



Neutral Citation Number: [2026] EWHC 298 (Ch)

BL 2024-LDS-000020

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (CH D)

13 February 2026

Before:

MR JUSTICE LEECH

B E T W E E N:

TANGENT PROPERTIES (NORTH) LIMITED

Claimant

- and -

EVANS HOMES (SKELTON) NO 2 LIMITED
(formerly Templegate Developments Limited)

Defendant

MR GARY BLAKER KC and **MR MARCUS KELLY** (instructed by **Freeths LLP**) appeared on behalf of the Claimant

MR GREGORY BANNER KC and **EMILY GAILEY** (instructed by **Walker Morris LLP**) appeared on behalf of the Defendant

Hearing dates: 1-5 December 2025

APPROVED JUDGMENT

Table of Contents

I. Introduction	[1]
A. The Parties	[1]
B. The Skelton Site	[4]
C. The Dispute	[21]
II. The Witnesses	[24]
D. Tangent.....	[24]
E. The Defendant ..	[35]
III. The Facts	[36]
F. May 1994 to December 1996	[37]
G. January 1997 to December 2005.....	[71]
H. June 2006 to June 2022.....	[139]
IV. The Law	[163]
I. Contract	[163]
J. Estoppel by Representation.....	[172]
K. Unjust Enrichment	[179]
L. Agency.....	[187]
V. The Contract Claim	[190]
M. Mr Chambers' Services	[190]
N. The 29 November 1996 Meeting/6 December Fax.....	[216]
O. The 18 August 2005 Meeting	[273]
VI. The Estoppel Claim	[315]
VII. The Unjust Enrichment Claim	[323]
VIII. Board Approval	[330]
P. Authority	[330]
Q. Board Approval.....	[342]
IX. Disposal.....	[349]

Mr Justice Leech:

I. Introduction

A. The Parties

(1) The Claimant

1. The Claimant, Tangent Properties (North) Ltd (“**Tangent**”), is a limited company owned and controlled by Mr Nigel Chambers and his wife and it was formed in January 1996. Mr Chambers is a self-employed property consultant. In 1986 he qualified as a chartered surveyor and town planner and holds the qualifications MCD, ARICS and MRTPI. From 1992 onwards he was self-employed and practised under the name Atlas Property Consultants (“**Atlas**”).

(2) The Defendant

2. The Defendant was formerly a joint venture company which was ultimately owned by Evans of Leeds Ltd (later the Evans Property Group Ltd) (“**Evans**”) and the Kelda Group plc (“**Kelda**”). It is now wholly owned by Evans, a privately owned property investment and development company and Kelda is the ultimate parent company of Yorkshire Water plc. On 14 December 2000 the Defendant was incorporated under company registration no. 04125370 and adopted the name Skelton Business Park Ltd. On 25 January 2008 it changed its name to Templegate Developments Ltd and on 29 November 2024 to Evans Homes (Skelton) No 2 Ltd. I will refer to it as “**SBPL**” until the first name change and “**Templegate**” until the second name change and thereafter as the Defendant.
3. SBPL was incorporated as part of a reorganisation of the ownership and development of a large site close to Leeds (the “**Skelton Site**”). Between 1996 and 2000 it was owned by a company called White Rose Developments Ltd (“**WRDE**”), an earlier joint venture between Yorkshire Water and Evans. Mr John Bell, who was the Managing Director of Evans from 1994 until his retirement in 2012, was a director of WRDE during that period and Mr Geoff Goodwill was its Chief Executive Officer (although there was some uncertainty whether he was a *de jure* a director). On 9 January 2001 Mr Geoff Goodwill was appointed to be a director of SBPL and on 21 January 2002 Mr Bell was also appointed to be a director.

B. The Skelton Site

(1) General Description

4. The Skelton Site consists of 267 acres located next to the M1 south of Leeds. Most of the land was originally owned by the British Coal Corporation (“**British Coal**”) and it was used for open cast mining until the middle of the last century. It is shaped like a boletus mushroom with a large cap on a short stalk or trunk. To the left hand side of the trunk and immediately below the left of the cap is the Skelton Lake Nature Reserve which was developed and is still owned by Leeds City Council (the “**Council**”).
5. Yorkshire Water Estates Ltd (“**Yorkshire Water**”), the property arm of the water undertaking, originally owned a significant section of the site too. It was located on the left hand side of the cap of the mushroom and it amounted to about one fifth of the total site area and acquired by a company called Swayfields Ltd (“**Swayfields**”). It has now been developed as the Leeds Skelton Lake Motorway Services Area (the “**MSA**”) by a company called Extra MSA Services Ltd. The remainder of the Yorkshire Water land was compulsorily purchased by the Council to create Skelton Lake.
6. In a report dated 29 March 2012 (the “**JLL Report**”) Jones Lang LaSalle Ltd (“**JLL**”) provided the following description of the Skelton Site (which was still undeveloped at that date):

“The land comprises a total gross area of approximately 267 Acres (as stated by Mott McDonald). It is of an undulating nature rising to a high plateau to the southern end. A stream, the Carlton Brook, runs through the middle of the site and there is a large lake to the Western end of the site known as Skelton Lake. This is designated wash-land which provides flood relief to the river Aire during times of storm. Almost all of the landscape is manmade having been subjected to extensive open cast mining, to a depth of up to 60 metres, in the mid-20th Century. The “Hill” forming the plateau is believed to be largely constructed of waste Pulverised Fly Ash (PFA) from the former power station, located to the west of the site at Knostrop.

In the early 2000s, connectivity to the site was improved with the completion of the A1/M1 link road, now forming the northern extremity of the M1 (see location above). More recently, the completion of the East Leeds Link Road has further improved access to Leeds city centre.

The land has been subject to considerable land-fill and restoration to a largely agricultural use. Some tree planting has also been undertaken in recent years particularly to provide a degree of screening from Pontefract

Road and the M1.”

7. Planning permission has been granted to develop the cap of the mushroom for residential use. That development will take place in three phases “**Phase 1**”, “**Phase 2**” and “**Phase 3**”. Phase 1 consists of most of the right hand side of the mushroom cap and Phase 2 (which will be developed in three separate parts or sub-phases) consists of the left hand side of the mushroom cap together with a sliver of land immediately below Phase 1. Phase 3 represents the stalk or trunk of the mushroom. In a brochure dated March 2019 Savills plc (“**Savills**”) stated as follows:

“Serviced site totalling 33.55 acres (13.58 hectares) that can accommodate up to 500 plots

- Ground works, plateauing, spine road, suds and utilities to be completed by Spring 2020, ready for housebuilders to commence plot development on site. House sales are achievable by the end of 2020 – the serviced site will need Reserved Matters consent in order to deliver house sales, offering an oven ready development opportunity
- The opportunity is offered as a whole or in two parcels. Parties are invited to offer on either Parcel A or Parcel B, or both parcels”

“Phases 1 & 2 received an Outline planning permission (15/07655/OT) on 1st November 2017 with all matters reserved except the means of access for the creation of a new community comprising up to • 1,100 dwellings • a new food store (A1) (up to 2,000m²) • a new local centre (A1 - A5 and D1 and D2) (up to 1,300m²) • a new school • areas of public open space • the means of vehicular access.

The planning permission has a number of conditions which need to be satisfied through reserved matters. Ground work conditions have already been discharged, allowing the site to be re-engineered and infrastructure to be constructed. Phase 3 currently has an Outline planning application running, which if approved, will provide an additional 700 houses and associated infrastructure.”

(2) *The Tripartite Agreement*

8. The Skelton Site was originally assembled for development thirty years ago. By an agreement dated 30 April 1996 (the “**Tripartite Agreement**”) and made between British Coal (1), Yorkshire Water (2) and WRDE (3) both British Coal and Yorkshire Water agreed to sell their parts of the Skelton Site to WRDE for £100 each. Clause 8 imposed an obligation upon WRDE as developer to prosecute the Planning Process (as defined) with a view to procuring the allocation of so much of the site as WRDE sought to develop within the Leeds Unitary Development Plan (the “**UDP**”) on terms which would permit

its development. Clause 10 required WRDE to give notice to both British Coal and Yorkshire Water of any proposed development and keep them fully informed about progress.

9. Clause 14 imposed an obligation to prepare a marketing campaign and to dispose of the Skelton Site as soon as reasonably practicable after obtaining planning permission and clause 15 required WRDE to pay overage to both vendors on the basis that British Coal was providing 80% of the site and Yorkshire Water 20% of the site. The obligation to make the overage payments crystallised on the “**Calculation Date**” which was defined as the first to occur of (a) the sale or sales of the land, (b) 10 years from the implementation of any relevant planning permission or (c) 15 years from the date of the agreement itself, i.e. 30 April 2011. If the Skelton Site had not been developed and sold, British Coal and Yorkshire Water were entitled to a share of its “**Unsold Value**”.
10. By a separate agreement also dated 30 April 1999 (the “**Yorkshire Water Agreement**”) and made between Yorkshire Water (1) and WRDE (2) Yorkshire Water undertook to enter into the Tripartite Agreement for an additional payment of £24,900. One of the factual issues between the parties was whether the British Coal land could be developed without the Yorkshire Water land. But in the event, WRDE acquired the entire site and Yorkshire Water was prepared to enter into a joint venture to develop it.

(4) *The MSA*

11. By an option agreement dated 27 February 1996 and made between WRDE (1) and Swayfields (2) WRDE granted an option to acquire the MSA which Swayfields later exercised and took a long lease of the MSA site. The documents were not in evidence but Mr Chambers’ evidence (which was not challenged) was that planning permission was granted for the development of the MSA after a public inquiry.

(5) *The Shareholders Agreement*

12. By an agreement dated 12 January 2001 (the “**Shareholders Agreement**”) and made between Evans (1) White Rose Property Investments Ltd (another Evans company) (2) Kelda Group (3) Yorkshire Water (which was now called Keyland Developments Ltd (“**Keyland**”)) (4) and SBPL (5), the parties agreed terms for the business and management of SBPL. The recitals conveniently summarise the purpose of both the

company and the agreement:

“(A) The parties intend to commence the development of the Site through the Company to a stage where a realistic valuation can be carried out to the satisfaction of both Shareholders following which WRPI can acquire Keyland’s shares in the Company.

(B) The parties have agreed subject to certain safeguards that the costs and expenses incurred by the Company in developing the Site are to be borne in equal shares.

(C) Keyland have agreed to remain a passive investor in the Company with the management of the development of the Site and the making of any decisions in relation to the development of the Site the sole responsibility of WRPI.

(D) The Company has an authorised share capital of £1,000 divided into 1,000 ordinary shares of £1 each of which 1 share has been issued paid up and are beneficially owned by WRPI.

(E) WRPI and Keyland have accordingly agreed to regulate the business and management of the Company and their relationship as shareholders on the terms and subject to the conditions appearing in this agreement.”

13. In order for the Shareholders Agreement to take effect it was necessary for WRDE to transfer the Skelton Site to SBPL and for both Keyland and WRDE to assign the benefit of their respective interests to SBPL. British Coal’s consent was also required to the assignment. On 12 January 2001 all of these various transactions took place, British Coal consented to the assignment and SBPL became both the owner of the Skelton Site and bound by the terms of the Tripartite Agreement.

(6) *The Business Park*

14. The Skelton Site was originally to be developed as a business park. On 1 August 2001 the Council adopted the UDP as planning policy and allocated 72 hectares of the land to the East of the M1 and the MSA for the development of a business park. On 9 November 2001 SBPL submitted two planning applications to the Council. The first related to landscape and infrastructure works and the second related to a proposed business park consisting of over 100,000 m² of space for B1 use, hotel and conference facilities, restaurants, leisure and retail space. The business park (if it had been developed) would have occupied a much smaller area of the Skelton Site than the three phases of housing which are now contemplated. The business park was located in the cap of the mushroom

and did not extend to the stalk (which would have been amenity land).

15. On 25 April 2006 the Council finally granted planning permission. The JLL Report records, however, that it was subject to in excess of 40 conditions including a condition that an application for reserved matters had to be made within 10 years. It was also subject to a section 106 agreement which envisaged three stages of work the second and third of which would trigger substantial contributions to the Council's funding and the construction of an East Leeds Link Road.
16. On 30 April 2011 the longstop date occurred for calculating the overage payments under the Tripartite Agreement without any development or sales having taken place. A dispute arose between British Coal and SBPL (now Templegate). SBPL's solicitors, Walker Morris LLP ("**Walker Morris**"), instructed JLL to prepare a valuation of the Skelton Site and in the JLL Report they valued it at £2.9 million. They explained that as at the date of their report no part of the contribution due under the section 106 agreement had been paid to the Council because no implementation had taken place in relation to any of the three stages of the work.

(7) *Housing*

17. The focus of efforts to develop the Skelton Site now changed as a result of the Council identifying the Skelton Site as suitable for housing. It is unclear precisely when this change of focus took place and I will have to return to this issue. But in the JLL Report the authors stated that in 2009 the Council published the final report of their "Strategic Housing Land Availability Report" which identified the site as suitable for the development of 875 dwellings on a medium term basis and a further 1375 in the long term. They also stated as follows:

"Subsequently LCCC published a draft Area Action Plan (AAP), identifying the site along with other sections of the Aire Valley as an "Action Area" to bring forward development in the medium to long term to meet the City Council's housing need. At the date of valuation the AAP was at the early stages of consultation. It was expected at the time that a further 24 months of consultation would be necessary before adoption. At the date of this report it is clear that the AAP will not be adopted before the Leeds Core Strategy and it is therefore expected to be a further 12 months before the AAP is adopted."

18. In 2017 the Council finally adopted the AAP to which JLL had referred in their report. It

was entitled the “Aire Valley Leeds Area Action Plan” and for shorthand I will refer to it as the “**AV Action Plan**”. It designated the Aire Valley as a major regeneration area and allocated the Skelton Site for housing. In section 4.6 the plan stated as follows under the heading “Skelton Gate Area Plan”:

“Skelton Gate will be a sustainable, healthy, and vibrant community (with potential for 1,801 new homes), within a landscaped parkland setting which has Skelton Lake as its centrepiece. The layout will be walkable, supported by key local facilities, such as a through school, local shops and services, health services and green spaces.

A mix of housing, in terms of type, tenure and cost will provide opportunities for different households to live at Skelton Gate including families, single person households and older people. The development will be child friendly and promote healthy lifestyles and will maximise opportunities to generate and distribute low carbon energy to new homes and businesses.

The area will be well connected into the LCREZ, city centre and neighbouring communities by frequent public transport services and pedestrian and cycle routes providing access to jobs, education and leisure opportunities. Skelton Lake will have become an important visitor destination and gateway to the Lower Aire Valley nature reserves, linked to other attractions along the River Aire and accessible from the waterways network. Improvements to the pedestrian and cycle network, including completion of the final phase of the Wyke Beck Way between Temple Newsam and Rothwell Country Park, will link to a network of leisure routes in east Leeds and along the River Aire corridor.”

19. The Defendant admitted in the Amended Defence that in November 2017 Templegate obtained outline planning permission for up to 1,100 homes together with supporting commercial uses and that in July 2019 the Council resolved to grant outline planning permission for a further 701 homes. It also admitted the following description of the three phases of development as a high level summary of the current status of the Skelton Site:

- (1) *Phase 1*: Between November 2018 and spring 2021 land preparation works were carried out and 14.55 acres were sold to Evans Homes for £8 million (payable in October 2022 and October 2023) and 17.18 acres were sold to Avant Homes for £5.3 million (payable between April 2022 and April 2024). In late 2019 Savills were appointed to market the site.
- (2) *Phase 2*: Between March 2022 and Spring 2024 land preparation works were due to be carried out and in January 2024 Savills were appointed to market 31.38 acres

in three parcels (2A, 2B and 2C) together with a further parcel for commercial use (including a supermarket).

- (3) *Phase 3*: Land preparation works have not yet been begun but once they have been completed, this will release a further 45 acres of serviced land available for sale which is anticipated to take place in 2026.

20. Mr Chambers also alleged that Templegate had secured £53 million in loans from Homes England and the Home Building Loan Fund, that since 2022 the Skelton Site started to realise profits and that taking into account the expected revenue the net profits realisable from the development are £58.835m of which he is entitled to 10% or £5,883,500. The Defendant denied these allegations and advanced the following case:

“83. Paragraph 70 is denied. The Defendant has only secured a single £20m loan facility from Homes England to be drawn down over Phase 1 of the proposed development. No further loan facility or increase in this loan has been agreed and the loan facility has not yet been utilised in its entirety. The Phase 2 & 3 works will be carried out with recycled funding from the proceeds of sale of first Phase 1 and then Phase 2.

84. Paragraphs 71-72 are denied. As pleaded above, the funds generated from the first phases of the development are needed to develop the latter phases, and it will therefore be several years before any final profit on the Skelton Site can be identified.”

C. The Dispute

21. Mr Chambers claims that in 1994 he introduced British Coal to WRDE and unlocked its development potential, that in 1996 WRDE entered into a binding contract to pay him 10% of the profits which it earned from developing the Skelton Site and that in 2005 SBPL agreed to be bound by its terms. In 2022 Mr Chambers assigned the benefit of his claims to Tangent. Now that the site is finally being developed, Tangent claims payment of 10% of the profits and damages for breach of contract and, in the alternative, a remedy for unjust enrichment.
22. The parties agreed a detailed list of 20 issues. But in broad terms what I had to decide was whether a binding contract came into existence in either 1996 or 2005 or whether the Defendant is estopped from denying that it did. If I decided against Tangent on that issue, I also had to decide whether it was entitled to be paid for the services which Mr Chambers provided to SBPL and, if so, on what basis. It was common ground that if

either claim succeeded, it would be necessary for the Court to decide what (if any) profits the Defendant has earned on the sale or development of any parts of the Skelton Site (and for that purpose to determine the issues set out immediately above). Accordingly, the Court will have to resolve the outstanding issues and, in particular, whether the proceeds of Phase 1 have been “recycled” to fund Phase 2 and Phase 3 and, if so, to what effect.

23. Tangent called three witnesses to give evidence: Mr Chambers, Mr Iain Robertson and Mr Ian Gray (both former executives of SBPL). Tangent also relied on a witness statement dated 27 February 2023 by Mr Goodwill for which it had served a notice under section 2 of the Civil Evidence Act 1995. The Defendant called only one witness, Mr Bell. Neither party sought permission to rely on any expert evidence.

II. The Witnesses

D. Tangent

24. Mr Banner and Ms Gailey reminded me of the guidance given by Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 at [15] to [22]. They also cited *Onassis v Vergottis* [1968] 2 Lloyd's Rep 403 and, in particular, the following passage from the speech of Lord Pearce:

“Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance.”

25. This guidance was important in the present case where the principal events took place between 20 and 30 years ago. Moreover, it was difficult for all of the witnesses to put themselves back in the position in which they were given that the whole focus of the development of the Skelton Site changed after the events with which the trial was concerned. For the most part, therefore, I relied on the contemporaneous documents. However, I also had to evaluate the accuracy of certain documents in the light of Mr Chambers’ method of keeping notes.

(1) Mr Chambers

26. Mr Chambers gave evidence with great conviction that WRDE and SBPL had entered into a binding contract with him. But I was not satisfied that he had any independent recollection of the critical meetings and telephone conversations about which he gave evidence and formed the view that he had reconstructed the relevant events after a long study of the contemporaneous documents. He demonstrated a detailed knowledge of the documents and could recall individual items of correspondence without prompting. For example, when Mr Banner cross-examined him about an important meeting on 13 May 2005 he gave evidence about Mr Bell's state of mind by reference to an email which Mr Goodwill had sent to Mr Bell on the previous day. When listening to his evidence, I had assumed that he had been sent this email. But it became apparent that he had only seen this document on disclosure:

"Q. But you're quite careful in your correspondence to refer to "development consultancy agreements", aren't you, not "arrangements". Was that John Bell's word? A. It was probably John's words. I mean, obviously I'm recording what was said. I mean, I don't see a difference between "arrangement" and "agreement". But I 'm not a lawyer. Q. Okay. A. These were John Bell's words. I think Geoff refers to it as the " profit share arrangement" on his fax of the 12th —sorry, his email of 12 May." "Q. Isn't it the case that you didn't advance the one—page fax in this meeting as a binding and full agreement because you knew it wouldn't stand as one? A. No. I mean, obviously John said to Geoff, post—August 2002: let's rely on the agreement. So he re—affirmed at that point in time that there was an agreement in place. This was, if you like , a final attempt with John just to see if the two parties could agree a replacement agreement. Q. Okay. MR JUSTICE LEECH: Sorry, before we move on, I may have misunderstood. Can I be clear that at 1100 you've got the email, 12 May 2005, which I think you said you saw immediately before the meeting. A. I believe it was left — MR JUSTICE LEECH: And the attachment to that, headed "Skelton profit share schedule". A. I don't think that —no, I didn't have a copy of that. I think —it was only found during disclosure, if I 'm correct."

27. Mr Chambers' evidence was also coloured by hindsight (as it was bound to be). His case was that WRDE had agreed to pay a profit share of 10% because he introduced British Coal to WRDE and unlocked its potential through his involvement in the UDP inquiry. However, the UDP only allocated the Skelton Site for development as a business park and its potential for housing development was only recognised in the AV Action Plan over 15 years later. I have no doubt that Mr Chambers strongly believed that he was

“instrumental” in persuading the Council to allocate the Skelton Site for housing in the AV Action Plan (as he stated in his witness statement). But, in my judgment, his evidence was not borne out by the documents and was heavily coloured by hindsight.

28. Furthermore, I found it very difficult to assess how much weight to attach to Mr Chambers’ evidence more generally about the services which he provided to WRDE and then SBPL. He gave evidence in very general terms and that evidence gave the impression that he was leading a large professional team or that, if not leading it, he was an important and influential member of the team. But when I began to look at the documents upon which he relied, they tended to suggest that he was performing a much more peripheral and less significant role. I set out my detailed assessment of that evidence in section M.
29. In describing the work which he carried out Mr Chambers also gave evidence on at least two occasions which was plainly inconsistent with the contemporaneous documents. First, Mr Chambers gave evidence that from 2003 onwards he promoted the Skelton Site for development as a casino to a hotel and resort group called Kerzner International Ltd (“**Kerzner**”). When Mr Banner put it to him that he was acting for Kerzner (as Mr Bell had said in his witness statement), he denied this and maintained that he was acting for SBPL. However, the correspondence showed that Kerzner had retained him and was paying him £75 per hour and that SBPL never agreed to his terms. This cast significant doubt on his credibility.
30. Secondly, Mr Chambers gave evidence in his witness statement that he was asked to take on a more extensive role in the Skelton Site after a critical meeting with Mr Bell on 18 August 2005. This evidence was inconsistent both with the terms of his own typed note of the meeting and also with a fax dated 4 December 1996 in which he asked Mr David Helliwell, the Estates Director of Evans, to explore “a potential future role in the scheme”. Since Mr Banner did not formally challenge this evidence, I am prepared to accept that Mr Chambers was mistaken but this undermined the reliability of his evidence.
31. Finally, I had concerns about the accuracy of some of the typed notes and emails which Mr Chambers produced at the time. Mr Chambers had a tendency to improve on what was said to him orally when he came to record discussions on writing. I deal with the

accuracy of his notes of the meetings on 13 May 2005 and 11 August 2005 separately. But there was another telling example in his cross-examination. On 17 March 2014 Mr Chambers spoke briefly to Mr James Pitt, the Development Director of Templegate, and on 21 March 2014 he recorded their discussion in an email. His email differed from his handwritten notes in two key respects. First, he referred to “our 1996 agreement” when Mr Pitt had referred only to “a piece of paper”. Secondly, he recorded that Mr Pitt had told him that the directors of Templegate were fully aware of the agreement and it had been mentioned at board meetings. Mr Chambers had to accept that Mr Pitt had not said this at all. If Mr Chambers had not kept his manuscript note, his email would have provided clear documentary support for his case.

(2) *Mr Robertson*

32. In 2004 Mr Iain Robertson was appointed as the Development Director of Evans and in May 2005 he also took over Mr Goodwill’s responsibility for SBPL. I accept that he was an honest witness trying to assist the Court. But he had no relevant evidence to give in relation to the formation of a binding contract and although I allowed Ms Gailey to put questions to him about his understanding of the relevant documents I attributed little weight to his evidence. He had some evidence to give about Mr Chambers’ role from 2005 until 2007 but after so many years that evidence was inevitably impressionistic.

(3) *Mr Gray*

33. In 2007 Mr Ian Gray was appointed to the new role of Managing Director of SBPL and occupied that position until 2009. Again, I accept that he was an honest witness trying to assist the Court. But, again, he had no relevant evidence to give in relation to the formation of a binding contract and, again, although I allowed Mr Banner to question him about his understanding of the relevant documents I attributed little weight to that evidence. Mr Gray also had some evidence to give about Mr Chambers’ role after 2007 but again that evidence was impressionistic.

(4) *Mr Goodwill*

34. Mr Goodwill made a statement which was broadly consistent with Mr Chambers’ evidence. However, I attributed little or no weight to Mr Goodwill’s evidence for a number of reasons:

- (1) I formed the view that Mr Goodwill had discussed his evidence with Mr Chambers before he made his witness statement. Both of them gave evidence about a telephone call in August 2002 in which Mr Goodwill spoke to Mr Bell and then relayed its contents to Mr Chambers. This call was completely undocumented. I found it inherently improbable that Mr Goodwill would have been able to remember it at all unless prompted by Mr Chambers. I also found it inherently improbable that either of them would be able to remember precisely what Mr Bell said.
- (2) Mr Goodwill did not deal with one important issue on which he would have been able to assist the Court, namely, whether the board of directors of WRDE approved the terms which Mr Chambers alleged to have been agreed at a meeting on 11 December 2005. The inference which I draw is that Mr Goodwill would have been unable to support Mr Chambers' account if he had been called to give evidence.
- (3) In an email dated 17 November 2025 Mr Goodwill wrote to Mr Chambers' solicitor, Mr Ciaran Dearden of Freeths LLP ("**Freeths**"). He stated that he had made it clear to Mr Chambers some time before that although he was prepared to make a statement he was not willing to come to Court. It is also apparent from this email that he had provided the statement to assist Mr Chambers to "achieve a fair and just settlement". In my judgment, the Court should place little value on an unsworn statement which the maker never intended to be tested in Court.
- (4) Mr Goodwill also relied on his age and health and stated that his health, self-confidence, memory and general well-being had diminished and he produced a letter from his GP stating that he was 81 and felt that he had lost confidence over recent years and felt unable to attend court because of the stress and anxiety which this would cause him. In my judgment, Mr Goodwill was in substance accepting that he had no confidence in his own evidence.

E. The Defendant

35. The Defendant called only one witness, Mr Bell. I found him to be an honest and reliable witness. He was clear when he was unable to remember conversations and meetings and clear when he was speculating about what he and Mr Chambers might have said to each other. Even then, he was diffident about speculating at all and only did so when invited

by counsel or by me to do so. I also found Mr Bell's evidence that he would not have agreed to be bound contractually at either of the meetings on 19 November 1996 and 18 August 2005, inherently probable. Further, Mr Bell confirmed in both his witness statement and in cross-examination that he could recall both the meeting on 13 May 2005 and the meeting on 18 August 2005 (although not the detail).

III. The Facts

36. I now set out the principal documents and other evidence upon which the dispute turned. I also set out below the relevant extracts from the cross-examination of the witnesses on those documents immediately below them. Although a lot of the detailed evidence which they gave was neither relevant nor admissible to the question whether a binding contract was made, it was useful as a method of taking me through the key documents and putting them in context. It also enabled each counsel to put their case to Mr Chambers and Mr Bell and to explore the reasons why it was either probable or improbable that a binding contract was formed.

F. May 1994 to December 1996

(1) 25 May 1994

37. Mr Chambers gave evidence that when he was working for AF Budge Estates Ltd in the early 1990s he first became aware of the Skelton Site and its potential. In May 1994 he recommended to British Coal that an approach should be made to WRDE. He also gave evidence that on 25 May 1994 he met Mr Goodwill and that in June 1994 he brokered a meeting between him and Mr Albert Schofield of British Coal. On 20 June 1994 that meeting took place and Mr Goodwill's handwritten notes of that meeting record as follows:

“Owned by British Coal

N.B. – Clarify ownership boundaries.

- End loaded deal. No minimum figures.

- WRDE low profile. New corporate vehicle to promote as agent for British Coal.

- Richard Arkham – UDP officer for the area.

- Inclusion of Y.W. land and avoidance of ransom situation essential. LCC land also?

- [Albert] Rothwell tip restoration might prove catalyst for Skelton

allocation?

- Wants 'a steer' from Brian Walker (informal).

BW. Seeking a meeting with Alan Stopher of B.C. opencast.

- [Planning?] £100k to £200k.

- Unserved Land better share for B.C?

- Served land/Dev. Profit better share for WRDE/Nigel + 60/40 ok.

- National Power have right to acquire part of the B.C land but only if B.C. decide to dispose and the arrangement has a finite life & can be allowed to expire."

38. Mr Chambers did not accept that the Yorkshire Water land represented a ransom strip which prevented British Coal from developing the Skelton Site when Mr Banner put this to him. But he accepted that Yorkshire Water were cool when he approached them and that Mr Goodwill was responsible for persuading Yorkshire Water to sell its land to WRDE and to participate in the development. By letter dated 22 June 1994 Mr Schofield wrote to Mr Goodwill who made manuscript annotations on the letter. Those annotations suggest that he spoke to Mr Schofield shortly afterwards about Mr Chambers and whether he should be paid a fee or a bonus. Mr Chambers was not copied in on this correspondence and he did not participate in these discussions.

(2) *1994 to 1996: Mr Chambers' services*

39. Mr Chambers' evidence in his witness statement was that after he had introduced British Coal to WRDE, Mr Goodwill instructed him to promote the Skelton Site through the UDP process and that he acted for WRDE between the summer of 1994 and early 1996. He stated in his witness statement this involved "the formal instruction, direction and management of the professional team". He also gave the impression that this was very significant and time consuming:

"21. Under instructions from Geoff, between the summer of 1994 and early 1996, I was charged with the task of promoting the Skelton Project through the Leeds UDP process. This involved the formal instruction, direction and management of the professional team. I attended a number of UDP Public Inquiry round table sessions and policy specific discussions. I spent a substantial amount of time during this period trying to over-turn the proposal by Leeds City Council to place the Skelton Project in the statutory Green Belt and to try and secure an allocation for business park use.

22. It was agreed at the time by WRDE, BCP and the professional team, including myself, that our efforts should be focused on promoting the Skelton Project for allocation in the Leeds UDP as a business park. In this

respect, early drafts of the Leeds UDP proposed to allocate three large business park schemes; two of which were, in our view at the time, proposed in unsustainable locations when compared to the Skelton Project. Accordingly, it was decided that WRDE would make objections to these two schemes and offer the Skelton Project as a better, alternative, location. Our discussions at the time were focused on securing a business park allocation and removing land from the Green Belt with a view to promoting a wider and more diverse range of land uses thereafter. I also recall discussions about how much of the Skelton Project we should promote for Green Belt release and development purposes in the Leeds UDP – particularly whether the pulverised fuel ash lagoons adjoining Skelton Lake should be included. It was agreed by all parties that, at least for the purposes of the Leeds UDP, the pulverised fuel ash lagoons would not be promoted but that the opportunity to try and bring this part of the Skelton Project forward would be revisited at a later time.

23. Within the draft versions of the Leeds UDP, it was agreed that BCP would be seen to promote the Skelton Project and that I would be a ‘frontman’ of the project throughout the Leeds UDP Public Inquiry process. I understood that I was put forward as such because I could be presented as an independent consultant acting for BCP. This was important because Evans and Yorkshire Water between them controlled at least half of the proposed land allocations for employment use in the emerging Leeds UDP so all parties felt that the Skelton Project should be put forward as a scheme being promoted by British Coal.”

40. Mr Goodwill confirmed in his witness statement that at the early stages of the UDP process Mr Chambers was the “frontman” but that this role diminished over time. However, he did not suggest that Mr Chambers either directed or managed the professional team. His evidence was as follows: “He attended meetings, helped with the coordination of the professional team and worked on the early representations to Leeds City Council.” He also stated that: “Nigel continued, as and when required, with his work in assisting in promoting the Skelton project”.
41. On 21 July 2003 Ms Stephanie McDonald of Evans sent a memo to Mr Goodwill enclosing cost and income schedules of the Skelton Site. It recorded that on 9 July 1994 Atlas had been paid £10,000 for “Preparation of initial UDP proofs” and that on 25 April 1996 and 19 June 1996 Mr Chambers had been paid £5,000 and £15,000 personally for “Public Inquiry preparation and attendance”. This schedule also recorded that between 20 January 1995 and 28 April 1995 Atlas had been reimbursed for professional fees paid to a number of different professional advisers totalling £13,236.75.

(3) *1995: The Early Negotiations*

42. Although he was paid for the services which he provided to WDRE for the UDP public inquiry, Mr Chambers also opened negotiations with British Coal and WRDE for either an equity stake or profit share in the development of the Skelton Site. British Coal was not prepared to give Mr Chambers either kind of interest and he ultimately accepted that WRDE would not grant him an equity stake in the project. By letter dated 2 February 1995 he wrote to Mr Goodwill putting forward alternative proposals for his involvement and remuneration:

“At this juncture it might be to our mutual benefit to consider my own involvement in the project, especially as the timeframes are now close to agreement with British Coal. When we originally looked to formalise our relationship last year British Coal pointed out that my profit should be accommodated within your company’s return from the scheme rather than as a percentage share of the overall project. My understanding, following on from our brief conversations subsequently, was that some form of Development Consultancy Agreement could be agreed between our respective solicitors to cater for my profit element.

I am now anxious that we set out the basis of such an agreement in order that its drafting could progress in tandem with your legal work with British Coal. To my mind there are 3 principle elements of such an agreement which we should perhaps consider at this point in time:

■ Timing:

As you are now close to resolving with British Coal the length of the option period I believe that we should be able to confirm a mirror timeframe within our agreement.

■ Role & Responsibilities:

We need to consider in detail my role within the project. At this stage, this will obviously involve promoting the scheme through the UDP process. However, once an allocation is secured I would hope that it would become more one of managing the development process itself; securing tenants, funding, procuring technical consents, infrastructure and building input, controlling and monitoring consultants etc. We would also need to agree my responsibilities in regard to your company including the reporting and decision making process.

■ Remuneration:

It is likely to involve 3 parts now that a straightforward equity stake has been ruled out:

- (i) Interim Consultancy Fee - These to be paid until the site becomes allocated for development. You have already made a payment of £10,000 for the first phase of work and a further £5,000 is due once

the agreement is signed with British Coal. I would welcome your thoughts on the basis of future fees as the scheme is progressed through the UDP process.

(ii) Development Consultancy Fee - Presumably once the site is allocated we would move on to the next stage in the development process to secure planning permission, agree infrastructure costs and provision, secure tenants, funding and instruct/monitor the consultants and generally bring the project alive. At this stage I suggest that my remuneration takes the form of an agreed fee to reflect time spent on these detailed tasks.

(iii) Profit Element - As individual phases of the project are completed and sold I believe that there should be some form of profit or bonus payable to me. This could relate either to a percentage of White Rose Development Enterprises Ltd profit or to a percentage of the completed development value or land sale of the particular phase.”

43. By letter dated 20 March 1995 Mr Chambers wrote to Mr Goodwill again stating that he was willing to trade off any consultancy fees which he earned under (ii) (above) in return for a bigger profit element under (iii):

“As I explained last Friday I would be happy to offset a substantial proportion of my fees under (ii) Development Consultancy Fee in return for an enhancement of (iii) Profit Element and I did indicate outline percentages which I felt might be appropriate in this situation. I appreciate the difficulty in adequately defining "Profit", especially bearing in mind your desire to hold a number of the completed buildings within the company's internal investment portfolio. However, I believe that it would be in both our respective interests to relate my profits to your company's return from the project in order to ensure that we have a shared interest in the scheme's success. Moreover, as your main agreement with British Coal relates to a division of profits on a pre-determined basis we could no doubt consider mirroring our agreement with the British Coal format in this regard.”

44. By letter dated 31 May 1995 Mr Chambers chased Mr Goodwill for an update on the position with British Coal and “whether you have addressed my involvement in the scheme with your fellow directors”. On 8 September 1995 Mr Goodwill spoke to Mr Chambers and Mr Goodwill took a note recording “Nigel X% of our Y% i.e. success related - net some or all of fees paid to date”. He also recorded: “Nigel hoping for 25% of our profit – told cannot go that far.” Mr Banner asked Mr Chambers to explain what Mr Goodwill meant by “success-related” and his evidence was that it meant the success of any scheme whenever it took place until the Skelton Site was fully developed:

“Have you any idea what Mr Goodwill had meant by the words "success related"? You'd reached agreement with —I mean, British Coal and White Rose had been introduced to each other and they were going in together. So what other success would you have had in mind at this stage? A. Well, this is Geoff's note. I think what he's saying is that I would be paid a percentage of White Rose profits. In terms of "success related", I assume what he meant there was if and when the scheme was successful. So I would get that percentage, and it says: "Net some or all of fees paid to date." In other words, the income that I had received, the interim payments. MR BANNER: So that would be the success of the scheme that you had in mind, or White Rose had in mind, you and White Rose had in mind? A. The success of a scheme. Q. Any scheme whatsoever? A. Any scheme. Q. One that didn't happen for another 45 years, for example? A. I think my intentions, along with White Rose, it would be throughout the life of the project. Q. What does that mean? A. Until the site is fully developed. Q. In any way whatsoever? A. I didn't see any difference there, yes. Whatever the scheme was, however long it took, our interests were aligned. Q. And irrespective of whether you were involved or with your involvement? A. I think the key reason that White Rose were prepared to offer the profit share was because I introduced the opportunity, the land development opportunity to them.”

(4) 18 June 1996

45. By letter dated 31 May 1996 Mr Chambers chased Mr Goodwill again stating: “I believe that you were due to discuss my Development Consultancy Agreement with your colleagues last week”. On 18 June 1996 Mr Goodwill met Mr Chambers, who prepared a detailed agenda for the meeting which contained the following points under the heading “Skelton Business Park - Leeds”:

“Development Consultancy Agreement

1. White Rose Development Enterprises Limited

2. Atlas Property Consultants

■ Development Procurement -

- * Planning & technical consents, statutory consultations.
- * Master planning, architectural layouts, design, master plan documents, design standards.
- * Consultants - selection, appointment, monitoring and liaison.
- * Construction - Contractor selection, building contracts/warranties for ground works/preparation, infrastructure, buildings & landscaping.
- * Marketing - Marketing meetings, tenant negotiations, heads of terms, pre-letting agreements, leases and sale agreements.
- * Management - On site management team (selection, appointment and monitoring/liaison), management accounts, cost control etc.
- * Finance & Funding - External funding sources, negotiations, finance and

funding agreements.

■ **Development Management** -

- * Level of responsibility/reporting process and decision making between 2 parties.
- * Protection of APC position v WRDE overall responsibility/control.
- * Exchange of information, copies of legal agreements etc on an open book basis.

■ **Agreement Timescale** -

- * Minimum 10 years/2 full UDP plan periods to allocation of site (mirror British Coal).
- * End Date - Full completion of project/site development. Winding up position.
- * Extension - Potential phase 2 (Fuel ash lagoons, National Power land etc).

■ **Remuneration** -

- * £15,000 on exchange of Agreement.
- * £20,000 on allocation of site in UDP.
- * 10% of WRDE profit (check definition within British Coal agreement).
APC costs/out of pocket expenses?
- * Method of payment to APC (terms and format)."

46. Mr Chambers accepted that all of the tasks which he had identified under the headings "Development Procurement" and "Development Management" would have arisen after the land had been allocated by the UDP or part of the building works or planning promotion. He also accepted that he was still linking his remuneration to British Coal's entitlement which he assumed to be a 10 year option. Mr Banner then asked him to explain what work his remuneration was to cover and, in particular, the 10% profit share for which he was asking:

"Q. Okay. Then you've got Remuneration at the top of 487: "£15,000 on exchange of Agreement." That "agreement" means what? That's the agreement between White Rose and British Coal and Yorkshire Water by which the land was acquired? A. The agreement had already been exchanged at this point, yes. Q. Yes. Okay: "£20,000 on allocation of site in UDP." And then: "10% of [White Rose Development] profit (check definition within British Coal agreement)." So it's right, isn't it, that your 10% was hinging on work you did after the land had been allocated to the UDP? A. The 10% profit share would relate to introducing the opportunity. That's why White Rose were prepared to discuss profit shares. Q. Why doesn't it say "10% profit for introduction"? A. I did say maybe it was part of an introduction fee. Q. But this is your document. A. Yes, but it's a different document to the one you referred to before. Q. Yes, but this is your document, and you're now saying 10% of WRDE profit? A. Yes. Q.

You said maybe that was part of an introduction fee. A. White Rose were prepared to give a 10% profit share based upon me introducing the opportunity to them. Q. Mr Chambers, that isn't what this says. It's not consistent with you folding in your two heads of remuneration under the development consultancy agreement. You were going to get a profit share for work you did under a development consultancy agreement after the land was allocated, not for an introduction. A. No, my understanding and the reason that White Rose were prepared to give a 10% profit share was for introducing a valuable opportunity. It wouldn't make sense for White Rose just to pay a profit share based on consultancy services. They were ancillary to introducing the main opportunity. The opportunity was valuable. Q. Consultancy services are what helps give the land its uplift in value, aren't they? A. Yes, they help to unlock the potential on an opportunity which I introduced. Q. And the introduction on its own, it's something that had already long since happened? A. Yes, but White Rose wanted to wait until the agreement was signed before entering an agreement with me. But it was acknowledged that I'd get the profit share for the introduction to the site. There's no sense in paying someone for services. The value I brought to the scheme was introducing the land, the opportunity. Q. In that case, why did White Rose need you for a development consultancy? If the value you had brought was simply an introduction, that's it. They don't need any further engagement with you, do they? A. Well, there is a benefit from White Rose's point of view because I can assist, I'm incentivised to do a good job, to provide the services to unlock the value because we're sharing in profits. Q. So how are you going to be paid for your work under the development consultancy agreement if it wasn't going to be by a profit share? A. Well, I wasn't getting paid for development services. Q. So you were going to do a development consultancy agreement for free? A. No, it came —the fees relate to the profit share. I provide services to White Rose to help unlock the development potential — Q. Okay. A. —which I identified and introduced to White Rose. Q. That, I thought, was where we had a disagreement a moment ago. I suggested to you that you were getting your 10% as a quid pro quo for the value that you added to the land by providing development consultancy services, and you seemed to quibble with that and say, "No, I was getting it for providing the introduction in the first place". A. The reason they were prepared to make the profit share was because I introduced a valuable opportunity off the market to them. In my experience, that's —I have done quite a few deals like this. It's introducing a developer, a land promoter, to the opportunity. Q. Okay. But you'd already long since introduced this land. You had no bargaining chips. This was now White Rose's land. You were way past the point of introductions. Why would White Rose be prepared at this stage to give you 10% for an introduction for land it had already bought? A. Because the principles of a profit share were discussed from 1994 onwards. It didn't start in 1996. The discussion started in 1994. I think you've referred me to notes from Geoff Goodwill before this date where we talk about —where he talks about profit shares. The profit share figures were higher than this in previous discussions. So that negotiation had been going on by this time for over two years."

47. Mr Goodwill made a handwritten note of the meeting in which he recorded “£15k intro fee”, “J.V. rather than consultancy – albeit not an equity partner” and “How to tie in with agency involvement? Eg. Grimleys + remainder of professional team + our own involvement?” Mr Chambers also made a handwritten note of the meeting in which he recorded the following points:

“1. Intro Fee → NJC to submit invoice now for £15k – This week for UDP work [OK].”

“4. BOARD on profit share – 10% or a lesser %age – fee to cover interim work – i.e. Planning to profit stage. Corporate view → a) Wot if NJC doesn’t have time or nothing to contribute b) No time & effort generally.”

ACTION –

(i) Int + low profit :

(ii) Just profit : NJC role GG to pursue this avenue only – prepared to meet NB - MSA excluded from deal with NJC (will only get £20k on Adoption)

- Phase II/extension – pot. involvement for NJC – A deal poss.

- Relocation/redevelopment – GG expressed some concerns!!”

48. Mr Goodwill and Mr Chambers both referred to the initial £15,000 as an “intro fee” in their notes of the meeting and Mr Chambers accepted that it was “a part fee for introducing the site”. By letter dated 19 June 1996 Mr Chambers followed up the meeting by enclosing his invoice and stating: “I note that you will discuss the Development Consultancy Agreement with your colleagues over the next few days.” Mr Chambers accepted that there was no agreement at this stage despite the description which he used.

(5) *Letter dated 23 July 1996*

49. On 9 July 1996 Mr Goodwill spoke to Mr Bell and Mr Helliwell. His note of the meeting records that they: “Discussed Nigel’s expectations – JDB outlined difficulties. Agd Nigel to write setting out his case, for the Board to take a final decision.” By letter dated 23 July 1996 Mr Chambers wrote to Mr Goodwill as requested “setting out his case”:

“My file on the project begins in July 1991 during my time at AF Budge when I had meetings with British Coal Opencast (Martin Stott and Alan Stopher). This dialogue continued with Tony Palmer and Albert Schofield at British Coal Property following the demise of AF Budge in December 1992 and the setting up of Atlas Property Consultants in 1993. It was not until the summer of 1993 that Albert Schofield finally saw the merit of making an objection to the UDP. As you must appreciate I had already invested substantial time and effort on a speculative basis prior to your involvement because of

my belief that the site had significant potential for development as a business park.

It is quite clear that from July 1991 until August 1993 no one had given any serious consideration to the site's potential. More importantly, had I not finally managed to persuade British Coal to make the UDP objection, it is very unlikely that the site would have been available for development in the foreseeable future. I fully appreciate that without your company's financial commitment to pursue the UDP Inquiry the scheme would not have progressed. However, you would have been unlikely to pursue this course of action if you did not believe that the site had a realistic chance of success.

Prior to your involvement I was content to suggest to Albert Schofield that we approach WRDE partly on the basis that you would be willing to allow me to participate as an equity partner in the scheme. British Coal themselves had also envisaged that I would form part of the equity relationship and when the deal was struck at the meeting with Albert Schofield in June 1994 it was suggested that I was to be accommodated within the WRDE side of the deal. Since that time I have always approached the project on the premise that my involvement was to be on an equity basis, a position I have maintained during the last 2 years. The only reason that the arrangement was not formalised earlier was that you wanted to get the site under contract prior to putting the details of my involvement to your colleagues. Unfortunately, it has taken much longer than we both expected to secure the site and we are only now in a position to finalise this matter."

50. Mr Chambers then went on to make a number of points to justify an equity participation in the project, namely, that the kind of arrangement which he was proposing was not unusual, he would give the project his full attention and there was a still a lot of work to do before concluding as follows:

"Having been involved in the Skelton project for some 5 years - identifying its potential, convincing British Coal to consider development of the land and pursuing the scheme through the UDP, latterly with WRDE - I feel a great sense of personal attachment to the scheme. As a small operator I have been fortunate in being able to devote considerable efforts to the scheme as I have a very strong belief in the merits of this opportunity and do not have to justify my efforts to colleagues or co-directors. Consequently, I feel fully justified in taking some form of equity position in the scheme to reflect both my efforts and commitment to date and likely input in the future."

- (6) *Memo dated 15 October 1996*

51. Mr Chambers accepted in cross-examination that WRDE's funding had driven the project through. He also accepted that his preference from the beginning was to take an equity stake in an SPV which would carry out the project rather than a profit share. But he also recognised that he was dependent on the goodwill of WRDE to achieve such an outcome. However, things had moved on by October 1996. In an internal memorandum dated 15 October 1996 Mr Goodwill reported to Mr Bell as follows attaching a copy of Mr Chambers' agenda for the meeting on 18 June 1996 and his letter dated 23 July 1996:

“1. There is no doubt that the initial identification of the opportunity was due to Nigel's initiative and commitment. Indeed it was only due to his persistence that British Coal submitted a UDP objection. Had they not done so there would have been no opportunity to present the case for development of the Skelton site at the Inquiry. It is also undisputed that he introduced the opportunity, initially to Yorkshire Water and then to WRDE. However, I then had to deal with the long and tortuous negotiations with British Coal Property (which commenced in Spring 1994 and finally came to fruition when we exchanged contracts in February 1996). I also had to "deliver" the Yorkshire Water land because of British Coal's belated refusal to proceed unless the YW land was included, thereby necessitating YW becoming a party to the contract.

2. Prior to the introduction to WRDE Nigel had progressed the project through its early stages up to and including the submission on behalf of British Coal of the original UDP objection. Once we became involved Nigel continued to fulfil a valuable role in helping to prepare the planning case, co-ordinating the planning team and acting as "front man" during the two years or so when we considered it prudent not to reveal our identity.

3. On the face of it I should have clarified the terms of Nigel's involvement at an earlier stage. However, bearing in mind that it was never going to be easy to find a mutually acceptable basis for his involvement, I thought it prudent to postpone the substantive discussions (i) until Nigel had fronted and co-ordinated the case up to and including the UDP Inquiry (particularly bearing in mind that we were still seeking to remain anonymous) and (ii) until we had exchanged contracts with British Coal to purchase the land, the time-scale of which became far more protracted than originally envisaged.

4. Nigel was, at the outset, seeking an equity stake by way of a shareholding in a project-specific joint venture company. I informed him at an early stage that we were not prepared to enter into a joint venture in which he would have a shareholding. Since then Nigel has consistently sought an entitlement to a profit share, initially at a significantly higher level than 10%. After protracted negotiation, Nigel has reached the point where he regards 10% as the minimum acceptable level in relation to his involvement.

5. Attached is a summary Nigel prepared some time ago of the main terms he would anticipate being included in a Development consultancy Agreement.

6. Could I make it clear that Nigel's percentage share would be of the WRDE profit, i.e. the net figure after any profit share payment to British Coal/Yorkshire Water Estates. In addition I have informed Nigel that as the motorway service area deal was done entirely by myself with no input from him, then he would not be entitled to any profit share from that transaction.”

52. Mr Goodwill then recorded that Mr Chambers had been paid £30,000 of which he described £15,000 as an “Introductory fee” and £15,000 for “planning work up to and including the UDP Inquiry”. He also stated that Mr Chambers had agreed to forego a further £20,000 which Mr Goodwill had agreed to pay if the Skelton Site was allocated for development in the UDP.

(7) 28 October 1996

53. On 28 October 1996 a meeting took place between Mr Goodwill and Mr Bell. Mr Goodwill’s handwritten notes of the meeting do not record in terms that Mr Bell was prepared to agree to Mr Chambers’ proposals but they do suggest that Mr Bell and Goodwill discussed both a time limit and a potential cap to be placed on Mr Chambers’ profit share:

“Nigel Chambers

- 10% of net profit before tax from land sales (actual or deemed)

Payable at each tranche sold/developed.

- Subject to a cap of £?

(net of payments on a/c)

- Finite limit to agt. – 10 yrs from UDP adoption.

- No more money from now until profit achieved.

- Termination rights - no breach – profit entitled preserved - breach – profit entitlement lost but us clawback of interim payment.

- Define duties.

- No share of development i.e: build out profit. If we want to retain the services we negotiate at that time

Or

Purchase Fee

N.B. Need to have clear definition of apportioned dev. costs to be set against value.”

54. Mr Bell could not recall this meeting. But he did draw attention to the cap and speculated that WRDE might have been able to persuade itself that a profit share was an appropriate arrangement if there had been a cap. On 8 November 1995 Mr Chambers spoke to Mr Goodwill and his own note of that meeting recorded that on two occasions they discussed a cap of £200,000 or, possibly, £250,000. Mr Chambers accepted that his note may have been referring to a cap on his remuneration:

“Q. If we look at 511 and 512, 511 is your note, I think, of a meeting on 8 November. 512 is the transcription of it. Some of this is illegible. We see—if we look at the typed version, 512, we see the parties present: “1. Geoff Goodwill ...” “2. NJC.” Point 1: “£130 spent to date ... on deal.” Do you have any idea what that relates to? A. Yes. I think that was the cost that White Rose had incurred to that point in time on the project. Q. And then 2: “Bones of objective.” The first point is illegible. I don’t know whether you can help us with the first point on 511 that is on the same line as 2 in the margin in the ring, in the circle. A. The second word looks a little bit like “mech”, or “mechanism”. That would be guessing. Q. Okay. So perhaps: “[Something] mechanism. “Cap –£200K £1/4 mill!” Now, this is your note and the exclamation mark appears in your note. Is it right to conclude from that that you were quite surprised at the idea of a cap at that sort of level? Is that why you used an exclamation mark? A. Yes, it may be that the cap on costs was 200 to 250,000 when 130 grand had been spent. Q. Are you looking at (a) at the bottom of the note now? Because that says “Capped at £250k” for planning application consent. I’m looking at the line that says: “Cap –£200K £1/4 mill!” A. Yes, that’s it. The costs of pursuing the planning application capped at 250 seems low. That’s maybe why I put an exclamation mark on it. Q. Isn’t that a cap on what would be paid to you, because the next line is: “Time –10 [years] +” “Deal basis” is the next line, and the final line is: “Swayfield [excluded].” Aren’t the bones of the objective here the bones of something concerning you, and if so, the cap, 200K/quarter of a million, is what was being proposed to you as a cap? A. Yes, that may be the case, yes.”

(8) 29 November 1996

55. On 29 November 1996 Mr Chambers met with Mr Goodwill and Mr Bell together for the first time. The only record of that meeting which was available at trial was a handwritten note prepared by Mr Chambers which had been transcribed by the parties’ solicitors. They disagreed about two phrases which I identify in the footnotes below and Mr Chambers corrected one word in cross-examination. I also set out immediately below the evidence which Mr Chambers gave about this meeting in his witness statement:

“Skelton BD – Leeds

- 1) John Bell – WRDE
- 2) Geoff Goodwill – WRDE
- 3) NJC

DEAL AGREED

2 parts to remuneration:

A) Legally contracted –

NJC to receive 10% of WRDE “Net” proceeds from any sales of unserviced or serviced land.

If WRDE “develop” then NJC to get 10% of “calculated”¹ land value

↑Dev continues throughout full life of project + requires input only to receipt of opp + UDP Allocation.²

B) Exchange of informal letters –

NJC to be positively considered³ (but no guarantee) for

(I) Agency/lettings

(II) Funding/investment role

(III) Project/Development Management

Remuneration to be fee based and flexible on both sides.

* Above to be set out by GG ASAP to confirm

* Subject to YWater Board Approval 11 Dec 96”

“Geoff and I had a meeting with John Bell of WRDE on 29 November 1996 at which the basis of the deal between the respective parties was finalised and agreed. At that meeting it was confirmed by both parties that I would receive 10% of the profits achieved from the development of the Skelton Project, less the costs incurred by WRDE. My profit share entitlement was to exclude any profits arising from built development and the proceeds from the disposal of part of the site for a motorway services area. I recall that Geoff was charged with drafting the terms of the agreement and sending them to me. Attached as p514-515 is a copy of my handwritten note of the meeting which took place on 29 November 1996 and which sets out what was agreed between the parties.”

56. Mr Banner suggested to Mr Chambers that when he used the phrase “deal agreed” he was saying no more than that Mr Bell (or Mr Bell and Mr Goodwill) had agreed to 10%. He also asked Mr Chambers to explain precisely what work he was expected to do for his 10% profit share:

“So you've put in capital letters "DEAL AGREED". Just help me, what do

¹ The parties’ solicitors originally transcribed this word as “retained” but Mr Chambers accepted that it was “calculated” which would be consistent with the Tripartite Agreement.

² Freeths could not read the last word but I agree with Walker Morris that it is “UDP”.

³ Freeths suggested “posting” for the first word and could not read the second. I agree with Walker Morris that Mr Chambers used the phrase set out in the body of the quotation.

you say is being agreed here? A. The 10% profit share. Q. Just the 10%? A. Yes, the "A) legally contracted". Q. Okay. A. That was agreed. Q. All right. Just help me, if the —the bottom section of A) says: "[Deal] continues throughout full life of project + requires input only to receipt of opp and [... UDP] Allocation." Why is White Rose agreeing to give you 10% now for the work up to the point at which the land is allocated in the UDP, rather than previously where you were both talking about 10% for the work done after the land was allocated to the UDP? A. This states the deal, the profit share will continue throughout the full life of the project until it's completed. Q. Yes, but it also then says: "+ requires input only [something] receipt of opp and [... UDP] Allocation." A. Yes, that's my time input, my services. Q. Yes. But that was what you were trading off against your percentage profit share earlier. You were saying, "Well, I won't charge my work after the allocation and I'll take a profit share instead". A. Yes. Well, I wasn't paid anything other than the £30,000 after early 1996. Q. Right. But now is it your case that you're saying that White Rose agreed to 10% for work —that would only require you to work up to the UDP allocation. Once the land was allocated to the UDP, you would have a new agreement that you charged for? A. No, I would get the 10% profit share up —yes, and my time input services to receipt of planning and allocation. Q. So what did you have to do to get the 10%, according to this note? A. Provide consultancy services as and when required by White Rose. Q. Where does it say that? A. "Requires input." Q. "To receipt of opp and [... UDP] Allocation"? A. Provide services input to that point. Q. Okay. So that was all you had to do, work up until the UDP allocation, and that secured your 10%? A. And outline planning permission. Q. And outline planning permission. That's what you say was agreed here? A. That was the intent. Q. No, I'm asking you, was it agreed? I'm not asking you what the intent was. I'm asking you, was it agreed? A. Yes. The agreement was 10% of the profit share. That profit share continues throughout the life of the project, and my consultancy input is to UDP allocation outline planning. Q. Isn't this simply just getting White Rose to agree 10% for something? It's no more detailed than that. A. It talks about the proceeds from land, serviced or unserviced, or if it's developed, 10% of a calculated land value. Q. But your focus is on the 10%. Isn't that why you've put "deal agreed" at the top of the page, because someone has said okay, 10%? A. Yes, that's what we agreed and that's what was contracted at that meeting. Q. I suggest to you that this was simply a staging post in a continuing process. This was not a final concluded agreement, was it, Mr Chambers? A. Subject to White Rose board approval, I believe it was."

57. When Mr Bell was cross-examined by Mr Blaker, he fairly accepted that he could not recall anything about this meeting or any of the phrases used in Mr Chambers' note. However, he stated in answer to a question from me that he would not normally operate in the way suggested by Mr Chambers:

"MR JUSTICE LEECH: You said a moment ago, "That's not the way that I would operate as a rule." Can you just explain what you meant by that?

A. Well, if we're entering into an arrangement such as this, particularly when you have partners, but not only when you have partners, if it was just Evans, I would say: right, let's see what —how far we are getting here. And I would also want to know what we are getting as well, because all this is about what Nigel gets; it's never about what we're getting. So I would need that side of the equation sorted out. And then I would go and discuss it with colleagues at our management executive meeting. I would go and discuss it perhaps with any visiting directors we have got coming through. And then I would have an impression of what the agreement was like. We would then take it, in the case of a joint venture, have a chat to the joint venture partners, so that they were acquainted with it and could make meaningful comment. And then it would go to a lawyer. And then a lawyer would make a subject to contract, or probably exchange correspondence to make sure that things are —that we are all of the same mind. And then we would start seeing travelling drafts going to and fro. The notion that I would agree anything of that nature at a meeting in a finalised fashion is —would be uncharacteristic of me.”

58. Mr Bell accepted that the reference to “Yorkshire Water Board Approval 11 Dec 96” must have been a reference to the approval of the board of directors of WRDE. A board meeting of WRDE was due to take place that day and given that WRDE was a joint venture between Evans and Yorkshire Water, a board meeting of WRDE was the easiest way for Evans to obtain the approval of its joint venture partner. Finally, the minutes of that meeting were taken by Mr Auty of Yorkshire Water.

(9) *The 6 December Fax*

59. By letter dated 29 November 1996 Mr Chambers wrote to Mr Goodwill after the meeting on 29 November 1996 asking to receive the “skeleton outline” which Mr Goodwill had suggested that he draft at the meeting:

“Just a brief note to let you know that I will be meeting with my solicitor on Wednesday morning 4 December to discuss the Skelton agreement amongst other matters. I shall therefore look forward to receiving the skeleton outline, as suggested you would draft, prior to this meeting.”

60. At 07.46 on the morning of 6 December 1996 Mr Chambers faxed through a letter to Mr Goodwill stating that he needed to leave at about 9 am for a meeting with his solicitor, Mr Kevin Docherty of Irwin Mitchell. He also stated: “I would therefore be grateful if you could fax through your notes regarding the Development Consultancy Agreement as discussed on Wednesday.” At 09.50 am Mr Goodwill sent a fax to Mr Docherty to which

I will refer as the “**6 December Fax**”. It consisted of a fax cover sheet and a one page document. The cover sheet stated: “In connection with your meeting with Nigel Chambers this morning”. Behind was a single page which contained the following text (with the date “4 December 1996” at the foot):

“SKELTON

Nigel Chambers - basis of ongoing involvement (subject to WRDE Board approval) throughout the UDP and planning processes and preparation of the site for development:

Client:	White Rose Development Enterprises Limited
Core Service:	Planning and development consultancy and project management
Remuneration:	To date - payments made "on account" totalling £30,000 + VAT Future - No further payments until WRDE achieves overall profit at which point NC entitled to 10% of WRDE net pre-tax profit (i.e. after all relevant costs and any profit share payments to British Coal and Yorkshire Water Estate) arising from (i) unserviced land sales (ii) serviced land sales (iii) the land element of built development activity by WRDE
Deductions:	The "on account" payments
Exclusions	- Profits arising from built development - Profits arising from the Motorway Service Area deal with Swayfields Limited
Expenses:	NC will be reimbursed for previously authorised third party expenses/disbursements
Termination:	In event of material breach

Potential future role in WRDE built development activity:

No commitment by WRDE to NC involvement but situation to be reviewed in the event that built development by WRDE is contemplated. Potential role(s) include agency and/or development consultancy and/or project management”

(i) Mr Chambers

61. Mr Banner suggested to Mr Chambers that it was quite striking that the 6 December Fax was not described as an “agreement”. He also suggested that there was a difference between the scope of work referred to in the 6 December Fax and the scope of work

which Mr Chambers thought he had agreed at the meeting on 29 November 1996:

“Q. Look at the line "Core Service": "Planning and development consultancy and project management." Planning and development consultancy and project management, we established earlier, are things that take place after the land has been allocated to the UDP, aren't they? A. No, the project still needs managing throughout the planning promotion process. Q. But once the project is —once the land is allocated to the UDP, that's when your project management role was going to kick in? A. No, it would be project management of the services as well. It could encompass that. Q. Sorry, can you say that again? A. It could encompass project managing the planning process. Q. Could encompass, but do you say this is clearly understandable as meaning project management only up to the date of allocation to the UDP? A. Yes. So it's project management of planning. Q. And where does it make any reference to allocation to the UDP? A. I can't see that. Q. Look again at "Core Service": "Planning and development consultancy and project management." How is White Rose supposed to determine whether you have performed those services to a suitable standard? A. If I was asked to do something and I either refused or didn't undertake it properly. Q. So failure to perform; that's it? A. Yes, as I say, providing the service or not providing. A. I think White Rose and myself would just have to be reasonable about what these services were. I don't necessarily think a long list of services would necessarily suffice. There may be things on there which are — Q. That's perfectly fair enough, Mr Chambers. The parties would have to work out as they went what this A. Yes, I think it was a flexible arrangement, based on a very good working relationship at the time. I don't think —I'm sure no one from White Rose, Skelton or Templegate would ever say (a) I refused to do any of the services they asked or performed any of them poorly. So for the purposes of how this operated in practice, it worked well. Q. Isn't this nothing more than another staging post? It's a step on the path towards an agreement that never eventuated? A. No, this is an agreement, once it was approved by the White Rose board. Q. Because if you remember, you accepted in one of your letters that the whole process would require several stages: agree principles of a deal, draw up heads of terms, send them to solicitors, negotiate between solicitors, sign off with the board. This, such as it is, just ticks off a principle on one element of a potential deal. This is not a complete deal, is it, Mr Chambers? A. No, this is a complete deal once approved by the board. The information and letters you provided before were the intent of the parties at the time, which pre-date the November 1996 meeting and these terms.”

62. Mr Banner also put it to Mr Chambers that the term “skeleton outline”, which he used in his letter dated 29 November 1996, was not an apt description for a binding agreement. He also suggested that he was not referring to a binding agreement when he used the expression “your notes” in his own fax early in the morning of 6 December 1996. Mr Chambers would not accept either of these propositions:

“The expression "skeleton outline" is not an apt description for an agreement, is it? A. Sorry, it's not? Q. The expression "skeleton outline" is not an apt description for an agreement, is it? A. In regard to the working relationship between the defendant and myself, I would say it's perfectly adequate. It would describe an agreement. I don't think —we are not lawyers. We are not seeking — Q. Come on, Mr Chambers — A. —we're not defining things.”

“MR BANNER: Mr Chambers, we were focusing on the expression "skeleton outline". Even between, as you put it —even within a working relationship, the expression "skeleton outline" does not mean an agreement, does it? Be honest. A. I believe it does mean an agreement. Q. You believe it does? Okay. Let's turn on then to page 519. This is your letter of 6 December, again to Mr Goodwill: "I will need to leave this morning around 9 am for the meeting with my solicitor. I would therefore be grateful if you could fax through your notes regarding the Development Consultancy Agreement as discussed on Wednesday." "Your notes" is not an apt description for an agreement, is it? A. Well, this is before I received the documentation. Q. Yes, so you weren't expecting to receive anything more than notes, were you? A. No, I was expecting to receive a written form of what we agreed on 29 November. Q. Those aren't notes, Mr Chambers. Notes are a memo, a record of the discussion. A. Again, it is part of the relaxed language between two parties working closely together. Q. The "relaxed language"; that's your evidence? A. Yes. Q. Even though you use the expression "Development Consultancy Agreement" in the following line? A. Yes.”

(ii) Mr Bell

63. Just as he could not recall the meeting on 29 November 1996, Mr Bell could not recall the 6 December Fax. Mr Blaker put it to Mr Bell that the description "Planning and development consultancy and project management" was standard in setting out the services which Mr Chambers was to perform. He took Mr Bell to a draft of the consultancy agreement which Walker Morris sent to Mr Goodwill on 4 April 1999 and Mr Bell agreed that there was no difference between the description of services in the 6 December Fax and the following clause:

“During the period of this Agreement NJC is retained on a "when needed" basis to provide the Consultancy Services at such times and at such locations as WRDE and NJC shall agree from time to time provided always that NJC will be required to provide the said services during the hours which are deemed reasonably necessary by WRDE in order for the said services to be properly performed.”

64. Mr Bell properly accepted that it was not for him to comment on whether the 6 December Fax constituted a contract but after an invitation from me he made the following

observations:

"A. Exactly. But what I might say to you is that almost intuitively, and from the experience I have had, that is totally inadequate, because once you actually start to draft these documents, it becomes a travelling draft, and it goes to and fro and to and from and to and fro, and it ends up nothing like that. And there are many, many very important issues that are dealt with in those travelling drafts and the final document."

"A. I hesitate to say this, but it does seem to me that the relationship between Mr Goodwill and Mr Chambers time and time again looks a bit close to me. And I hesitate to say that, because my opinion of Geoff Goodwill is that he was an honest man. MR JUSTICE LEECH: Right. A. But in this particular case, time and again, we find him acting out of character. For example, why did he reach an agreement in 1994 without telling his colleagues? That is not like Geoff. Why did he prepare a draft like that? He would never dream of preparing — I've never seen him prepare a legal document. He would go to the lawyer, and he would say to the lawyer: this is what has happened; would you please prepare a draft. So I believe that their relationship was too close. Now, as far as the connection you have made between the note and this note, the manuscript note and this one, is concerned, I don't know when that manuscript note was prepared. MR JUSTICE LEECH: Well, let's assume that I accept that it bears the date that it stated on the actual manuscript note. You just simply can't explain — A. I personally can't explain it, no."

(iii) Mr Robertson

65. Mr Robertson was not present at the meeting on 29 November 1996 and did not see the 6 December Fax until very much later. He gave evidence in his witness statement that SBPL had some difficulty in locating any formal agreement which set out the relationship with Mr Chambers and his remuneration. When Ms Gailey cross-examined him, he accepted that if a binding agreement had been reached with Mr Chambers he would have been aware of it:

"Q. Now, as you're presumably aware, Mr Robertson, the claimant says in these proceedings that Mr Chambers had concluded a binding agreement with Mr Bell in August 2005. Were you aware of that? A. Sorry, can you repeat the question? Q. In these proceedings the claimant says that Mr Chambers had concluded a binding agreement with Mr Bell in August 2005. Were you aware of that? A. No. Q. Well, that is their case in this claim. Now, it's surprising, isn't it, in those circumstances, ie if a binding agreement had been concluded in August 2005, that there was any uncertainty in 2006 about what document governed the relationship? A. I wasn't party to the legal documents. Q. I entirely appreciate that, Mr Robertson. I was merely saying it was surprising. I put it to you that it is surprising. A. Yes. Q. Thank you. In the end, however, you say that some

kind of document of this type was located along the lines of what we've been calling the December 1996 fax. A. That's right. Q. Thank you. And you're not sure whether you actually saw this document at the time. So in your witness statement you asked Freeths to send you a copy."

"MS GAILEY: Going back to the December 1996 fax, so folder 2, page 517. A. Apologies, can you point me — Q. 517. A. Yes. Q. Is this the document you were referring to? A. Yes. Q. Thank you. Now, stepping back, this doesn't look like a concluded legal agreement, does it, Mr Robertson? A. It doesn't what, sorry? Q. It doesn't look like a binding legal agreement, does it? MR BLAKER: Can this witness really answer that question? Isn't that a matter ultimately for my Lord? MR JUSTICE LEECH: I think —in your own experience of what limited experience you have of seeing legal documents, so bear in mind that you're being asked in that context, I think you can answer the question. A. Okay. It looks like it's part of a legal agreement, not the whole agreement. MS GAILEY: Thank you. It's not signed, is it? Is that why you say that? A. Correct. Q. Thank you. In any event, there was no understanding in 2006 that this document did amount to a binding agreement with Mr Chambers, was there? A. I wasn't involved in those discussions. Q. I appreciate that, Mr Robertson, and it's, as you say, a long time ago. If you could turn to page 1229. MR JUSTICE LEECH: Perhaps I can, before you move on, put that round the other way, because you say you weren't involved in the discussions and I don't think there is any dispute about that. If there had been a binding agreement between Mr Chambers and the company, would you have expected to know about it or would you not have expected it one way or the other? A. I would have expected to know about it, given my responsibility for the project during the years 2005 — sorry, 2004/2005. Sorry, 2005/2006, yes. MR JUSTICE LEECH: Thank you."

(iv) Mr Gray

66. Mr Gray gave evidence in his witness statement that Mr Helliwell made him aware of the relationship with Mr Chambers and referred him to a copy of the 6 December Fax. He defined it as the "Agreement" in his evidence in chief and Mr Banner asked him in cross-examination why he had done so. He gave evidence that he was referring not only to the 6 December Fax but also a draft consultancy agreement:

"Why do you refer to an "arrangement" in paragraph 5 and an "Agreement", with a capital A, in paragraph 7? A. Because the arrangement I had seen in the files was the fax and the agreement. I had not reviewed extensively or had seen a completed version. All I had seen was what was in the David Helliwell files. Q. Which was the fax? A. And the —I think there was a first draft of an agreement. Q. Yes. But not an executed agreement? A. I hadn't seen an executed agreement, no. Q. So the fax that you had seen was what you considered was an arrangement? A. Yes. Q. So why do you define the fax as "an Agreement" with a capital A in paragraph 7? A. Because for me, the fax and the draft agreement

together become the agreement. Q. So now —okay. So the fax and a draft of an agreement —this was a longer draft, was it? How many pages roughly? A. I wouldn't recall how many pages, but it was —it wasn't a single sheet, but it was longer than that. Q. Did it look like it was drafted by lawyers? A. I cannot remember that. Q. Okay. So the fax plus another document in your mind became the "agreement"; the fax on its own was an "arrangement"? A. I think the fax was part of the agreement. Q. Yes. I'm not disputing that's what your evidence is. But the fax seems to be an arrangement, records an arrangement, and it's the fax plus a longer document that constitutes an agreement? A. Yes.”

67. Mr Banner also put a number of points to Mr Gray about the 6 December Fax, e.g., that it was not headed “Agreement” and did not contain “signature blocks”. After an intervention from Mr Blaker, I allowed Mr Banner to put it to Mr Gray that the 6 December Fax looked nothing like a commercial consultancy agreement. But he did not accept this:

“Q. Have you ever seen — MR BLAKER: I have hesitated to rise, but I'm not sure how this witness is necessarily going to assist my Lord on these sorts of issues, which are ultimately a matter for my Lord, rather than witness evidence, and it strays well beyond where his witness statement is. MR JUSTICE LEECH: Well, I'm not sure it does. I think Mr Gray is being advanced as a senior executive who was — MR BLAKER: Very well, my Lord. MR JUSTICE LEECH: — who understood that there was an agreement, a binding agreement, or an agreement at least, between the parties; and I think Mr Banner is entitled to cross-examine against that. MR BANNER: Mr Gray, I suggest this isn't — this doesn't look anything like a commercial agreement for the engagement of a consultant, does it? A. I disagree. I have seen — like I said, I have seen agreements very similar to that.”

(10) 18 December 1996

68. On 18 December 1996 a meeting of the board of directors of WRDE took place. There are no signed minutes of the meeting. But under cover of a compliments slip dated 6 January 1997 Mr Ken Auty, who was the company secretary, sent draft minutes to Mr Goodwill. He had annotated the draft “Geoff Goodwill for comments please”. There is no evidence to show whether Mr Goodwill made any comments or whether the minutes were signed in the form of the draft. Mr Chambers was clearly aware that the meeting was due to take place because on 9 December 1996 he sent a letter to Mr Goodwill in the following terms:

“I note that the WRDE board is due to meet on the 11th and will

consider my future role and remuneration within the Skelton project. I trust that the outline which was faxed to me last Friday proves acceptable and that we can formally instruct our solicitors to prepare a draft agreement.

As you know I met with Kevin Docherty, my solicitor, on Friday and his view was that if he could receive copies of the British Coal, Yorkshire Water and Swayfield contracts then it would simplify the overall task. Accordingly, on the basis that the draft outline is acceptable to your board, I shall look forward to receiving copies of the contracts. Once these are to hand I should be able to draw up some Heads of Terms for your approval prior to instructing our solicitors. I would be happier proceeding on this basis and ironing out any issues between ourselves rather than incur a heavy legal bill.”

69. The draft minutes record that Mr BJ Wilson, Mr Bell, Mr NJ Hope and Mr IG Knight were present at the meeting and that Mr Auty, Mr M Evans, Mr W McGibson and Mr Goodwill were in attendance. It was common ground that Mr Goodwill was a director of WRDE at the time (although Mr Bell suggested that it was possible that he might not have been a *de jure* director). Under the heading “47/96 Skelton” the draft minutes record (or purport to record):

“Mr Goodwill submitted a report which set out the basis of the ongoing involvement by Nigel Chambers throughout the UDP and planning processes and preparation of the site for development, and proposed a basis for his remuneration, including an element of profit sharing on WRDE’s net pre-tax profit on this site. The Board AGREED that the terms set out in the report now submitted be approved.”

70. The minutes also recorded this as an “Action” point for Mr Goodwill. Mr Bell could not remember this meeting either or Mr Goodwill’s report. But he was able to give some context to the draft minutes. He also doubted that the report to which the draft minutes referred was Mr Goodwill’s memo dated 15 October 1996:

“Now, firstly, do you remember him submitting a report? A. No. Q. Could it be the document that we saw at 499, the memorandum that we were talking about before, that he sent to you? Do you think he shared that with the board? A. I doubt it. He may have expressed similar sentiments, but it wouldn't appear like that. Q. How did reports generally appear before the board? A. It would be headed "Report" and so on. It may be appended as an attachment.”

“Then you say: "Any document submitted to the board in these circumstances would, in my experience and opinion, have been an extensive report which would have set out the history with Nigel, the

rationale for the proposal and specific details on what was being proposed (including the advantages and disadvantage of proceeding with the proposal). I would also expect it to make any such agreement subject to the usual extensive conditions such an agreement would normally contain. Thereafter, I would expect those terms to be submitted to our lawyers, so ... a detailed draft agreement ..." So are you suggesting that actually, if Mr Goodwill —and you don't deny that Mr Goodwill would have submitted a report, the likelihood is it was an extensive report? A. It probably —yes, my Lord, the answer is yes. Q. And it probably included all the advantages and the disadvantages, because that's what you say you would have expected, and the history of Mr Chambers' involvement and how he introduced the site to WRDE, in the same way as the memorandum did? A. Yes. Q. Because otherwise you and —of course, you knew about it, but your fellow board members wouldn't be able to make a considered decision? A. Yes, that's correct. Q. So I just want to be quite clear. You're not suggesting here that there was anything untoward about this board meeting and what Mr Goodwill put forward? A. No, my Lord, I'm not."

G. January 1997 to December 2005

71. There now followed a long period during which the parties exchanged drafts of a potential consultancy agreement. This period began with a letter dated 30 January 1997 in which Mr Chambers asked for copies of the Tripartite Agreement:

"When we spoke just before Christmas you did agree to ask Walker Morris to forward copies of the various contracts with British Coal, Yorkshire Water and Swayfield early in the New Year. Unfortunately, as of today's date I still await this information. I know that we both now wish to agree final heads of terms prior to instructing solicitors but I cannot complete these until I receive the contracts. Perhaps you would therefore be kind enough to remind Walker Morris to forward the relevant documentation."

72. By letter dated 8 March 1997 Mr Chambers chased for copies of the contracts "in order that I could complete the heads of terms." He also stated that he would "like to conclude our Development Agreement" in tandem with another agreement. Mr Banner put it to Mr Chambers that both letters contained the language of continuing negotiations. Mr Chambers did not accept this and described it as "relaxed language":

"Conclude"; not "replace", "conclude". A. Well, again, relaxed language, "conclude", "replace". I believe the December 1996 agreement was concluded. Q. But you're not talking here about replacing it with a further version of an agreement? A. Well, the practical implication, had we reached a further, more detailed agreement, would —it would replace it. So I'm talking here about concluding this replacement agreement. Q. But you never refer to a replacement agreement, do you? A. Yes, but this is not

two lawyers speaking. Q. No. But you never refer to an extant agreement, and you never refer to replacing agreement, do you? A. No, but I wouldn't necessarily need to do that, in my view."

73. Under cover of a letter dated 1 April 1997 Mr Goodwill sent extracts from the Tripartite Agreement and other contractual documents to Mr Chambers and under cover of a letter dated 6 May 1997 he also sent him copies of the complete agreements at his request. In his covering letter Mr Goodwill stated that he was sending them "for the sole purpose of assisting in the drafting of your terms of appointment". By letter dated 15 May 1997 Mr Chambers replied stating that he would now look "to complete some draft heads of terms for your approval" in the next couple of weeks. Mr Chambers accepted again that there was no reference to replacing an existing contract.

(1) Letter dated 11 July 1997

74. By letter dated 11 July 1997 Mr Chambers wrote to Mr Goodwill proposing "to draft a development consultancy agreement which has the same effect as would have been the case were I party to the current main agreement with British Coal and Yorkshire Water." He argued that this would simplify drafting. He also asked "to continue the development consultancy agreement for an additional 10 years beyond termination of the main agreement" and to be paid on a time basis for his consultancy work (which would be deducted from his profit share). Mr Banner put all of these proposals to him in cross-examination:

"Q. If we go forward to 540, your letter of 11 July, third paragraph: "Having discussed the matter at length with Kevin I would propose to draft a development consultancy agreement which has the same effect as would have been the case were I party to the current main agreement with British Coal and Yorkshire Water. I believe that this would help simplify drafting and avoid any confusion between ourselves." Now, that is a very different arrangement to the one in the December 1996 fax, isn't it? A. Not necessarily, no. Q. Not necessarily? Okay. Let's look at the next paragraph: "I should like to make an alteration to this general arrangement with regard to timescale. As you are aware, I am concerned that should the site be allocated in the next UDP cycle a situation may arise whereby little or no development has taken place at the termination of the main agreement. Accordingly, I would like to have the option to continue the development consultancy agreement for an additional ten years beyond termination of the main agreement should these circumstances arise." So again, another new term. A. Yes. The situation here, when we agreed and concluded the terms of December 1996, I hadn't, firstly, any knowledge or seen the agreement with British Coal. My understanding was the agreement would

be an option agreement, not a land transfer. My experience of land promotion or option agreements is there is an initial planning promotion period, usually 15 to 20 years, followed by a second stage post-consent, where land is drawn down, normally over a 10 to 15-year period. That was my understanding of the agreement that had been entered into with British Coal and Yorkshire Water. Q. Okay. So you were proposing a new term here, a term that was different to what was contemplated — what you say was contemplated in December 1996? A. Yes, the December 1996 is an open-ended agreement. Q. Okay. You also — A. Subject to completing the development of the site. Q. Yes. A. It doesn't have an end date with a date. It relates to the — as I have said earlier, the full life cycle of the project. So the intention was we would both work on the scheme until it had been completed. So I now have the information that it's not an option agreement, which would have — in my experience with a landowner, that's what they would insist upon, ie looking at the life cycle of the project: you get the planning permission; you draw the debt down the land on a phased basis. That wasn't the case here. So this was an attempt to reflect the timescales more akin to the December 1996 agreement. Q. And at the top of 541, you propose a further change: "The only other change I would like to our verbal agreement is in respect of my consultancy input into the project prior to receipt of my first profit share from development of the site. To this end I would like to roll up my time input on a pre-agreed hourly basis up to the point of first disposal/lease and calculation of profit under the main agreement. Should no profit be attributable to me, then [White Rose] to cover this consultancy input which would be deductible from any future profit share entitlement." So you're asking for payments on account? A. Sorry? Q. You're asking for payments on account? A. This paragraph relates to consultancy work in the event of built development. And my intention here was — which is obviously a verbal agreement in the November 1996 agreement, because it talks about a further role in the event of built development. So I think this was an attempt by me to get Geoff to look at the second limb of that agreement. This issue here, this never actually came through into the Walker Morris draft of 1 October, because I felt it didn't make sense, I think, commercial sense for me to say: yes, I will — if there is built development, we'll roll that up. If there's no profit, I'll offset it against it. Because, clearly, what I realised is that these consultancy fees in relation to built development were to be separately remunerated. So I thought — and that never — I never, or that never came through on the Irwin Mitchell draft."

(2) *Draft Heads of Terms*

75. The trial bundle contained draft Heads of Terms which were also headed "subject to contract" and this document appears to have been created at about the same time as Mr Chambers' letter dated 11 July 1997. The Defendant made the following positive averments about this document in the Amended Defence:

"At some point after the execution of the Overage Agreement, a document

entitled 'SKELTON – LEEDS / DEVELOPMENT CONSULTANCY AGREEMENT ("DCA")'/DRAFT HEADS OF TERMS/SUBJECT TO CONTRACT' was prepared. The Defendant is unaware of the circumstances in which this document was prepared (it was exhibited to a letter from Mr Chambers' solicitors dated 8 March 2018 without further explanation) but it is to be inferred that it was prepared after the December 1996 Fax because it broadly follows the structure of that document (although expanding on it so as to resolve some of the inherent uncertainty as pleaded above) and adopts some of the same wording. The 'Timescale' for the intended consultancy agreement, as proposed in these further Heads of Terms, was as follows: "The DCA shall remain in place until the expiration of the Calculation Date and Payment Date, as defined in the [Overage Agreement], or while-ever the [Overage Agreement] shall remain in force; whichever shall be the latest." This longstop date, in line with the terms of the Overage Agreement, was 30 April 2011."

76. Mr Chambers did not reply to these allegations in the Reply or address them in his witness statement and Mr Banner did not cross-examine on the draft even though he and Ms Gailey relied on this document in their written closing submissions. I accept that there was a limit to the number of documents which he could put to Mr Chambers but by the end of the trial there was no evidence that this document was ever sent by Irwin Mitchell either to Walker Morris or to Mr Goodwill directly. For this reason, therefore, I attach no weight to it.

(3) *The Irwin Mitchell Draft*

77. By letter dated 1 October 1997 Mr Doherty of Irwin Mitchell wrote to Mr Goodwill enclosing a first draft of a consultancy agreement. As he indicated in the covering letter, the draft agreement incorporated a significant number of the terms of the Tripartite Agreement (which was defined as the "White Rose Agreement"). The individual terms were classified either as the "Basic Clauses" or the "British Coal Clauses". Clause 3.1 provided as follows:

"Save as set out in the remainder of this clause 3 for the purposes of this Agreement NJC shall have the benefit of and be entitled to all of the rights as set out in the Basic Clauses and the British Coal Clauses as if he were a party to the White Rose Agreement and named as one of the Vendors in the Basic Clauses and as if he were British Coal in the British Coal Clauses and WRDE shall have the same obligations to NJC on the part of the Purchaser as set out in the Basic Clauses and the British Coal Clauses."

78. The draft agreement also contained a provision under which WRDE was required to join

with Mr Chambers in applying to the Land Registry to register a restriction against the Skelton Site which would have prevented it from selling any land unless Mr Chambers consented to it. But it did not identify the services which Mr Chambers was required to carry out and simply inserted a placeholder: “[list the services]”. Mr Banner put this point to Mr Chambers and also the point that neither the draft nor the covering letter referred to the 6 December Fax or an existing agreement:

“Now, I don't expect you to be able to speak to Mr Docherty's state of mind, but it's striking there that Mr Docherty was the recipient of the December 1996 fax. He refers to having seen "copy correspondence", but he doesn't refer to having seen an agreement, and he doesn't refer to the first draft of the consultancy agreement as replacing an existing agreement, does he? A. No, but he wouldn't necessarily do that in this letter anyway. I don't see why he would need to say that. Q. All right, you don't see why. If we look at the Irwin Mitchell draft, page 549, services, clause 2, "General Services", middle of the page: "NJC shall perform the Services." "Services" are defined at the top of the page as: "... the services described in Schedule 1 and the performance of any additional services requested by [White Rose Development] and agreed to be performed by NJC." If we scroll through to 552 —do you have 552? At the bottom? Page 552 at the bottom? A. Yes. Q. "Schedule 1 [list of the services]." A. Yes. Q. So at this stage, Irwin Mitchell weren't proposing with any form of clarity at all what it was you were to do under this agreement, were they? That was still open for negotiation. A. Yes, I think you asked me this question yesterday about services — Q. I'm asking you it today, in relation to this document in October 1997? A. Yes. Q. My question —my point is that Irwin Mitchell don't describe the services in this draft, and therefore my question is: is it not right that the services were still up for negotiation? A. Well, we did agree the services in the November 1996 and the December 1996 agreements as being planning and development and project management. So in relation to planning, that would be local plan promotion work and permissions and consents. The development services would obviously be relinquishing technical constraints, landownership, etc, an element of marketing, project management. I'd already undertaken that role in terms of the UDP process, and later project managing the Skelton —sorry, the Kerzner casino proposal. Q. I appreciate this is asking you to cast your mind back 30 years almost. A. Yes. Q. But do you remember, did you see a copy of this draft produced by Mr Docherty before he sent it to Mr Goodwill? A. Yes, I believe I did. Q. You believe you did? A. Yes. Q. So why didn't you say, "Well, we can fill in schedule 1, because these are the services I am to provide"? A. I guess, on reflection, I should have just —we should have just replicated what was said in the original agreement. Q. Okay. A. I can't recall why it was done in this way.”

79. By letter dated 17 April 1998 Mr Chambers wrote to Mr Goodwill referring to a meeting before Easter that year in which Mr Goodwill had said that he was looking to consider

the draft agreement in more detail with Walker Morris. By letter dated 22 May 1998 he wrote to Mr Goodwill again this time stating that he was awaiting suggestions for a list of services to be inserted into the agreement. Again, Mr Banner put this point to Mr Chambers:

“Q. If we turn over the page to 560, May 1998, middle paragraph: "I believe that we are in broad agreement on most matters but you are to give detailed consideration to an extension beyond the term of the British Coal/ Yorkshire Water contract to take account of a situation whereby the land is allocated as neither green belt nor for development within the current emerging UDP. In addition, I await suggestions from you with regard to a list of services to be provided by me under the agreement and matters relating to material breach, etc." Why were you asking for suggestions in relation to "a list of services to be provided by me", when you say that was catered for in the December 1996 fax? A. I think this was after a meeting with Geoff, and he asked, or he said he would provide the list of services and issues on material breach. Neither of which I ever received. Q. Hold on. If he said to you in a meeting preceding this letter that he would provide a list of services, why didn't you say: but we've already agreed that? How did this point get any traction? A. Well, it didn't gain traction, because I was never provided and I never provided a list of services.”

80. By letter dated 28 January 1999 Mr Chambers chased Mr Goodwill again. He stated that bearing in mind that the UDP inspector's report was imminent he was sure that “we would both like to conclude the legal arrangements”. Mr Banner put it to Mr Chambers that this was yet another example of continuing negotiations:

“Turn on to 588. Another letter from you, 28 January 1999: "I understand that Walker Morris have now almost completed the draft Development Consultancy Agreement. Bearing in mind the impending UDP Inspector's Report later next month I am sure that we would both like to conclude the legal arrangements prior to deciding upon a firm course of action ... " So now you have a catalyst for a concluded agreement; and the catalyst is the impending UDP inspector's report. But you are talking in terms here of wanting to conclude legal arrangements, not that you have already concluded legal arrangements. This is again indicative, is it not, of continuing negotiations? A. No, it's in reference to concluding an agreement with the lawyers. Not that there isn't a concluded agreement already in place. I mean, obviously — Q. Sorry, Mr Chambers, you are going to have to help me with that, because I don't understand why, if that's the case, you weren't saying: I am sure we would like to conclude the legal arrangements, but it doesn't really matter because we have got our own binding arrangement between the two of us? A. Yes. Q. But you didn't say that, did you? A. Yes, because this, you know, is relaxed language — I keep repeating the point — between two parties working together. Quite clearly, I 'm just asking Geoff if he can ask Walker Morris to send the

agreement. Q. I think from your — A. Which came on the back of, I think, both Geoff and Walker Morris saying that they wouldn't accept the principle of the agreement piggybacking, as I think we used the phrase, on the tripartite agreement, because the belief was that there were two distinct, separate parties and would be contracted differently; and the two agreements, my profit share agreement and the tripartite agreement, are in no way tied."

(4) *The Walker Morris Draft*

81. Mr Chambers gave evidence that early in March 1999 the UDP inspectors began to release their conclusions in a series of separate reports and that on 22 March 1999 they released the second of these reports recommending that the Skelton Site be allocated for development as a business park. Three weeks later, on 13 April 1999 Walker Morris sent Irwin Mitchell a revised draft of the consultancy agreement.
82. The Walker Morris draft was much more like a standard professional appointment in terms of the structure and terms of the consultancy itself although it contained detailed provisions for the calculation of Mr Chambers' profit share (which are likely to have been taken from an overage agreement). The definition of services was not specific and, in that respect, it was very similar to the draft which Mr Blaker put to Mr Bell. Mr Banner put a number of provisions of the draft to Mr Chambers and rather than quote them separately, it is easier to set out the relevant passage from the transcript in full:

"Q. We see here that on page 634, "consultancy services" are defined: "... planning consultancy and co-ordination and development consultancy and project management services in respect of the Site." At 639, the site is developed: "Means the land shown edged red on the Plan and where the context so admits shall include any Separate Plot or Unit ..." We don't have a plan attached to this draft. I don't think we have plans attached to any of these drafts. So perhaps they were going to be put on later. Clause 3, we have a duration for the —this agreement. 3.1: "The appointment ... shall commence from the date of this Agreement or from the time [you] shall have begun to perform the Consultancy Services, whichever is the earlier and this Agreement shall be deemed to apply to the performance of ... the Consultancy Services from the date of [your] appointment." And 3.2: "[You] shall continue to provide the Consultancy Services until commencement of Unit Development or until 30 April 2011, or termination of this Agreement ... [under] Clause 12 whichever shall be the first to occur." So there is a longstop of 2011 in there, isn't there? A. Yes, on this one, yes. Q. And clause 4 defines your positive obligations in some detail. 4.1: "[You] shall give priority to the provision of the Consultancy Services and [you] shall at all times perform [them] personally. "[You] shall devote such time as is necessary for the proper execution of [them]."

"[You] shall keep detailed records of all acts and things done by him in relation to the provision of the ... Services ... " 4.4: "[You] shall at all times during the period of this Agreement: "Faithfully and diligently perform those duties and exercise such powers consistent with them which are from time to time necessary in connection with the provision of the ... Services." 4.4.2: "Promptly comply with all lawful and reasonable instructions ... of [White Rose]." 4.4.3: "Use all reasonable endeavours to promote the interests of [White Rose] ..." 4.4.5: " ... attend all meetings in relation to the provision of the Consultancy Agreement ... " 4.6 ... provide the Consultancy Services with reasonable skill and care." All of these positive obligations on you setting the standard of what you were to deliver are not catered for in the December fax, are they? A. No. Well, this is obviously a 20–page document. Q. Yes. But it's a 20–page document prepared by White Rose's solicitors. This is what they were looking for. A. It's what they put forward, yes. Q. Yes. It's what they were looking for? A. It's here in the contract, yes. Q. And there are provisions in here, clause 5, as to your obligations of confidentiality. We don't need to read those in detail. And clause 6, your liability under this agreement. These are all detailed provisions that are completely outwith the scope of the December fax, and these are all detailed provisions that White Rose was looking for once the negotiations properly got going. I suggest to you it's impossible to suggest that White Rose could have considered the December fax to be a binding agreement, Mr Chambers. A. No, I disagree. Q. So you think they were just changing their mind here? A. Sorry? Q. You think they were just changing their mind here? A. No, I think they, or rather Walker Morris, were attempting to define and put a number of detailed aspects here. This is obviously three times the size of the first Irwin Mitchell draft. Q. But what is striking is neither you nor Irwin Mitchell reply by saying: no, we are not having any of this; we have got a binding agreement. It's perfectly straightforward and clear. It works. We will stick with that, thanks. And if you'd believed it was binding, that's what would you have said, surely? A. No —well, I mean, ultimately, we didn't accept any of the drafts produced by Walker Morris. I never accepted any of the drafts. Q. But never was it put on the basis that: we already have a one–page binding agreement. You were negotiating on different bases, I agree. You had your set of demands and they had their set of demands, and the two never meshed together. But your position was never put on the basis that: we can just drop all of this; we've got an agreement from December 1996? A. No, I think both parties did genuinely try and negotiate and draft a replacement agreement. The problem, I think, was that the preferred approach by myself and Irwin Mitchell was to utilise the tripartite agreement and amend various clauses. The White Rose/Walker Morris approach was to adopt a completely independent, freestanding agreement, which in my view, and particularly Irwin Mitchell, was far too onerous on me."

83. I followed up Mr Chambers' final answer myself. I took him back to clause 4 of the draft agreement which was headed "Positive Obligations of NJC" and contained what had appeared to me to be unexceptional duties such as to devote his time to the project,

perform his duties faithfully and act with reasonable skill care. However, Mr Chambers did not see those terms in a similar light:

“MR JUSTICE LEECH: Before we leave 641 and the terms of the agreement, are you saying to me that you considered this agreement to be onerous, too onerous, the — A. Yes, I think if you look at the past history of our involvement, it did commence on the basis of two parties working together to promote and develop the site with a profit share. This is more akin to a sort of standard appointment of a professional; and I didn't think the intent of the parties was to have an agreement such as this. MR JUSTICE LEECH: Just look at "Positive Obligations of NJC" on page 641. Look at sort of 4.2, for instance: "NJC shall devote such time as is necessary for the proper execution of the Consultancy Services." And then you're required to keep records, attend meetings, and then exercise reasonable skill and care. I mean, did you consider those obligations to be too onerous? A. Well, on other —well, on all other agreements I've entered into with developers of similar magnitude and schemes of a similar size, I have never been asked to agree anything like this. It's far more straightforward. I mean, certainly keeping detailed records is not something I do as a matter of course. MR JUSTICE LEECH: Well, look at 4.4, because you were going to be —first of all, you were going to be given some quite important confidential information. A. Yes. MR JUSTICE LEECH: You had introduced these three parties together. They were seeking to develop this land and then sell it on. To me, it doesn't seem surprising that WRDE should be looking for quite detailed terms in relation to the confidentiality, and also seeking to impose an obligation of loyalty on you, saying: you can't compete with us and you've got to be —you know, you can't place yourself in a position of conflict. It doesn't seem to me to be unreasonable. A. Yes, in that sense it's not unreasonable, but it's not my experience of other situations I have reached with other developers on similar schemes. You know, I have never been asked to do this. I think there's been a sense of goodwill between the parties that we would work together jointly to achieve the same objectives. So I think it's my personal experience, never having signed one of these agreements. And the advice of Irwin Mitchell: ultimately, you know, this is not in your best interests to do so. MR BANNER: In relation to his Lordship's first question, you said this is —this document is more akin to a standard appointment of a professional. But isn't that what you're doing? You were going to be a development consultant and you were going to be doing project management. Those are professional roles. A. Yes, but the work that I've done tends to be in land promotion work; and as I say, I have never been asked to enter into an agreement like this. Q. Right, but you were going to —you were putting yourself up for a role that demanded a professional standard. It's hardly surprising that White Rose would expect a professional standard to be imposed upon you in a contract, is it? A. Well, I can only repeat, that's not my personal experience on similar projects, and I have never been asked to do it before; and my lawyers advised me against entering into an agreement like this.”

84. By letter dated 10 September 1999 Mr Chambers wrote to Mr Goodwill raising a number of issues and by letter dated 9 November 1999 Mr Goodwill responded addressing his detailed queries. He ended his letter by stating: “I think the time has now come for us to sit down together with the solicitors and finalise the document as quickly as possible.” By letter dated 25 November 1999 Mr Chambers wrote back to Mr Goodwill again saying that he had met Mr Doherty and discussed the current draft at length.
85. Although the parties then instructed their solicitors to resume correspondence, they very quickly reached an impasse. By letter dated 7 December 1999 Mr Doherty wrote to Walker Morris identifying five points of principle before matters of detail could be addressed. By letter dated 13 December 1999 Walker Morris replied stating that the current draft had been prepared following discussions with Mr Chambers and accommodating all of the points which WRDE was prepared to accept. I set out below the numbered paragraphs in Irwin Mitchell’s letter and immediately below them in bold the numbered replies from Walker Morris:

“1. Our client would wish there to be separate Agreements dealing respectively with his appointment as a Consultant and payment of the profit share. Whilst many of the clauses are appropriate to a Consultancy arrangement, a number eg Termination (clause 12), Suspension (clause 13), Assignment (clause 14) would not be appropriate to the agreement reached with regard to payment of the profit share.

1. Separate Agreements are not necessary and would complicate matters unduly. The draft Agreement deals with all issues perfectly adequately.

2. Clause 8 envisages one payment only (the Fee) will be paid at the Calculation Date. We understand that the agreement reached was that our client would also be entitled to interim payment as and when parts of the site are sold and/or Units let similar to as provided for in the 1996 British Coal Agreement.

2. There was no agreement that your client would be entitled to interim payment. One payment will be made (if appropriate) to your client at the Calculation Date.

3. Receipts should be offset against Development Costs.

3. Our client is not agreeable to Receipts being offset against Development Costs.

4. The Agreement does not provide for any security to our client for payment of any sum that may be due. Under the terms of the 1996 British Coal Agreement protection is given by a restriction on the Registers of Title.

4. Your observation is quite correct.

5. In the definition of Calculation Date the wording of (b) should be deleted as it negates the effect of the proviso to (c) which has been agreed between our respective clients. In other words the Agreement should be capable of going beyond 10 years from implementation of the planning permission.

5. The wording of the definition of Calculation Date has been amended to accommodate your client's concerns. It provides your client with the reassurance he sought. Our client is not prepared to amend the definition any further.”

86. Apart from one letter dated 7 April 2000 in which Mr Chambers chased Mr Goodwill, there was no further dialogue between the parties or their solicitors in relation to the Walker Morris draft until early January 2001. By this time, SBPL had been formed and had become the vehicle through which Evans and Yorkshire Water intended to develop the Skelton Site. Mr Banner put the exchange of letters in December 1999 to Mr Chambers and suggested to him that he had taken a very different position in the later negotiations from that set out in the 6 December Fax:

“Q. Right. Points of principle. Number 1: "Our client would wish there to be separate Agreements dealing respectively with his appointment as a Consultant and payment of the profit share. "Whilst many of the clauses are appropriate to a Consultancy Agreement, a number ... would not be appropriate to the agreement reached [in relation] ...to payment of the profit share." So you are now proposing a differently structured deal? A. Yes, I think we were trying here —as I mentioned, the consultancy services in the Walker Morris draft to me and to my solicitors seemed far too onerous when the principle was a profit share agreement. Q. You want two separate agreements. On your case, there was only one agreement in December 1996, wasn't there? A. Yes. Q. And now you want two agreements? A. I think we were trying, as I say, to separate the profit share from the consultancy. Q. Turn on to — A. I think the issue that Irwin Mitchell identified is that, you know, the intent between the parties and the contract from December 1996 is a reflection of the profit share being me introducing White Rose to an off-market, highly profitable deal. It seemed unfair when we have a consultancy agreement that could be terminated which impacts on the profit share. Q. Okay. So your position is you needed to separate out those two points? A. That was the advice of my solicitors, to protect the profit share. MR JUSTICE LEECH: Could you just keep your finger in 703. A. 705, yes. MR JUSTICE LEECH: And go back to 517. A. Yes. MR JUSTICE LEECH: So you will see that in the original fax, what it says —the clause I was going to ask about, but I will ask you about it now, it just says: "Termination: in event of material breach." And come 7 December 1999, so three years later, almost to the day, you're now suggesting something slightly different, aren't you, in the letter from Irwin Mitchell? A. Yes, I think because the consultancy services and the provisions were far more onerous than ever envisaged, because I think

when Geoff talked —I think I have seen some correspondence in the file about material breach from Geoff; and I think he identifies two areas, one being I don't devote sufficient time, resource and skill; and secondly, we have a divergence of view on the future direction of the project. MR JUSTICE LEECH: So that was what you say was meant originally by "termination in the event of" — A. That was my understanding, based on discussions with Geoff. MR JUSTICE LEECH: But coming back then to page 703, is it right that you were now saying that the profit share wouldn't come to an end if there was termination for material breach? I mean, you can say to me that that was what you were proposing then, and that was —but that was something different, wasn't it? A. Yes, I think it was because we were faced with this 20-page agreement, rather than a more sort of straightforward four, five, six-page agreement, with a whole load of provisions which, you know, I don't think we envisaged when we agreed in December 1996. I think it had moved beyond what we'd already agreed, because I think ultimately, the arrangement that we reached in December 1996 was effectively a profit share agreement, and the profit share came from the work that I'd done up until that point. White Rose wanted to positions on all substantive points." So that's three years on now from the December 1996 fax? A. Yes. Q. And one might have expected you to turn around and say: oh, well, it doesn't really matter, because I've got a binding agreement. So that may be your final position on that draft, but it doesn't affect me. Why didn't you say that? A. Because I think there was still a good working relationship, as there always has been, and an intent to try and reach a further agreement. That was, I think, what we were still both trying to achieve, and this was part of that process. Q. But if there's a good working relationship, you can be honest with your counter-party and say: I understand that you want to —that you don't want to negotiate further, but understand, this is my position: my position is we have a binding agreement reached in December 1996. And you never said that, did you? A. At this stage, neither party said that. But of course as we will come on to 2002 and 2005, that is exactly the position we reached, because of — Q. We will look at those, don't worry? A. —these various drafts and the issues that it raised."

(5) *26 October 1999*

87. In the meantime, on 26 October 1999 a meeting of the board of directors of WRDE took place at which Mr Bell, Mr Helliwell and Mr Goodwill were present. Again, there were no signed minutes in evidence and the draft minutes record the following entry under the heading "Management/Coal Authority aftercare": "The Board noted that an ex-British Coal employee (Nigel Chambers) would be entitled to 10% of WRDE's net profit from Skelton". Mr Bell could not remember this entry. Mr Bell accepted that he did not step in and correct the statement (assuming that it was made). But he gave the following explanation:

“A. My Lord, I never doubted that there was a relationship with Nigel and the company. Rightly or wrongly, I believed that that relationship was undocumented. But he had done some work, that's for sure. It was never defined to me. It was confusing the sort of answers I got to those questions. But he had done some work and, as such, he deserved to be remunerated.”

(6) *The Shareholders Agreement*

88. The Shareholders Agreement contained standard terms which it is unnecessary for me to repeat. I was not taken to any of them in detail and only one clause was relevant to the issues which I had to determine. In clause 18 SPBL agreed not to enter into a number of different kinds of contract without the consent of the shareholders (not to be unreasonably withheld). Clause 8.1.7 prohibited SBPL from entering into “any partnership or joint venture arrangement including establishing any profit sharing, bonus or other incentive scheme in connection with an approved joint venture arrangement with any other person”. Clause 8.1.11 also prohibited SBPL from entering into any contract on certain terms. But it also contained the following proviso and a copy of the 6 December Fax was appended as Appendix 2:

“but (for the avoidance of doubt) the Company may without such consent enter into an agreement with Nigel Joseph Chambers which provides for Mr Chambers to be entitled to 10% of any residual profit due to the Company under the 1996 Agreement on terms not materially different to the terms of agreement appearing at appendix 2 hereto.”

89. Mr Blaker and Mr Kelly placed considerable emphasis on the genesis of this clause. By letter dated 28 December 2000 Mr Ian Gilbert, who was a partner in Walker Morris, wrote to Mr Noel Hutton, a solicitor at Hammond Suddards Edge (“HSE”), who were acting for Kelda. He stated that he had had a meeting with Mr Bell and Mr Paul Millington, Evans’ Finance Director, and he enclosed a black line version of the draft Shareholders Agreement. He explained one of the amendments to the draft as follows:

“The reference in the definition of Costs to the Chamberlain Agreement is simply a note that the parties have agreed to enter into or have entered into an agreement with a Mr Chamberlain who originally found the site. This needs to be reflected in the agreement.”

90. Mr Bell accepted that he was present when these instructions were given to Mr Gilbert although he could not recall who gave them. Mr Blaker put it to him that this letter was inconsistent with his evidence that there was no contract with Mr Chambers (although I

corrected his question as the passage below records):

“Q. I want to know why you've told my Lord on a number of occasions, both in your witness statement and already this morning, that in your view, in your opinion, there was no agreement with Mr Chambers. And I want to know why you're telling your company's solicitor, Mr Gilbert, a partner, that there is an agreement? MR JUSTICE LEECH: Well, he's not saying that, is he? A. I'm not saying that. MR BLAKER: Either have agreed to enter into or have entered into an agreement. A. My Lord, if you look at the agreement, because I do recall reading the agreement after the event. It's referred to in my statement. If you look at the agreement, it says quite clearly that we may enter into an agreement. It's a permissive clause. And that, I think, reflects the truth at that time, that there was this understanding that hadn't been converted into an agreement, and hadn't been properly defined. But it had gone through a board process, seemingly four years previously. No agreement had been reached. In that shareholders' agreement, if my memory serves me correctly, and you will want to check it—in that shareholders' agreement, it refers to the fact that we may enter into that agreement, which I think is talking about the future.”

91. On 29 December 2000 an “all parties” meeting took place between Evans and Kelda at which representatives of both groups and their solicitors were present. Mr Bell, Mr Millington and Mr Goodwill all attended this meeting on the Evans side. The minutes, which were set out in a three column table (number, issue and action) record that a large number and wide variety of issues were discussed. Against item 7 “Share Purchase – WRDE” the minutes included the following reference to Mr Chambers:

“Chambers Agreement – intended to be signed off. EOL should have right to complete without recourse to Kelda provided not materially different from grant.”

92. The Action specified against this entry was: “GG to provide copy”. On 3 January 2001 HSE faxed the latest draft to Walker Morris. The covering fax stated that there was a meeting that afternoon between Mr Bell and Mr Ian Knight of Kelda “with a view to settling the outstanding commercial issues”. The travelling draft contained a detailed definition of “Costs” in a series of sub-paragraphs which included “(s) overage payments, costs and all other sums properly expended or incurred by the Company”. Against this clause, Mr Bell had written in manuscript “What about Chambers”. The draft also contained a placeholder: “[Chamberlain Agreement?]”. The name “Chamberlain” had been corrected to “Chambers” in manuscript and someone had written next to it “Please provide a copy”. Mr Bell’s evidence was that this was probably Mr Goodwill’s

handwriting.

93. Mr Blaker then took Mr Bell to clause 8.1.11 of the Shareholders Agreement in its executed form. Although he had annotated the travelling draft with the question “What about Chambers” Mr Bell could not remember this clause. However, he made the following observation:

“A. I understood from that that it was still undecided as to whether that agreement was to be signed or not. We may sign that agreement without further reference if it is in accordance with the terms of the report. That report was produced in 1996. We're here now in 2001, and there has been efforts to produce it and agree it. So my feeling has always been that we never reached agreement. And that, to some extent —counsel will say to the contrary, I 'm sure. But that, to some extent, is borne out by the fact that it hasn't been signed, and it may be signed. It's not definite that it's going to be signed? And after five years, if it was going to be signed, I think I would be speaking to my board to say, "We are going to sign it now," or I would at least be saying to our joint venture partners, notwithstanding the fact that we were the leading company in terms of operational decisions, I would still be telling them that we are going to sign this now after five years.”

94. Mr Blaker also took Mr Bell to Appendix 2 which was the 6 December Fax. Mr Bell gave a very similar answer. He also gave evidence that he did not execute the Shareholders Agreement and although he would have approved it, Mr Goodwill took the lead in the negotiations:

“Q. Right. I just want to know, would you have examined and considered this document, this shareholders' agreement, before it was actually entered into? The whole shareholders' agreement, did you read it? A. Yes, and I would have been content to know that I could or could not sign it. Q. But did you —why did you not say, "Well, there is no agreement because we actually have reached no agreement"? You've called it "terms of agreement". A. Because we were striving to reach agreement. This was an ongoing thing. I mean, there were drafts passing — I can't remember when this stopped, but there were drafts passing at that point. I don't recall that, but I would have recalled it at the time I was doing the — that I was involved with this document. Q. And presumably, as a managing director —were you also the company secretary? A. No. Q. As the managing director, you had overall responsibility for really taking a lead on this shareholders' agreement; is that a fair assessment? A. At the time this would have been left to Geoff. I 'm pretty sure about that, my Lord. But I would have been involved. I 'm sure Geoff would have involved me.”

95. Mr Goodwill clearly kept Mr Chambers updated about the change in corporate structure because on 19 January 2001 he wrote to Mr Goodwill chasing to finalise his consultancy agreement. Despite his letter, the process continued to move slowly and Mr Chambers prepared a letter to send to Mr Goodwill which he headed “Draft for Discussion”. The draft was dated 10 April 2001 and Mr Banner put it to Mr Chambers on the basis that it had been sent (and in that form). Mr Blaker did not object and I accept that the draft which Mr Banner put to Mr Chambers was sent to Mr Goodwill. In the letter Mr Chambers suggested that they turn their attention “to this outstanding matter with a fair degree of urgency”. He also set out his views on the draft consultancy agreement in detail:

“With regard to the profit share arrangement, I am pleased to note that some progress appears to have been made on the definition of Calculation Date. Moreover, with the addition of the definition of Unsold Value, I am now a little more relaxed that we have a firmer ‘trigger’ for the payment of the Fee and a mechanism to calculate any portion of that Fee remaining “locked” in any land remaining undeveloped.”

“Referring back to my letter of February last I did indicate that there are likely to be a number of concerns regarding the provision of Consultancy Services and I have not yet instructed Mike Bentley, the appropriate expert at Irwin Mitchell, to do any further work. To this end, I am strongly advised that 2 separate agreements should be entered into respectively for the profit share and consultancy aspects; a principle to which both our solicitors feel could be easily applied in this case. As I am sure you can appreciate, I want to ensure that we have a measure of agreement on the profit share and a workable draft prior to incurring significant costs. However, having read the latest draft I do not see much change from the previous document, which did cause concern on initial inspection to Mike Bentley. From my untutored eye, I still have some strong reservations with regard to the onerous nature of the Consultancy Services. As I have explained before I would be keen to take on board an agency role alongside GVA Grimley. I appreciate that this opportunity might be served by taking up a position with a Leeds based practice.”

96. Mr Chambers also identified a number of examples of what he described as “problem areas” in the current Walker Morris draft of the consultancy agreement, which included the following two points:

“The basis of our agreement has always been that payment of the Fee relates to my input into the project from inception until development commences ie land is sold or unit development starts. As currently drafted, the assumption is that I work on the scheme until the Calculation Date. The clear intent of both parties being that

my future role in the project would be considered when SBPL contemplates built development. The potential of an agency instruction was raised as one such future role.”

“7. Non-Competition. If I do take up a position with a Leeds-based practice I am sure that they will question the imposition of this section of the agreement. For example, a 10 mile radius of the site takes in the whole of the Leeds area! Whilst I am no expert, the restriction might be seen as a restraint of trade. I cannot believe that you would expect me to jeopardise the Skelton project by working on a competing scheme in any event.”

97. Mr Banner put it to Mr Chambers that he was still seeking to negotiate these points and that he did not say in this letter that there was a binding agreement which had been made in 1996 or that his negotiating position had to be seen in that context. Mr Chambers answer was that this would have been an aggressive approach and that he was not an aggressive person.

(8) *The LOA Draft*

98. Mr Chambers also gave evidence that on 29 May 2001 he met Mr Goodwill again and they agreed to draw up a more straightforward letter of appointment or “LOA”. Mr Banner asked him to explain the purpose of this if there was a binding agreement between the parties:

“Mr Chambers, could you turn to bundle 1, page 346, please. Paragraph 71, when you get there. A. Yes. Q. Third line, do you see that? You say: "Geoff and I met again on 29 May 2001 and agreed that attempts to draft an agreement between solicitors were proving fruitless. Accordingly, we agreed to try and draw up a more straightforward letter of appointment." Why did you not simply agree to rely on the December 1996 fax? A. I think we were still trying to work together positively to get a replacement agreement. Q. Because White Rose wanted something —because SBPL wanted something more than the 1996 fax? A. I don't think so. I think we were involved in a process here. It was no more than that. Not that we didn't have an agreement. Q. But what was the objective of the process? A. I think to find a more detailed long-form agreement. Q. Because White Rose wasn't content with what was in the fax? A. No, I dispute that. I think White Rose weren't content with the approach that Irwin Mitchell took, and I wasn't content with the approach Walker Morris took. That was why it became fruitless, because we looked at it differently.”

99. In November 2001 Mr Chambers sent Mr Goodwill a draft letter of appointment. This letter contained both a description of the “project” and an “End Date” of 30 April 2015.

It also provided that Mr Chambers was to provide consultancy services to SBPL until any land was sold or development had started but no obligation to provide services thereafter. Mr Chambers accepted that this letter was “work in progress” and part of the continuing negotiations:

“Perhaps I can do it this way. Do you recognise page 905 as the draft letter? A. Yes. Q. The draft short form that you prepared in November 2001? A. Yes. Q. So if we look at clause 3 of this, you are to receive a profit share from the development or sale of the site equivalent to 10% of net pre-tax profit achieved by SBPL, profit share is to be contemplated at the end date 13 of the development of the site. The “end date” —sorry, let's go back to clause 2, line 3: “Part of the land (Site), extending to approximately (178) acres has been allocated for development in the adopted Leeds City Council Unitary Development Plan.” And you refer to an “attached plan”, but once again, we don't have the plan. So that's the business park area, isn't it? A. Yes. Q. If we go to 906, you have some notes. In (vi) you have 24 “End Date”: “Earliest of sale/development of whole site or 30 April 2015.” So now you're proposing a longstop? A. Yes. Q. And if we go over the page to 907, “Development Consultancy Services”, you are: “... to provide development consultancy services to SBPL until any land is sold or any development has commenced on the Site. Thereafter, [you are] ... under no obligation to provide any services to SBPL regarding the Site.” So under this proposed letter appointment, you're to provide services up to a particular point in time. That's until the land is sold or development is commenced. And you get 10% of the net pre-tax profit achieved by SBPL in relation to the business park land; correct? A. Yes. This was a draft which later changed when I had the discussions with Geoff. So — Q. That's rather my point — A. —this is work in progress, yes. Q. Exactly. It's part of the continuing negotiation? A. Yes. That changed when we had further discussions with Geoff and Geoff produced a second draft to clear up some anomalies.”

(9) *August 2002*

100. Mr Goodwill gave evidence in his witness statement that Mr Bell “called a halt to further attempts to agree a more formal agreement with Nigel” and confirmed that “we would stick with what we had, which was the profit sharing agreement which we had agreed with Nigel 1996”. He did not suggest that he made a note of this conversation and did not explain when he first was asked to recall this conversation.

(i) Mr Chambers

101. Mr Chambers also gave evidence in his witness statement that “in August 2002, I was contacted by Geoff to say that John had asked him to cease any further drafting,

suggesting that we should rely on the Agreement” and that he did not pursue it any further. Mr Banner asked Mr Chambers about this conversation in cross-examination:

“But after that exchange, I think you tell us back in paragraph 72 of your witness statement, so bundle 1, 346, at paragraph 72: "Not long after Geoff supplied the draft letter of appointment in August 2002, I was contacted by Geoff to say that John had asked him to cease any further drafting, suggesting that we should rely on the Agreement. As a result of John's intervention ...[I] did not pursue the matter further. As far as I was concerned, my continued involvement in ... Skelton ... was subject to the terms of the Agreement." A. Yes. Q. That, as far as I'm aware, isn't documented anywhere. There's no document reference — A. No. It was a telephone conversation between Geoff and myself. Q. Right. A. But obviously the facts bear that out, because there is no documentation regarding the agreement for three years. Q. It's your evidence that Mr Goodwill told you that Mr Bell said that, "We should rely on the Agreement," capital A? A. Yes, and I believe that is what Geoff says in his statement as well. Q. Right. And this is a conversation that took place 24 years —23 years ago? A. Yes. Q. You don't have a note of it? A. No. I mean, some time —if I am sat at my desk with my daybook, I will record a conversation, but obviously if I'm in the car travelling and a conversation happens then, I wouldn't have noted it down. Q. But you wouldn't —is it not the case that really what you are reconstructing here is that the parties just drew stumps on the short-form agreements, and you took the view that: okay, well, I guess I'm back with my 1996 fax then? A. Yes. We both — Q. I'm talking about you. I'm not asking you to speak for anybody else. A. Yes. I was content to do that, because we were not able to reach an agreement. Q. All right. A. A replacement agreement. Q. And you didn't think to record that position in a communication with SBPL? A. I never —I didn't do that, no. Q. No. A. Again, we had a very good, cordial working relationship. We're both working towards the same ends.”

(ii) Mr Bell

102. Mr Blaker put Mr Goodwill's witness statement to Mr Bell who gave evidence that it was inconceivable that he would have instructed Mr Goodwill to stop negotiations with Mr Chambers for a formal consultancy agreement:

“Q. Now, I want to ask you about those last few sentences: "I recall that John Bell, who was Managing Director of Evans at the time, called a halt to further attempts to agree a more formal agreement with Nigel because it was becoming too convoluted and I remember John confirming that we would just stick with what we had, which was the profit sharing agreement which we had agreed with Nigel in 1996." A. I can't — Q. Now, that —that is the correct, true position of what happened in 2002, isn't it, Mr Bell? A. No, it's not, my Lord. I just can't imagine me saying to Geoff, "Stop the attempts to reach a proper agreement", and I can't imagine for

one minute relying upon that single page. There was no benefit to us in relying on that, none whatsoever. And I believe that Geoff has got it wrong there, and he is mistaken in his understanding of my position. All along I wanted some certainty into the situation, which is why I developed the idea that we should go on to a proper consultancy, that we should deal with it in a professional manner, have invoices to pay, and take our relationship forward on that basis. I certainly wouldn't have said, "Let's rely on the —that one page agreement". It's inconceivable in my mind for me to have said that. It just goes against the —my training, and it goes against my experience. That document couldn't stand up to the test of all the things that were required of that relationship.”

(10) The Financial Model

103. Mr Blaker also took Mr Bell to an email dated 7 April 2004 from Mr Stephen Bottomley (an accountant in Evans’ finance department) to Mr Goodwill and Mr Simon Bottomley (a project surveyor) enclosing a financial model for the Skelton Site which included a profit share of 10% or £498,000 for Mr Chambers. It had been calculated by reference to SBPL’s net profit from the project after deducting British Coal and Keyland’s profit shares and also a standard deduction for developer’s profit (which would be usual for a residual valuation). In the covering email he stated:

“Profit shares — the calculation of the share of profit due to the Coal Authority, Keyland and Nigel Chambers. It would be very helpful if Geoff could check that the calculations are a correct reflection of the agreement.”

104. The 7 April 2004 email was not sent to Mr Bell although he accepted that he was copied into a later version of the model. Mr Bell’s evidence was that Mr Goodwill would have given the instructions to include Mr Chambers’ profit share in the model. He also accepted that Mr Goodwill clearly thought there was an agreement in place:

“Q. So do you recall being aware of that particular model or you can't say, apart from just the fact that you were aware of modelling going on? A. My Lord, it may sound cavalier, but these sort of models go on all the time, and unless you're convinced that there's something going to be happening in the pretty near future, you don't pay too much attention to it. It doesn't surprise me that there is this inclusion of Nigel's perceived —purported position, but when finance people actually do these calculations they always err on the side of caution, so that if there is a possibility of an expenditure item coming in, they will include it as a precaution, looking at the downside case, looking at the worst-case scenario, in the same way that they will usually suppress income. So you end up with an appraisal that takes into account all the possible expenditure that your project is

going to meet. Q. Steve Bottomley — A. Geoff Goodwill would have been the person who instructed the finance team to actually prepare this, and the finance team would be led by Geoff in that respect. MR JUSTICE LEECH: What was the purpose —if we go back to 1024 — A. Yes. MR JUSTICE LEECH: —it says the latest version of the Skelton model is attached. What would the purpose of this model be? For raising finance or just for accounting, year-end accounting, or to try and fix the carrying value of the land? A. We operated with a very conservative accountancy policy. So if a scheme was as embryonic as this one was, we wouldn't revalue it. We would put it in at cost, and we'd account for all the costs, and we would take a conservative view, because ultimately this scheme could come to nothing. So we didn't want to inflate our accounts and then have to deal with the downturn. MR JUSTICE LEECH: If you're just carrying it at cost, why bother modelling it at all? A. Because it informs the company of the potential in the site. It doesn't serve any practical purpose because it doesn't feature in the accounts as such, but it gives us an impression of what might be around the corner if all goes well. MR BLAKER: Steve Bottomley became the company secretary, didn't he? A. No, I don't believe so, no. Q. You don't believe so? A. No. Q. Now, I'd suggest that whoever has carried out this modelling, somebody has told them that they need to include Nigel Chambers in there. A. Yes, Geoff Goodwill will have told them. These are the product of discussions between the project manager involved in the scheme and the finance team. Q. And this is — A. And they —the project management side of it, if you like, the development surveyors, would inform the accountants, and the accountants would take their word for it. Q. And it's entirely consistent then with Mr Goodwill's understanding that there was an agreement already in place? A. I have no doubt whatsoever that Geoff thought that this —that there was an agreement in place. All his actions suggest that. I don't believe he had enough — rightly or wrongly, I don't believe he had just cause for that because it didn't seem to me that there was an agreement in place.”

(11) Email dated 12 May 2005

105. By email dated 12 May 2005 Mr Goodwill wrote to Mr Bell copying in Mr Robertson. It is clear from the email that he had been asked to provide Mr Bell with a summary of the work which Mr Chambers had performed in advance of a meeting with Mr Chambers (which took place the following day). Mr Goodwill attached a file which he had saved as “Skelton - Profit Share Schedule” and stated as follows:

“As requested I attach the schedule which sets out the profit share arrangement with Nigel.

1. His current involvement is as follows:

- Resolution of rights of way, road diversions etc. to minimise ransom risk. This is tied in with the understanding with Keyland regarding delivery of any rights claimed by YWS etc.

- LCC adoption of Coal Authority CPO land to avoid ransom
- Transfer of Lake area to LCC, coupled with reservation of rights for services and transportation corridors.

(The above matters are being progressed in conjunction with the Coal Authority)

- Extinguishment of Npower/Innogy rights across the site
- Representations to RSS, Yorkshire Forward/Ernst and Young study etc. in connection with the gaming legislation and associated liaison with Kerzner

2. Matters with which he is not at present, but could become, involved:

- Resolution of the outstanding planning conditions relating to the detailed planning permission granted in January 2004 for engineering and infrastructure works.
- Finalising the planning conditions and Section 106 agreement relating to the outline planning permission for the Business Park which, now that the HA conditions are agreed, we shall be pressing LCC to issue as soon as possible.
- Liaison with LCC/HA/other landowners to achieve issue by HA of their TR110 consents for the three sites. HA will not issue them until the HA/LCC agreement regarding junction 45 and 46 improvements is completed and will not issue them piecemeal.
- Representations to LCC when they consult on the draft Area Action Plan, which will inform preparation of the new Local Development Framework
- Involvement with the other main landowners and LCC regarding the routing and provision of electricity and other main services.
- The minor boundary reconciliation with the Coal Authority, following resolution of the CPO land transfer

3. Other matters not involving NJC include:

- Finalisation of ELLR negotiations with LCC and YF and associated documentation. This requires close liaison with Keyland and Lord Halifax/AMEC.
 - MSA/Swayfields - outside the scope of the agreement with NJC.
 - Liaison with and quarterly reporting to Keyland and the Coal Authority.
 - Liaison with LCC Aire Valley team
- Management/VP of agricultural tenancy with Matthew Smaling)
- Appraisals/Cash Flows

Please let me know if you require anything more before you see Nigel.”

106. Mr Blaker suggested to Mr Bell that the 6 December Fax was attached as the “Skelton – Profit Share Schedule” and Mr Bell accepted that it may have been. He also gave evidence that this email confirmed his belief that Mr Chambers was not performing any services which justified the payment of a profit share:

“Q. Right. Can you see there's a little pdf sign, "Skelton —Profit Share

Schedule" has been attached? Let me — A. Yes, I've got it. Sorry. Yes. Q. Thank you. Now, what I'm going to suggest to you that what was actually attached was the 1996 fax. A. It may have been, yes. Q. Right, thank you. Now, what he then goes on to say, number 1: "His current involvement is as follows ... " And he sets out —I'm not going to read them all out, but he sets out a number of things: rights of way, road diversions, adoption of the —Leeds council adoption of the Coal Authority and a CPO, transfer of the lake area to Leeds, coupled with reservations of rights, and that's being progressed in conjunction with Coal Authority, extinguishment of N Power/Innogy rights, representations to RSS. Who are RSS,⁴ do you know? A. No. Q. Yorkshire Forward/Ernst & Young in connection with gaming legislation and associated liaison with Kerzner. Now, before this time, were you aware of all of those things that Mr Goodwill says Mr Chambers was doing? A. Before this time? Q. Yes. A. I knew that he had involvement in Kerzner. For the rest, I wasn't sure. Q. So this all comes, does it, as a surprise to you, when you receive this email? A. Yes, it did —I can't recall if it was surprise or not, my Lord. But I believe that this is the email that made me believe, or confirmed my belief, that Nigel wasn't really doing anything that justified any kind of profit share. If you look at each of these items, they don't amount to much, and there are certainly items that you would pay an agent to do, rather than to enter into a profit share agreement. Q. Okay. Let's move on. Let's look at number 2. Mr Goodwill says these are "matters with which he is not at present, but could become, involved". A. Yes. Q. He sets out a whole load of things. Now, if he's just a bit part player, why is Mr Goodwill suggesting: there are all these other things that we can get him to do? A. I have no idea what was in Mr Goodwill's mind, but I don't believe he got involved in any of these items. Q. Okay. Let's have a look at number 3. There he says: "Other matters not involving [Nigel Chambers] include:" Finalisation of ELLR negotiations with LCC..." Then he says: "MSA/Swayfields ..." He says that's "outside the scope of the agreement with NJC". If there's no agreement, why did you not write back and say: what are you actually talking about, Mr Goodwill, Geoff? What agreement? There isn't one. A. I wasn't reading it as a forensic lawyer, I was — Q. Well, you are a lawyer by background, and you pride yourself —you say in your witness statement that you pride yourself on how particular you are? A. Not particular in legal matters. I mean, I see the word "agreement" there as summarising a situation. It didn't occur to me to examine the word in its legal context. We knew we had a relationship with Nigel, and it was that relationship that I took that word to mean. Q. Now, the reason — A. But I can't recall what I took the word to mean, to be perfectly honest with you. Q. The reason why this comes about is because Geoff is about to leave at the end of the month, isn't he? A. Correct. Q. And so you are trying to (a) introduce him to Iain Robertson? A. Mm—hm. Q. And (b) you want to take a little bit more of a hands-on approach with him, to find out, as you say, what he's up to and what he can do for you? A. No. Q. No? A. No. Q. Okay. But you accept the first one, it was just about introducing him to

⁴ Mr Chambers gave evidence that the RSS was the Yorkshire & Humber Regional Spatial Strategy and I will also refer to it as the "RSS".

Iain Robertson? A. Yes, that's right. That was the primary purpose. Q. So let's turn over the page at 1101, that's the end of the email. He says: "Please let me know if you require anything more before you see Nigel. "Geoff." Now, why did you not—I'm going to ask you again, and it will be the final time I'll ask you on this document, is why did you not write back and say: what agreement, Geoff? There isn't one. A. My Lord, I was not reading this letter as—this email as a legal document. I wasn't examining it. And to be perfectly honest with you, I was a lawyer for about four or five years. I do not claim to be a great lawyer. Q. But he sent you an attachment which you say you think was the 1996, and he describes it as "profit share arrangement with Nigel". Why didn't you say: well, there is no profit share? We're not paying him a penny—(overspeaking)—doesn't deserve anything. He's doing all this minimal work. A. I think verbally I would have said that to Geoff, and I told Geoff that I was going to speak to Nigel about it, to try and get him on to the traditional consultancy-type approach."

(12) 13 May 2005

107. On 13 May 2005 a meeting took place at Evans' headquarters in Leeds at which Mr Bell, Mr Robertson and Mr Chambers were all present. Mr Bell informed Mr Chambers that on 31 May 2005 Mr Goodwill would be leaving SBPL and introduced him to Mr Robertson. Mr Chambers' typed note of the meeting records as follows:

"JB informed NJC that Geoff Goodwill would be leaving SBPL on 31 May and that his departure was entirely amicable. As a result JB wished to discuss/agree with NJC:

- o Current tasks that NJC is involved with
- o Potential tasks that he might get involved in.

JB's view is that the tasks could be undertaken as a "last push" over the next 3-6 months to secure the consents and tidy up any title issues/requirements. JB stated that NJC should focus on these matters as part of the agreed profit share arrangement.

NJC asked if JB would consider formalising a Consultancy Agreement to document the existing profit share arrangement. JB agreed that, subject to a maximum 4/5 page length, he would be happy to consider this in order to "give the agreement definition".

NJC then went on to ask about a possible future role in terms of development consultancy/project management. JB stated that he was prepared to give this matter serious consideration as a means for NJC to become more closely involved in Skelton and to secure short term income prior to the profit share.

JB also indicated that if the existing and proposed tasks became "too time consuming" for NJC then he would be willing to look at some form of short term income.

- o It was agreed that NJC would ask his solicitors (Irwin Mitchell) to

prepare a simple Consultancy Agreement, max 4/5 pages, and forward this to JB for discussion.

- o IR to meet Geoff Goodwill for a full de-brief on the Skelton scheme and potentially ask NJC to attend/contribute.

- o IR/NJC to have a detailed meeting the purpose of which would be to agree tasks and workload + potential role for NJC in the future.”

(i) Mr Chambers

108. Mr Banner asked Mr Chambers about the way in which his note of the meeting was composed and Mr Chambers gave evidence that Mr Goodwill told him that it was important to keep a full note. Mr Banner also put it to Mr Chambers that the language which he used was of two parties looking to enter into an agreement rather than communicating on the basis that there was such an agreement:

“Q. I think this is referred to in your pleading as a "near contemporaneous note". What does that mean? A. It means I typed this note up either on the day or the day after. Q. From what? A. From handwritten notes. Q. Where are the handwritten notes? A. I haven't retained the handwritten notes. Q. Okay. Why did you type this note up? A. Well, this was —I think the situation, John Bell was a very particular individual; and my discussions with Geoff were: make sure you have everything copper-bottomed, as it were, with John. Q. Okay. A. Takes notes. He's an ex-solicitor, a company director. It makes sense to properly document what he said. Q. Very sensible. A. Yes. Q. Did you send this note to Mr Bell after the meeting and ask him to agree it as a note of the meeting? A. No.”

109. I have set out the exchange between Mr Banner and Mr Chambers in relation to this document and Mr Chambers' reference to Mr Goodwill's email dated 12 May 2005 at [26]. I then asked him about the words which he had put in quotation marks:

“MR JUSTICE LEECH: What you've chosen to do is you have put some words in inverted commas. So —in the third paragraph you say: "JB's view is that the tasks could be undertaken as a 'last push'." And then you also say further down: "JB also indicated that if the existing and proposed tasks became 'too time consuming' for NJC then he would be willing to look at ... " And, again, you've got to "give the agreement definition", which is perhaps the key paragraph, in the middle. So were those the actual words used by Mr Bell? A. They were the exact words that he used, and that's why I put them in quotes, yes. MR JUSTICE LEECH: So, fair to say that, as we often do when we're taking a note, even one very soon after a meeting has taken place —you've probably got a lot of handwritten notes —but you have chosen to do is tidy them up and paraphrase in the rest of the note; is that a fair assumption? A. No, I don't think that's quite right. I think what I tend to do with —if it's a key point, I will identify it on the

actual handwritten note, and then, for want of a better term, transcribe it into this typewritten note. I didn't select those words after the event; they were what I highlighted during the meeting. MR JUSTICE LEECH: I'm assuming that those are the words that Mr Bell actually used. A. They were the exact words. MR JUSTICE LEECH: It's the other words that I'm equally interested in, whether —you would accept that those are not verbatim what he said? A. No, it's a —as it says at the top, a note of the meeting. These were the principal matters we discussed, but the quotes are the exact words, phrases, that I recorded at the time from John Bell. MR JUSTICE LEECH: I see. Thank you.”

(ii) Mr Bell

110. When Mr Blaker put the note of the meeting to Mr Bell, he stated immediately that it had not been sent to him at the time and that, if it had, he would have taken issue with it. He also stated that he could recall the meeting and the topics discussed if not the words used. Mr Blaker then took him through the note in detail:

“So he said that John Bell's "view is that the task could be undertaken as a 'last push'". Now, that —are those words —did you say —use the words "last push"? Is that something —and if you can't recall that, please say so. A. I can't recall it. Q. " ... over the next 3–6 months to secure the consents and tidy up any title issues/requirements. [John Bell] stated that [Nigel Chambers] should focus on these matters as part of the agreed profit share arrangement." Now, did you —I haven't asked a question yet. A. I can tell you what I think I discussed. Q. I haven't asked a question yet. Did you say that he should focus on those matters as part of the agreed profit share arrangement? A. No. Q. What did you say? A. I can't recall. Q. Let's move on to the next — MR JUSTICE LEECH: Why can you be so sure that you didn't say the words that Mr Chambers records? A. I beg your pardon, my Lord. I qualify that. I can't recall seeing it, and I don't think I would have said it. MR JUSTICE LEECH: And why don't you think you would have said it? A. Well, throughout this arrangement with Nigel, my view was that there was a relationship there. I have said it before, and I apologise if I'm repeating myself. MR JUSTICE LEECH: No, no. A. There was an arrangement there. There was a relationship that work had been done, and that we needed to pay for it. Now, when we had this discussion about the fees, Iain Robertson had left the room, because I didn't think it appropriate for Iain to listen in on that aspect of it. And my distinct recollection of that —not a distinct one, but my recollection of that is that I broached with Nigel the subject of getting —putting a proper consultancy agreement in place. And to try and encourage him to accept that, I said to him that we could expand his role, we could get him involved in the development process, and that if we needed to have an outsider helping us, we would put it Nigel's way. My motivation for doing that was that I wanted to have an amicable settlement to the situation, and I felt that by agreeing to pay for work that he would have done, provided he gave me invoices for it, and also by trying to bring him into the fold, as it were, giving a proper

definition to his work, and pay him for that work, my motivation in doing that was simply to try and get rid of what was in my mind a very unsatisfactory situation. There's an element of self-interest in that, because we had a reputation in the town, and still do have a reputation in the town, of looking after agents and people who work for us, surveyors and people like that. And it's a reputation we worked hard to build up. And I didn't want Nigel to go out into the marketplace to say that: those guys at Evans are trying to screw us; they've agreed something and they're going back on their word. So I wanted to try and have an amicable arrangement with him. And I'm pretty sure in my mind that we discussed this idea of having a traditional consultancy arrangement with an enlarged —with an enlarged work remit, if you like, and an agreed work remit as well. That seems to have got translated into, not only did I say, "Yes, we'll stick with the 1996 agreement," but in addition to that, "We will pay you more because we are going to expand your role." That doesn't make sense to me, because why would you expand on a 10% arrangement? That just doesn't make sense to me at all."

"MR BLAKER: Let's carry on, Mr Bell, with the document. We're halfway down: "[Nigel Chambers] asked if [John Bell] would consider formalising a Consultancy Agreement to document the existing profit share agreement. [John Bell] agreed that ... " A. No. Q. I haven't asked the question yet: "[John Bell] agreed that, subject to a maximum 4/5 page length, he would be happy to consider this in order ... " And then there's a quote, "give the agreement definition". I'm going to ask two questions here. Firstly, does that paragraph accord with your recall of the meeting? A. I can't —I don't have a recall of that particular item, no. Q. Okay. And do you recall —I presume the answer is going to be no. But do you recall saying to "give the 10 agreement definition"? A. No. Q. Are you sure you didn't say it, or you can't remember? A. I'm pretty sure I didn't say either of those things, because my motivation was to take him to a completely different direction. Q. Right. Well, let's carry on: "[Nigel Chambers] then went on to ask about a possible future role in terms of development consultancy/project management. [John Bell] stated that he was prepared to give this matter serious consideration as a means for [Nigel Chambers] to become more closely involved in Skelton and to secure short term income prior to the profit share." Now, in that paragraph, do you either not recall it, or do you agree that you said it, because you remember agreeing that you said it, or you remember and you didn't say? A. My Lord, I don't recall saying it, and I don't believe I would have said it."

"[John Bell] also indicated that if the existing and proposed tasks became 'too time consuming' ..." Again, a quote: " ... for [Nigel Chambers] then he would be willing to look at some form of short term income." A. Yes. Q. Just in terms of the general paragraph and what's said there, do you recall saying that? A. I don't recall saying it and I don't believe I would have said it. Q. And do you recall saying, if it's too time-consuming, you'll look at short-term income? A. I don't recall it, and I don't believe I would have said it either. If I may add to that —I beg your pardon. MR JUSTICE LEECH: No, please continue, Mr Bell. A. If I may add to that, I did ask Nigel to present to me a consultancy agreement, but it was based upon, in

my recollection, the discussion that we had about it becoming a more traditional consultancy role. And I didn't want to have a long document —drawn—out document. I said to him: provide me with four or five pages. And I do recall saying that. But the subject matter of that consultancy agreement wasn't, in my recollection, to document a discussion about his overage or his percentage of the profit, the profit share. It wasn't to document that, it was to document what we'd been discussing around the subject of a traditional consultancy."

(iii) Mr Robertson

111. Mr Robertson gave evidence in his witness statement that he recalled Mr Chambers' note of the meeting and the action points which were agreed. When he was cross-examined by Ms Gailey, he could not recall whether he had left the meeting early but he did confirm that he was not involved in any of the relevant discussions:

"Q. Now, this is a note of a meeting on 13 May 2005, and you were one of the people present at the meeting — A. Yes. Q. —you see listed at the top. And you say now that you've seen these notes before? A. I saw these notes when Freeths sent them to me. Q. Okay. So you don't —when you said in your witness statement that you recall these notes — A. I recall — Q. —you don't in fact recall having seen this document? A. I recalled having seen them before. Q. Because this isn't a company document, Mr Robertson, is it? It's one prepared personally by Mr Chambers. A. I 'm sorry, I couldn't hear. Q. This isn't a company document. It's not a note prepared by the company? A. No. Q. It's Mr Chambers' note? A. Correct. Q. So did he provide it to you, Mr Robertson? A. No, he didn't. They came from Freeths. Q. Thank you. So we have cleared that up. So the first time you saw this note was when it was provided to you by Freeths? A. I believe so yes. Q. Thank you. The truth is that you left this meeting early, didn't you, Mr Robertson, as John Bell recalls in his witness statement? A. I —to be honest, I don't recall. Q. Well, I think you must have done, Mr Robertson, because it says it would be —John Bell says that you didn't hear any discussion about Mr Chambers' profit share at that meeting, and that is what you also say in your witness statement. If you could turn to paragraph 12 which is on page 324. Do you have that? A. Sorry? Q. Paragraph 12? A. 324? Q. Yes. A. Yes. Q. So halfway through that paragraph you say: "My recollection is vague on detail but I did get the impression from Nigel that there was an agreement in place ... " And he was a beneficiary under the profit share proceeds: "I don't know the precise detail of the profit —sharing arrangements because this would have all been handled by John Bell and Paul Millington." So is that still your evidence, that you had an impression from Nigel Chambers about the terms, but you can't confirm whether or not that impression was accurate because you weren't involved in any of the discussions? A. I wasn't involved in any of the discussion, correct."

(13) Letter dated 26 July 2005

112. By letter dated 26 July 2005 Mr Chambers wrote to Mr Bell enclosing a fresh draft of his consultancy agreement. In this draft, Mr Chambers and Irwin Mitchell reverted to the very first draft which Mr Chambers had sent to Mr Goodwill on 1 October 1997 incorporating by reference the terms of the Tripartite Agreement and imposing a restriction upon SBPL preventing it from dealing with the Skelton Site without the consent of Mr Chambers. In the covering letter Mr Chambers stated as follows:

“Further to our meeting back in May my solicitors have now prepared a simple Consultancy Agreement to formally document the basis of my profit share entitlement which we agreed some years ago. I enclose the initial rough draft for your consideration.

In order to keep the document as simple as possible the suggestion is that we utilise the original tri-partite agreement between British Coal, Yorkshire Water Estates and White Rose Development Enterprises (and any amendments that might be required as a result of the transfer to Skelton Business Park Ltd). Accordingly, I propose to incorporate a number of the key clauses in the tri-partite agreement and transfer these into the Consultancy Agreement itself.

Following on from a number of discussions with Geoff over the years, the draft agreement proposes an extension to the 2011 timeframe within the tri-partite agreement. I understand that it might be beneficial to Skelton Business Park Ltd to extend this timeframe in order, amongst other things, to avoid making 2 substantial capital payments on the same date and thereby improving the overall cash flow of the project.

I trust that the enclosed draft is broadly acceptable and I await your thoughts in this regard. Clearly there are a number of issues which are not fully covered in the draft but I am keen to start the ball rolling.

I was pleased to hear at our meeting that you are prepared to consider some form of additional, ongoing, development and project management role once we have secured the business park consent and tidied up a number of legal issues. In the medium term, I was also encouraged that this role might also be extended to incorporate an agency instruction at the appropriate time.”

113. Mr Blaker suggested to Mr Bell that he had offered Mr Chambers an additional “carrot” at the meeting on 13 May 2005 which was reflected in the final paragraph of this letter. Mr Bell rejected this suggestion:

“So what you were actually doing was saying to him, Mr Chambers: in addition to the profit share, there's something else, I can dangle that carrot, because in the future there might be another development and project

management role for you. Does that jog your memory that you said that to him? A. I did not say that to him. You must understand what my frame of mind was at the time, my Lord. My frame of mind was that he was getting overpaid for what —he was claiming to be overpaid for what he was doing. I couldn't work out what he was doing. And certainly Geoff's memorandum didn't take that problem away from me. In fact, it reinforced it, because if you look at the three or four things that he was doing, these are not anything like the sort of issues that you would pay a profit share for. Q. But he's the man — A. So it's —my frame of mind that he was getting paid too much at the moment. Let's get this sorted out. Let's define what you are supposed to be doing, put you on a proper consultancy basis. And to help you, we'll see if we can expand that a wee bit, to make it —to take away the pain of not getting the 10% that he was claiming. Q. But you'd agreed that 10% back in 1996, hadn't you, because you knew, as Mr Goodwill told you at the time: without Mr Chambers, none of this happens; he's the man who's introduced us to the land? A. Again, my Lord, there's a misunderstanding here, because all that happened, that created the value, if you like, happened in British Coal's ownership. And that is not our affair. If anything, British Coal should have been paying Nigel a proportion of their 50%."

(14) Letter dated 10 August 2005

114. By letter dated 10 August 2005 Mr Bell replied to Mr Chambers' letter dated 26 July 2005 (which he wrongly identified as 20 July 2005). After apologising for the delay, he invited Mr Chambers to make an appointment to see him stating that: "I think we need to chat through what you have in mind and why we need to change existing arrangements." Mr Blaker put it to Mr Bell that in this letter he accepted that there was an existing contract:

"Q. What you're saying there is it's the precursor to: let's leave it; let's leave the profit share as it stands. A. No, it's not. No, it's not. I had explained to him that —in our meeting, that in my opinion, what the situation was, was that he had been doing work for us, we had no agreement to cover that work, and that we should have an agreement to cover that work. If we didn't reach an agreement, I said to him, it would have to be worked out on a quantum meruit basis. If we —as an alternative to that, it would be better if we sat down and reached an agreement on a consultancy basis. And that's what I'm referring to as the "existing arrangement". Q. Well, let's go to page 374, please, bundle 1. A. 374? Q. 374. Can you see on the bottom, paragraph 78 of your witness statement, you say: "I do not recall specifically why I referred to 'existing arrangements', but I probably meant the situation which existed before the May meeting." A. Yes. Q. What do you mean by that? A. What I have just said. I know that I had discussed with Nigel the fact that we owed him money. He had done some work for us. We needed to define what that work was. And moving forward, we had to define what he was going to be doing and how he should be

remunerated. Q. But the day before the May meeting, Mr Goodwill sends you and Mr Robertson the profit share agreement. That's what existed before the May meeting. A. No, that's —that's the point at issue, I would suggest. Q. You then say: "There was obviously a relationship of sorts between us and Nigel, but there wasn't in my opinion, any real agreement ..." A. No. I mean — Q. What do you mean by that, there wasn't a real agreement? There was a fake agreement? What do you mean? A. An enforceable agreement. Q. There wasn't an enforceable agreement: " ... in the absence of any definition as to his role ... " Well, you knew what his role was: he was providing those planning and development consultancy services for you, wasn't he? A. Well, he wasn't. He wasn't actually doing that. He was doing bits and pieces of things to do with easements and that sort of carry on. Q. His remuneration. You knew what that was, 10%? A. No, I —we had never entered into an agreement that specified what his remuneration was. Q. So why did you not say to him at any point in time: let 's keep this relationship on a very loose and casual basis, very ad hoc. You do a bit of work for us; we'll pay you, you don't do any work for us; we pay you nothing? You didn't say that at any time, did you? A. I thought —I thought it would be much better for him to have a proper contract that specified what he was supposed to be doing and specifying his remuneration. I thought he would welcome that."

(15) 18 August 2005

115. On 18 August 2005 a second meeting took place at Evans' headquarters in Leeds at which Mr Bell and Mr Chambers were present. Mr Bell's evidence was that it was not a long meeting and took between 15 and 20 minutes. He also confirmed that he did not take a note because he was very busy and it was not his habit to do so. Mr Chambers gave evidence that he made manuscript notes at the meeting and then made a typed note of the meeting either the following day or the day after and destroyed his earlier notes. I set out his note in full below and for ease of reference I have inserted paragraph numbers in bold. When I use those numbers in square brackets, I intend to refer to the relevant paragraph of this note:

“**[1]** JB informed NJC that he was not happy with the draft Consultancy Agreement, prepared by NJC's solicitors, and was not prepared to put it forward, even in principle. He said that he was "slightly offended" with the tack taken by the draft which he felt" went far beyond the existing arrangements". For example he didn't like the request to register my interest on the title and the demand for approval prior to any lease or sale.

[2] JB then asked how far the existing arrangements dated from December 1996 had progressed in terms of any drafting with Geoff Goodwill and our respective solicitors. NJC informed JB that, over the intervening years, a number of drafts had been prepared but nothing acceptable to both parties had been agreed upon.

[3] As a result, JB stated that both parties should "stick with the existing arrangements" and that he was happy to accept the "ambiguity of the original terms set down by Geoff in 1996". Moreover, he said that he saw "no material advantage in preparing or drafting anything else".

[4] JB went on to assure NJC that SBPL would "look after my interests in the scheme" and that I would "do very well". He went further to point out that as I got to know the company better I would become more comfortable with them. NJC then informed JB that he did not wish to incur substantial legal fees if SBPL were not prepared to look further at the latest Irwin Mitchell draft or any alternatives. Accordingly, both parties confirmed that the terms from December 1996 should stand as the agreement between the parties.

The meeting then went on to discuss and explore some of the ambiguities which might exist on this basis:

- [5] Calculations involving unserviced and serviced land sales were relatively easy to compute but "built development" might prove more tricky. JB's initial view was that comparable land values should be used (as per OMV/RICS Red Book) and costs subtracted. However, after discussion he acknowledged that a profit share calculation method in line with the formula for unserviced/serviced land sales might actually work better.
- [6] JB indicated that SBPL "might" be prepared to give NJC interim profit payments as the company declares profits in its accounts ie once the scheme has broken even.
- [7] JB did see merit in a project/development management role for NJC with NJC receiving some short term payments. SBPL had limited manpower and he acknowledged that NJC would be incentivized to perform due to the profit share agreement."

(i) Mr Chambers

116. Mr Chambers gave evidence that Mr Bell used the exact words "slightly offended" and "arrangements" in [1]. He stated that he did not recognise a difference between arrangements and an agreement. In relation to [2], he accepted that when discussing the various drafts, he did not say to Mr Bell that "we have an agreement from 1996". Mr Chambers' evidence was that it was unnecessary for him to say so because of his call with Mr Goodwill in 2002 (although he had to accept that he did not have that call in mind at the meeting). In relation to [3], he stated that Mr Bell used the exact words "stick with the existing arrangements" and "the ambiguity of the original terms set down by Geoff in 1996".

117. I turn now to [4]. Mr Chambers accepted that the last sentence of this paragraph was a

paraphrase and that neither he nor Mr Bell used the following words: “Accordingly, both parties confirmed that the terms from December 1996 should stand as the agreement between the parties.” His evidence was as follows:

“MR BANNER: Third paragraph of the note: "As a result, JB stated that both parties should 'stick with the existing arrangements' ..." So that's a direct quote from your note? A. Yes, that's what he said. Q. And he used the word "arrangements"? A. Yes. Q. " ... and that he was happy to accept the 'ambiguity of the original terms set down by Geoff in 1996'." Again, his exact words? A. Yes. Q. And he used the word "ambiguity"? A. Yes, he did. Q. And you didn't step in at that point, there's no record in this note that you stepped in and said, "Well, they are not ambiguous, they're perfectly clear"? A. We did discuss ambiguity at the end. Q. No, I'm coming to that, don't worry. I'm saying you didn't at this point jump in and say, "It's not ambiguous, it's perfectly clear"? A. No, as I said, we discussed it at this point here. Q. So you accepted that the 1996 arrangements were ambiguous? A. Well, I recorded here what John Bell said to me, and that's what he said. As I say, we went on later to discuss ambiguity. Q. Let's come to that final paragraph in a moment or two. We will take it sequentially: "Moreover, he said that he saw 'no material advantage in preparing or drafting anything else' ". JB went on to assure NJC that SBPL would 'look after my interests in the scheme' and that I would do 'very well'." Direct quotes again, "look after my interests in the scheme" and "do very well"; yes? A. Mm—hm. Q. But what he didn't say was that SBPL would abide by an agreement reached by White Rose in 1996 because you would have written that down, wouldn't you? A. Well, I did write it down, didn't I, that we agreed to stand by that agreement. Q. What Mr Bell said, and what you've written down, is that SBPL would look after my interests in the scheme and that I would do very well. But he didn't say SBPL would consider itself legally bound by an agreement White Rose had entered into with you in 1996 which was binding? A. Yes. The very last sentence of that paragraph, I'll read it out, says: "Accordingly, both parties confirmed that the terms from December 1996 should stand as the agreement between the parties." That's what John and I agreed. Q. I'm coming to that. That is not in quotes, is it? That's your paraphrasing. A. Yes, that was just, yes, where we said to each other, "Yes, okay, then, we will stake [sic] with those existing arrangements. That will be the arrangement between us".

118. Mr Chambers accepted that there were ambiguities in the 6 December Fax but maintained that the ambiguity related only to “built development” and not the profit share agreement more generally. Mr Banner then returned to the last sentence of [4]:

“Q. Yes, okay. So if we go back to "accordingly both parties confirm that the terms from December 1996 should stand as the agreement between the parties", that's not a direct quote. It's not in quotation marks, is it? It's your paraphrase. A. No, that is what John and I agreed that we would do. We'll stand by our agreement. Q. That isn't my question. It's not a direct quote?

A. No, it's not a direct quote. Q. It's your — A. As a note of the meeting, that's what both parties agreed. Q. It's your summary, isn't it? A. It's a summary of what we agreed jointly. Q. Isn't it fairer to say that both parties agreed that they would stand by the terms of the December 1996 fax, whatever that might mean, essentially kicking the can down the road? If there were problems in it, you would try and sort them out later? A. Yes, I think both —because we'd spent all this time trying to draft an agreement that we could both rely upon, it was better to accept a small degree of ambiguity on the agreement which we already had, that being how do you define built development profits separately from land profits. I mean, obviously, as the schemes developed, there hasn't been a built development scenario by your client. So the profits are easy to calculate. Q. Isn't the tenor of the paragraph that begins "JB went on to assure NJC that SBPL would 'look after my interests in the scheme' and that I would 'do very well'" an assurance to you that you would be looked after, not that a binding agreement was in place and would govern the relationship between the parties? A. No, I think this was comfort that John Bell, on behalf of the joint venture company, would honour the agreement which we reached and concluded in December 1996. Q. I suggest to you, Mr Chambers, that what really happened in this meeting is that SBPL indicated to you that it would treat you okay if everything went according to plan, but there was no suggestion of a binding agreement governing the relationship between the parties from this point onwards? A. No, I disagree."

119. Finally, Mr Banner returned to [1]. He put it to Mr Chambers that Mr Bell would have required the approval of the board of SBPL to enter into a binding contract on the terms of the 6 December Fax:

"Q. The opening paragraph which we read earlier: "JB informed NJC that he was not happy with the draft Consultancy Agreement prepared by NJC's solicitors, and [he] was not prepared to put it forward, even in principle." So Mr Bell was making it clear there that he could not reach an agreement on his own, he would have to refer it to the board, wasn't he? A. Yes. I think because, if you look at the end of that, the request to register my interest on the title, a demand for approval prior to any lease or sale. So the agreement we had, which had board approval in 1996, obviously didn't feature there. Q. Those were reasons why he wasn't prepared to put it forward? A. Yes. Q. But even if it were acceptable, he would still have had to put it forward. He's saying he's not prepared to put it forward. He's not even prepared to take that step because of what's in it? A. Yes, because he didn't —that's obviously where he felt slightly offended that I'd gone a little bit too far in requesting — Q. He was making it clear to you that anything that was entered into had to have the sanction of the SBPL board, wasn't he? A. No, I think he was making the point here that it went beyond what we already had by seeking to register interest on a title, and demands for approval to lease or sell. Q. Okay. A. Not that the agreement was in place, because it already had a board approval with White Rose. MR

JUSTICE LEECH: It's a different company, isn't it? A. But with the same shareholders. MR JUSTICE LEECH: It's still a different —you're familiar with the difference between corporate entities, aren't you, Mr Chambers? A. Yes, and my interpretation from the meeting is that on behalf of Skelton Business Park Limited, John Bell bound that company to the December 1996 agreement by stating that we should re-affirm, if you like, the terms from December 1996, because John at this point was the most senior director at Evans. Evans were in sole control of the Skelton Business Park project, and John was able to do that, in my view. That's how it was presented to me, because every time I had discussions, be it with Geoff or Ian and Iain or David Helliwell, it was always, "We'll seek the approval of John to do X, Y and Z", or he was kept involved quite closely in the project on key important decisions or development aspects of Skelton. So there was no doubt in my mind that he was the right person to give me that assurance that would bind Skelton Business Park in August 2005. MR BANNER: There's an element of wishful thinking in this, isn't there, Mr Chambers? Throughout all the preceding stages of negotiations you'd been well aware that matters would go through solicitors and that ultimately there would have to be board sign-off. There would have to be board sign-off to heads of terms before matters went to solicitors. And suddenly you have this conversation, you take from it what you want to take, and then you think, "Well, John Bell must be able to do what I want him to be able to do". It's wishful thinking. A. No. No, I mean, we'd already been through a process with both White Rose and Skelton Business Park of trying to reach a more detailed agreement which wasn't successful. So we both reverted and agreed the arrangement which was in place already. And that was re-affirmed by both parties at this meeting, and John Bell in my view presented himself and his colleagues and co-directors presented him as the most senior director that could bind the company. Q. What do you mean, "the most senior director"? A. He was in, according to their company accounts, day-to-day control and management of Evans Property Group, Evans Property Group being the party controlling the Skelton project. Q. And did those accounts state that he had ability unilaterally to bind SBPL to contracts? A. No, but — Q. No. A. —how am I supposed to know what authority he has specifically in the company? If it's presented to me, you know, John is the man, he is the most senior director, I think it's perfectly logical to assume that he can bind the company."

(ii) Mr Bell

120. Mr Blaker took Mr Bell to his witness statement and then to [1]. Mr Bell accepted that this paragraph of the note was broadly accurate although he preferred the word "disappointed" to "offended":

"MR BLAKER: Now, let's try and have a look —let's go firstly to what you say at 79.1: "This note [you've seen the note, and you say] partly reflects my recollection ... " So let 's have a look at which bits of Mr

Chambers' notes you accept and which bits you don't accept. So at 79.1, you say: "As I have said, I remember being disappointed at what Nigel had sent me with his ... July ... letter as I thought it simply didn't reflect what we had briefly discussed in the May meeting, as I recalled it. I also remember explaining why I couldn't recommend his proposal to the board or even present the draft for consideration." So let 's just have a look at 1147. Keep that open and look —turn our eyes to that. A. 1147? Q. Yes. Let's look at that first paragraph, to see if it matches: "[John Bell] informed [Nigel Chambers] that he was not happy with the draft Consultancy Agreement, prepared by [Nigel Chambers'] solicitors, and was not prepared to put it forward, even in principle." So you are comfortable with that, that that is an accurate reflection of what was said? A. Could you say it again? MR JUSTICE LEECH: Just read the first sentence. MR BLAKER: Just read it, the first sentence. MR JUSTICE LEECH: Take your time, Mr Bell. MR BLAKER: "[John Bell] informed [Nigel Chambers] ..." That bit. Just the first sentence, up to the word "principle". A. Yes, I remember saying that. Q. You were comfortable with that. That was said. Right, let 's go on to the next sentence: "He said that he was 'slightly offended' with the tack taken by the draft which he felt 'went far beyond the existing arrangements'." Does that accord with what was said? A. I think —I think that —rather than say "offended", you could say I was disappointed. Q. Okay. But does the tenor of that sentence accord with your memory of the meeting? A. Yes. By "existing arrangements", you understand — Q. We'll —we are not going to argue about words at the moment, okay? I haven't asked the question, Mr Bell. So then you go on —Mr Chambers says: "For example he didn't like the request to register my interest on the title and the demand for approval prior to any lease or sale ." Was that said? A. I have a feeling it was said, but it wasn't said in the same way. Q. Well, how was it said? If it was said, how did you say it? A. I started off , I think, by saying that I was disappointed because it didn't reflect the conversation a propos the possibility of creating a traditional consultancy agreement. That was my major disappointment. And I possibly added, as an example of why agreements like that —provisions like that couldn't feature in our relationship, the idea that we would have to seek consent from him to actually do certain things with the property, and so on and so forth. That's not a traditional consultancy agreement. It's just not. It's really a repetition of the 10% profit share. So that's why I was disappointed. And I was also disappointed because —it's coming back to me —I did say to him three or four pages, and he wrote to me and said three or four pages. But when you actually analysed the three or four pages, it quoted clauses 9, 10, 11, 12, 13, 14 of the British Coal agreement. So if you fleshed those out and put them in the agreement. And then it said something along the lines of role , "to be completed". And if you had actually put the agreement in, all the bits and pieces he was referring to and all the bits and pieces that needed to be defined later on, it would have been a 15 to 20–page thing. Now, he either thought I was a fool and wouldn't notice that, or it was me over–reacting to it. But I was disappointed, not offended."

recorded in [2] (although he accepted that Mr Chambers and he probably discussed the earlier negotiations). He did not accept either that he made the statements recorded in [3] and the reason which he gave was that: "It just doesn't bear any relationship to the discussion I recall." He accepted that he would have made something like the statements in the first and second sentences of [4] and he gave the following explanation:

"A. What I was possibly conveying was the fact that people who work for Evans work for us for a very long time. We create relationships, for example with contractors. We don't go out to tender. We negotiate most of our tenders, and we had favourite surveyors and so on and so forth. And what I was saying to Nigel was: look, I know you're disappointed with where you are. Put that behind us. Start afresh. Know what we're doing, what you're doing for us and what we'll do for you. We'll extend your role, so that you can get more fees, and you will not —and we will look after you. I can imagine myself saying that. But not in the context there —that's being used. MR BLAKER: What about: "He went further to point out that as I got to know the company better I would become more comfortable with them." A. That's right, and that's more or less what I just said."

122. Mr Bell did not accept either that Mr Chambers told him that he was not prepared to incur more legal fees if SBPL did not agree the Irwin Mitchell draft. Mr Blaker then addressed the term "existing arrangements" in [3] and the last sentence of [4]:

"Accordingly, both parties confirmed that the terms from December 1996 should stand as the agreement between the parties." Was that said? I'm at the final sentence of that paragraph, and I want to know whether you said: "Accordingly, both parties confirmed that the terms from December 1996 should stand as the agreement between the parties." I want to know whether that was said or not. A. I don't believe it was said, no. In fact, I know it wouldn't have been said. Q. You know it wasn't said. Let's just have a look at what you say at 376. So turn your eyes and go to 376, please. 79.5, the top of page 376, you say: "It's possible I gave Nigel the option of sticking to the existing arrangements ..." What do you mean by that? MR BANNER: Sorry, can you take the witness to the preceding subparagraph, where he actually deals with that sentence. MR BLAKER: In 79.4, you say you don't recall agreeing the terms that the 1996 fax should stand, and you've already told my Lord that. Then at 79.5, you say: "It's possible I gave Nigel the option of sticking to the existing arrangements ..." A. Yes. Q. And I just want to know what you mean, because you then say: "... in my view Nigel had two options. He could either stay in his existing ambiguous and uncertain situation or he could try and achieve certainty as to the scope of his role and how he would be paid through agreeing a more traditional consultancy agreement." I want to know what you actually said to him, what you mean by, "It's possible I gave [him] the option of sticking to the existing arrangements". What do you mean by that? A. The "existing arrangements", as I have defined them, my Lord, to Nigel, and as I

reconciled them to myself, was that he had been doing some work, he needed paying for them, we could do it by invoices and agreement, or we could do it by quantum meruit. That's what I believed to have been —would be the case if ever we came to a dispute. That's what I called the "existing arrangements". What I was trying to say to him was that —well, what I may have said to him, because I can't remember saying it, but what I may have said to him is: look, Nigel, it's for your benefit as well. It's good for you to have clarity, it's good for you to know where you stand. If we don't agree, then we are going to go with the existing arrangements, which involves dispute and quantum meruit or agreement. I was trying to encourage him to come to agreement.”

123. Mr Blaker then moved on to the bullet points in [5] to [7]. Mr Bell initially gave evidence that there had been a discussion about serviced and unserviced land and built development. However, he did not accept that this was in the context of a profit share. After an exchange with Mr Blaker, he gave the following evidence:

“MR JUSTICE LEECH: You said a moment —before we leave that, you said a moment or two ago you do remember some discussion about unserviced and serviced land sales. A. About the development of that land, my Lord, yes. That was part of the inducement for him to agree to the —the idea of having a consultancy agreement, traditional consultancy agreement. We would expand his role. What happens, once you get planning consent, as you will be aware, you then either sell the land or you develop the land; and if you're going to develop the land, you do it partly with your own in-house resources —we have a project team, we have surveyors and so on; but you both it also with external resources. And if I could find a role, and I didn't commit myself to it, but if I could have found a role for Nigel, I would have brought him in to do that, as an inducement to him, to soften the blow, as it were. MR BLAKER: Let's look at the next bullet point at 1148: "[John Bell] indicated that SBPL 'might' be prepared to give [Nigel Chambers] interim profit payments as the company declares profits in its accounts ie once the scheme has broken even." Do you recall discussing that? A. No. Q. And, finally: "[John Bell] did see merit in a project/development management role for [Nigel Chambers] with [Nigel Chambers] receiving some short term payments." Do you recall that discussion? A. No. Q. "SBPL had limited manpower and he acknowledged that [Nigel Chambers] would be incentivised to perform due to the profit share agreement." Do you recall that? A. Can you go back to the one before, because I said no, but I wasn't listening properly. Q. Okay: "[John Bell] did see merit in a project/development management role for [Nigel Chambers] with [Nigel Chambers] receiving some short term payments." Did you discuss that or not? A. I don't recognise the short-term payments, but I recognise the other bit. Q. What, the "merit in a project/development management role"? A. Yes. Q. Then what about: "SBPL had limited manpower and he acknowledged that [Nigel Chambers] would be incentivised to perform due to the profit share agreement." A. That —my Lord, Evans is a very well established company. It was a Plc until we took

it private. It had a fantastic reputation in the marketplace. It had a very strong balance sheet and a very strong cash flow position. It's probably worth around half-a-billion pounds today. The notion that we would depend upon one individual to meet our requirements is just mistaken. We would either have those resources available to us or we would go out and get them. We would either recruit people or we would use outside agencies. And there's no question about that. Now, what I was saying to Nigel was that if we find ourselves in a situation in the development — developing land scenario, if we were to find ourselves in that position, and if we were going to go out to somebody else to help us, rather than employ from within, we would look to him to try and see if we could find a role for him in that. That's what I had in mind. And I think it was pretty clear —I'm not expressing myself particularly well today, but it was pretty clear the way that I would have explained that to him at the time.”

(16) *Email dated 24 August 2005*

124. On 24 August 2005 and therefore only six days after the meeting, Mr Bell wrote to Mr Goodwill raising a query about the “existing agreement” with Mr Chambers and on the following day Mr Goodwill replied answering his question. I set out both emails below:

“Sorry to trouble you but I had a chat with Nigel Chambers the other day. He wanted to add to the existing agreement we have with him by addressing the variety of issues which our existing agreement does not touch upon. I could not see any rush now for Evans agreeing to any changes so I turned him down. As part of my preparation for the meeting I read through the file and I could not see anywhere any reference to the fact that our agreement only related to the area which was the subject of our planning application other than a reference to the fact that the MSA area was not included. I recall you mentioned to me that the “Casino area” lay outwith our agreement with Nigel. Can you confirm that that is the case and direct me to the authority for the position.”

(Bell to Goodwill, 24 August 2005)

“The only land excluded from the arrangement with Nigel is the MSA area. The other exclusion is any profit arising from physical development, his entitlement being restricted to the land element. The Reserve Land/ Casino issue arose when Nigel broached the topic of him having introduced Kerzner and the prospect of him being paid a fee in relation to any deal with them. Our response to Nigel was that no fee would be payable as any involvement on our behalf would be covered by his profit share entitlement. There is unlikely to be much if anything on file as my recollection is that the dialogue on this topic was verbal.”

(Goodwill to Bell, 25 August 2005)

125. Mr Blaker put his email to Mr Bell and he was unable to explain why he had used the expression “existing agreement” twice and the word “agreement” a further two times. Mr Bell suggested that he meant “existing arrangements” and Mr Blaker challenged this evidence:

“Q. That's what it says. They are your words, Mr Bell. This is your opportunity to explain why you've written those words. A. I don't believe Nigel believed that to be the case, and I certainly didn't believe it to be the case, even though I wrote it down myself. If you recall, Nigel was still trying to negotiate this existing agreement, as you call it, a year or two after this —this event. Q. Then you say: "I could not see any rush now for Evans agreeing to any changes ..." So "changes", in order to change something, there's got to be something there in the first place in order to change it, hasn't there? A. Yes. Q. Right. So what — A. This isn't convincing, but before, when I was using "existing arrangements", I knew exactly what I had in mind, because I had explained it to Nigel and I knew what I meant when I said the words. Q. Here, you're talking about an "existing agreement", and so you're saying you couldn't see any rush for Evans agreeing to any changes; and you mean there changes to the existing agreement; yes or no? A. Notwithstanding that —yes or no what? Q. Do you mean there changes to the existing agreement? What do you mean by that when you say "agreeing to any changes"? A. I don't know. Q. You don't know? A. It's —the only thing I can think about, and it's probably a post hoc rationalisation, is that I'm using "existing agreement" in the same context as I was using "existing arrangement". But I would also add that neither Nigel nor I believed that there was an existing agreement. Nigel's behaviour would give more testimony to that, and so did mine. Q. " ... so I turned him down." You say you turned him down. You said, "No, no changes". Now, I'm going to suggest to you —and this is your opportunity to clear this up before my Lord now —that this paragraph entirely encapsulates Mr Chambers' account that he, in a very neat few lines, he says "Come, I want to change things", you say, "No, let's leave it as it is, we stick to the existing arrangement —the existing agreement". A. I can't blame counsel for coming to that position. All I can say to you is I did not mean what that appears to say. I probably wrote the letter very quickly, and off it went. Nothing else in my behaviour is at odds with what I believe.”

126. Mr Blaker also suggested to Mr Bell that what prompted his email was a concern about Mr Chambers' profit share. Mr Bell gave evidence that he would not have been concerned about the size of the profit share and that Evans would have paid it whatever the amount if it was liable. But he was unable to offer an alternative explanation:

“MR JUSTICE LEECH: If you just can't remember —I got the sense, when Mr Blaker started asking you another question, that you wanted to say more about —he put to you that it was —you were worried about the

amount of money you would have to pay to Mr Chambers because of his 10% profit share, and you say it was not about that, and you were about to say something else. A. Well, the only thing I did say about that, in 2005, this had no planning permission for housing. If in 2005 we had planning permission for housing, and the same point was being made, I would still say, look, it doesn't matter, we would pay what we owe, but nevertheless, I would understand counsel's position or question better. In 2005, if you look at the financial appraisals, money wasn't a huge issue. It wasn't—it wasn't throwing up a lot of profit. So it's not money that we were concerned about in that discussion. I can't for the life of me think what it was I was asking that question for. It's—it was a long time ago. But having said that, I appreciate that I would remember certain things, but I can't remember this, I appreciate that.”

(17) 1996 to 2005: Mr Chambers' services

127. Mr Chambers gave evidence in his witness statement that between 1999 and 2001 he worked closely with Mr Goodwill and his deputy or assistant, Mr Chris Best, to prepare, submit and monitor the progress of two planning applications which SBPL submitted for the Skelton Site:

“27. From 1999 until November 2001, I worked closely with Geoff and the professional team to prepare and submit two planning applications; one for engineering works to prepare the Skelton Project for development and the second an outline planning application for the development of a business park. Prior to 1999 I recall that Geoff was assisted by Simon Bottomley from Evans and from about 1999 was assisted by Chris Best, also an Evans employee.

28. Throughout 2000 and 2001 WRDE or TDL managed the preparation of the two planning applications and other related masterplan, planning brief and technical work by regular project team meetings. I attended 17 meetings during this period. Outside of these meetings, I also made specific contributions to the Skelton Project to ready the site for the planning applications. Attached as p734-741 is a copy of a letter from Leeds City Council dated 4 September 2000 and my observations in a detailed letter to WRDE's planning consultant dated 26 September 2000, regarding a draft planning brief. Attached as p847-852 are copies of a letter to TDL from the planning consultant dated 9 March 2001 and my observations in a fax dated 16 March 2001 to Geoff's assistant, Chris Best, in regard to the strategic planning application strategy for the Skelton Project.

29. Following the submission of the two planning applications, I was also involved in monitoring their progress and liaising with both the professional team and officers at Leeds City Council. The engineering application was approved by Leeds City Council in January 2002 and the business park application was approved in April 2006. During this period, Geoff remained my principal point of contact and I continued to work

closely with him as we spearheaded and controlled the progress of the two planning applications. Chris Best remained involved, assisting Geoff but, unfortunately, he passed away in early 2004. From 2004 until Geoff left Evans in May 2005 I dealt solely with Geoff and I was not aware of any other person assisting him during this period.”

128. Mr Chambers also gave evidence that once the UDP had allocated the Skelton Site (or part of it) as a business park, he was involved in promoting it to a number of potential purchasers and investors including Autex, Leeds United and Kerzner:

“31. Firstly, interest in the Skelton Project was expressed in mid-2000 from a company called Autex, who wished to set up a number of car exhibition, sales and display operations throughout the UK. I provided support and assistance to Geoff during the negotiations with Autex which included attending a number of meetings with the Autex team.

32. Secondly, in the summer of 2001, Leeds United selected the Skelton site as a preferred location for a new 60,000 capacity stadium and supporting retail and commercial development. Both of these interests came through WRDE or TDL and were handled mainly by Geoff. I was, however, involved in the proposal, providing assistance to Geoff as and when he required it.

33. Thirdly, in June 2003, on behalf of TDL, with Geoff’s prior approval I introduced the Skelton Project to Kerzner International, a major international casino operator who I knew well. Attached as p947-948 is a copy of my letter to Mark Comley of Kerzner International dated 18 June 2003 in which I introduced Kerzner to the Skelton Project on behalf of TDL for whom I was acting. Kerzner International expressed strong interest in the Skelton Project and from this point I became heavily involved in the promotion of a regional casino at Skelton.

34. From 2003 onwards, I also worked closely with Geoff on a number of issues in respect of the Skelton Project. These issues included me directing representations into the Yorkshire & Humber Regional Spatial Strategy (“RSS”), principally promoting the Skelton Project and Leeds for a regional casino development. From October 2004, I was asked by TDL to help resolve complex rights of way issues across the site and the transfer of Skelton Lake under a historic Section 52 Agreement.

35. For a short time between April and July 2005, I was also included in part of the team which attempted to resolve a dispute with Innogy Plc regarding a land boundary problem, a diverted highway and rights appertaining to a historic pulverised fuel ash pipeline.”

129. As part of his handover of responsibility to Mr Roberston, Mr Goodwill was asked to explain precisely what projects Mr Chambers had been working on. By email dated 14 March 2005 Mr Goodwill wrote to Mr Bell copying in Mr Robertson setting out the work which Mr Chambers had performed in relation to the Skelton Site:

“Among the Skelton matters being dealt with by Nigel Chambers are:

(1) the private rights of way on Knowsthorpe Lane (which we need to divert in order to construct the main site access from the motorway junction). The extent of these is being investigated but we know that YWS/Keyland have such rights and possibly also Innogy (Thames Water).

(2) the Innogy rights of way across the Skelton site which need to be extinguished. In recent weeks Bill Lawson has also become involved. At the rugby on Saturday Bill made a point of having a word to confirm that Keyland are happy to provide whatever assistance they can. However, in order to do so effectively, they firstly need to make further progress matters with other parties.

Bill is negotiating the transfer of further land from YWS to Keyland which, when completed, will enable Keyland to progress their part of item (1). He believes it will complicate matters if we try to deal with this item while YWS are still involved.

Keyland are negotiating with Thames Water regarding their adjoining land interests. Although they find them difficult to deal with, Bill believes that variation of any rights which could prejudice the diversion of Knowsthorpe Lane, and the extinguishment of the rights of way across the Skelton site, could be incorporated in their intended deal with Thames.

Both of these items have cost implications (as yet unquantified), including the potential for ransom claims. As Keyland could well be instrumental in helping to resolve these matters I thought you should be made aware of the current situation, in case it might affect our stance in relation to Team Valley.”

130. By email dated 13 April 2005 Mr Goodwill wrote to Mr Robertson copying in Mr Bell informing him that he had reached agreement with Keyland over Team Valley but also addressing the Innogy rights of way: see (2) (above). He informed Mr Robertson that Mr Chambers was involved in these negotiations. On 3 May 2005 Mr Bell forwarded on this email to Mr Millington. On 25 April 2005 a development team meeting took place at which Mr Helliwell, Mr Goodwill and Mr Robertson were all present. The minutes record “Nigel Chambers to deal with Energy/Npower” and by letter dated 4 May 2005 Mr Chambers wrote to Mr Simon Williams, the Development Director of Thames Water Property Services Ltd explaining both issues with which he had been tasked in more detail:

“As you may be aware my clients have secured planning approval, subject to a section 106 agreement, to develop a business park at Skelton and, once a new link road from junction 45 of the M1 into

Leeds has been constructed in the next 2 to 3 years, will be seeking to develop their landholdings. Accordingly, I have been instructed by my clients to resolve a small number of minor outstanding issues regarding their land title at Skelton. With regard to Innogy/National Power, now controlled by Thames Water/RWE, there are 2 matters which I have been asked to resolve:

- An easement for a fly ash pipeline from the now demolished Skelton Grange power station.
- An old right of way along the previous route of Pontefract Lane/Knowsthorpe Lane. In regard to each of these matters I would like to agree with Thames Water/RWE the extinguishment of any rights which might have existed historically but have since been diverted or abandoned.”

(18) *Kerzner*

131. None of the witnesses were taken to any contemporaneous documents which illustrated the work which Mr Chambers did in relation to Autex or Leeds United. In relation to Kerzner, Mr Chambers referred to a number of documents in his witness statement and in cross-examination. By letter dated 18 June 2003 he wrote to Mr Mark Comley of Kerzner to interest him in the Skelton Site, enclosing a location plan, an aerial photograph and a document which he described as the “Master Plan”. He then continued as follows:

“As I explained during our discussion I have been working on this site for almost 10 years now, acting for a company called White Rose Development Enterprises, which is a 50:50 JV between Evans of Leeds Ltd and Kelda plc (Yorkshire Water). The company owns the site which totals 330 acres, 180 acres of which is allocated as a prestige business park in the adopted UDP.”

“I would suggest that once you have considered this opportunity it would be a good idea for the Kerzner team to meet with my contacts at the JV company to explore your interest further. The development timescales on this one are similar to the gaming reform process!”

132. By letter dated 19 June 2003 he wrote to Mr Goodwill stating that following a conversation the previous week he was writing to outline “a potential interest from Kerzner International”. He provided detailed background on Kerzner and the gambling industry before setting out why Kerzner might be interested in the Skelton Site:

“Kerzner International believe that the UK will see its casino industry develop more like Australia and South Africa where the new style casinos are situated within major conurbations (Leeds being one) and form part of a new leisure and entertainment destination within the city. Each

development would be anchored by a casino of 75-100,000 sq ft and a high quality 4/5 hotel, together with a range of leisure (health spa, cinema, music/comedy club, tableside dancing etc), complementary retail and a wide and diverse range of bars and restaurants. In order to procure the support of the local authority Kerzner International are keen to establish what the political priorities for the city are and tie these in with development of the Destination Casino. With regard to Leeds, I can see advantages relating to infrastructure provision within the Lower Aire Valley and/or the development of a new arena!

I am sure that my contacts at Kerzner International would like to meet with you to explore matters further. In this regard, perhaps we can discuss this the next time we speak.”

133. By letter dated 19 September 2003 he wrote to Mr Goodwill enclosing a brief report which he had prepared and headed “Destination Casino Development” which stated that it was “intended to demonstrate that a properly developed Destination Casino and “Entertainment Centre” concept could be devised for the UK market and, in certain key locations, would prove extremely successful.” In the covering letter he referred to a meeting between Mr Michael Evans and Mr Sol Kerzner and he continued as follows:

“As I mentioned during our recent telephone conversation, I am keen to try and work with the Kerznors on their UK development programme and have already spent some time on a project north of the border. In addition, I am in the process of working up a number of sites elsewhere in the UK for Destination Casinos which I have earmarked for Kerzner International.

It is clear that the Kerznors like to form strategic alliances with major developers to identify, procure and then jointly develop and own schemes. Moreover, I know from my discussions with Mark Comley that they are keen to work more closely with the Evans Group. Accordingly, I thought that I should approach you to see if you might want to look at a number of potential future casino-based opportunities with my practice, in addition to Skelton. I have in mind some form of initial retainer, plus fees and/or a profit share agreement as schemes are developed.”

134. By letter dated 11 November 2003 Mr Chambers wrote to Mr Goodwill on this topic again. He stated that he was disappointed that the Kerzner team had been unable to make a meeting which had taken place on the previous Friday and that it was being rearranged. He then referred to his earlier letter dated 19 September 2003:

“During the meeting last week we did touch briefly on my letter and submission of 19 September and I noted that you would try and speak with John Bell on his return from New York. In this respect, I will look forward

to hearing from you shortly if the opportunity is of interest. However, as I pointed out, things are moving forward rapidly on the casino development front and I have already had to introduce a couple of schemes direct to the Kerznerns. Accordingly, the sooner we can meet and explore matters further the better.”

135. Mr Goodwill raised this issue with Mr Bell (as Mr Chambers had asked him to do) and on 1 December 2003 he made a manuscript note of their conversation on the letter dated 11 November 2003. A transcription of the note appeared in the trial bundle and it stated as follows:

“Discussed with JDB who is ‘lukewarm’. Suggests we tell Nigel that we need to understand more about the Casino business (hopefully through our dialogue with Kerzner) before considering a broader-based interest in Casino development. Nigel free to introduce opportunities elsewhere but not ruled out for future. Nigel informed.”

136. By letter dated 19 December 2003 Mr Chambers set out his “proposal to act for you” in regard to the development of a major casino and leisure scheme at Skelton. He stated that he acknowledged that “our existing arrangement would cover any site acquisition fee that might be due to my practice” but proposed a fee arrangement for an agency instruction, development management, planning and licensing and design and feasibility (setting out the detailed work which he would carry out). He then continued:

“I would seek a fees arrangement on the basis of existing instructions with Kerzner International which involves an hourly rate of $\frac{1}{2}$ my normal charge. This would equate to £75 per hour plus VAT and expenses. In addition, my practice to receive the following payments:

- (i) A fee of £50,000, plus VAT, upon securing detailed planning and licensing consent for the scheme.
- (ii) A fee of £150,000, plus VAT, upon practical completion of the scheme.

I note from our meeting that you do not wish to formalise a relationship with my practice beyond Skelton. However, it might be that this position changes as you develop a wider understanding and interest in the casino sector. Accordingly, I am more than happy to bear your interest in mind in my work with Kerzner International as further opportunities develop. To this end, the proposal set out above could act as a template for future projects, subject to an additional site acquisition fee.”

- (i) Mr Bell

137. On 5 January 2004 Mr Goodwill discussed this proposal with Mr Bell and took a manuscript note of their conversation. Mr Blaker took Mr Bell through a number of the documents which I have set out above before taking him to Mr Goodwill's note:

"Q. Let's look at 998, please. It says here: "Kerzner deal." Is that Geoff's writing again? A. It is, yes. Q. John Bell. It's got you, "JDB": "Kerzner deal –we have the expertise –Nigel would be placing himself in a conflict of interest situation [therefore ...] no to [an] agency role. "Re ... [his] general future role. JDB not unsympathetic. "Meet when time right to discuss. "[Geoff Goodwill] to inform [Nigel Chambers]." A. That doesn't—that doesn't coincide with my recollection of this situation, my Lord. I was of the opinion at the time that Nigel was acting on behalf of the Kerznors, and, you know, the letters that counsel has pointed to would suggest that was actually the case. It says something along the lines of, "I've already had to introduce a couple of schemes direct to Kerzner". So he's actually acting for the Kerzner group on a wider platform than simply in relation to—in relation to Skelton. I can't recall speaking to Geoff, nor do I recognise what Geoff is saying about this meeting. It doesn't accord with my recollection of the events. MR JUSTICE LEECH: Well, it says Nigel will be placing himself in a conflict of interest situation, therefore no to agency role. Wouldn't that be consistent with your view that he was acting for the Kerznors? A. Well, I don't know where he gets this from, because when the Kerznors were brought into the room, Nigel actually sat on their side. I think that was the only meeting that he attended. MR JUSTICE LEECH: I see. A. And I was of the—I was under the impression that Nigel had an arrangement with the Kerznors, and what Geoff is writing there contradicts that. But I believe I'm right in my understanding of the situation. MR JUSTICE LEECH: I see, thank you. MR BLAKER: Then the next note, it's not clear again it's all the same conversation or the same day. It says: "Re consultancy terms, if [it] says terminate [to] 2011, then stick to that. If it is open, then make it 2011 to tie in with the coal authority/keyland [agreements]. "Don't change anything unless beneficial to us." What do you mean by that? Can you remember saying that? A. I certainly can't remember saying that. Q. And what do you mean by it? Does it jog your memory as to what you may have meant? A. I do not recall the conversation, my Lord. Q. If you don't recall, then please say so. A. I don't recall the conversation, and I cannot say that Geoff and I had, nor can I say that he has captured it properly in that note. I mean, it's not—these sort of quotes of me come up now and again, and I'm surprised to read them because I don't believe I would have said those things in the context that they're said. That's all I can say about that."

(ii) Mr Chambers

138. Mr Banner also cross-examined Mr Chambers about his relationship with Kerzner. He put it to Mr Chambers that he had a commission arrangement with Kerzner and that this explained why there were references in the documents to a conflict of interest. Mr

Chambers gave evidence that he was acting for SBPL and not for Kerzner:

“A. I worked on more than the business park plan. I worked on the scheme from Autex, which was to occupy the reserved land; the car showroom complex; Leeds United wanted the bulk of the site; Kerzner International, who originally looked at the reserved land but incorporated more land; and the housing land. Q. None of those three commercial enterprises you mentioned were looking to put houses on this land, were they? A. The latter one was. Q. Kerzner, the casino outfit? A. No, the housing proposal. Q. No, the first three —(overspeaking) — A. —from 2005 onwards. Q. The first three of the commercial ones. A. The commercial ones aren't housing. Q. Are not housing. A. They're not housing. Q. And Kerzner, you had a commission arrangement with Kerzner, did you? A. No, I was acting for your client, the defendant. Q. So when there are references in the documents to you having a conflict over Kerzner, what was that about? A. I was never aware of any conflict. That wasn't communicated to me, as I understand it. I wrote to Kerzner in June 2003. It's clear in that letter that I am acting for the Skelton Business Park joint venture. That's made clear, I think, in that letter. I think it's 19 June.”

H. June 2006 to June 2022

(1) Email dated 6 June 2006

139. In 2006 Evans' finance department modelled the profit shares of British Coal, Yorkshire Water (or Kelda) and Mr Chambers for the Skelton Site. Indeed, one version of the model suggested that Mr Chambers might be entitled to as much as £2 million. By email dated 6 June 2006 Mr Millington then wrote to Mr Bell and Mr Robertson dealing with the longstop date under the Tripartite Agreement and his own understanding of the British Coal and Yorkshire Water profit shares. He also addressed Mr Chambers:

“I have seen a one page document dealing with the profit share arrangements which equate to 10% of the profit before tax arising on the sale of unserviced and serviced land plots and also on the land element of built development activity by WRDE. The profit share does not extend to development profit but refers to the situation being reviewed in the event that built development is contemplated by WRDE. I'm not sure what legal standing the document has or whether a signed version exists and the arrangements are unusually vague as is the profit definition. The MSA deal is excluded from the profit share arrangements.

One option may be to tidy up the arrangement and make a payment to Nigel Chambers in full and final settlement. This may be attractive to Nigel given that he is unlikely to receive any payment much before 2010. In contrast he may have expectations which may make

it difficult to broker a deal.”

(i) Mr Bell

140. Mr Blaker suggested to Mr Bell that his apparent failure to respond indicated that he accepted that Mr Chambers was entitled to a profit share. He also suggested that Mr Millington’s proposal to make a payment to Mr Chambers was an acknowledgment of liability. Mr Blaker quoted the first paragraph to Mr Bell before asking the following question:

“Let's just pause there before I ask you about the second paragraph. Why did you not write back and say, "Dear Paul, I cleared all this up a year ago, there is no profit sharing agreement, it doesn't exist"? A. Well, I may well have said that to him. Q. Nothing in writing? A. No. Well, I'm not—you've probably gathered by now, I don't write a lot of emails. Q. Well, he then writes: "One option may be to tidy up the arrangement and make a payment to Nigel Chambers in full and final settlement." A. Yes. Q. Why would you be making any payments in full and final if there's no entitlement or liability or potential liability? A. For the simple reason that he had done work. Q. But this is talking about the profit share — MR JUSTICE LEECH: Let him finish, please. MR BLAKER: Sorry. MR JUSTICE LEECH: Do you want to finish, please. A. He had done work for us. That deserves to have been paid, and I always said to Nigel that that would happen. What Paul was suggesting was a very good idea. My problem with that, I think, was that we had to have some justification for making a payment, and it would be better to have an account setting out what work he had done, and then a discussion around what the appropriate fee was for that. But he makes the point, which is my view that the legal document situation was unsatisfactory, or could be unsatisfactory. MR BLAKER: Then he goes on and says: "This may be attractive to Nigel given he is unlikely to receive any payment much before 2010." A. Yes. Q. Why did you not write back and say, "Well, what payment? He's not entitled to anything". Why is he going to be getting a payment in at least four years' time? A. I think what Paul was saying is that I 'm not sure what the legal standing of this document is, but if he is entitled to something, then it would be—it might be attractive for him to have something now, rather than wait for something in 2010. Q. Why do you think Mr Millington writes, "In contrast he might have expectations which may make it difficult to broker a deal"? A. Because he's probably been party to discussions that we've had, and he would know that Nigel's expectation was for the profit share. He would know that I had severe doubts as to whether there was a contract or not, and he's reflecting both positions in that email.”

(ii) Mr Robertson

141. Ms Gailey put the same point to Mr Robertson but this time the other round. He accepted that in his email dated 6 June 2006 Mr Millington thought that the 6 December Fax did not look like a concluded agreement and that if he had thought otherwise, he would have said so:

“Q. Thank you. And he suggests that it doesn't look like a concluded agreement, for much the reasons that we've just been discussing. It's unsigned, and he also says the arrangements are unusually vague. Now, if you had thought that was wrong, you would have jumped in there, wouldn't you? You would have sent an email, saying "No, no, Paul, notwithstanding the appearance of the document, I know that's a binding agreement"; do you agree? A. Yes. Q. But you didn't send that email, did you? A. I don't believe so. Q. No. Did anyone send such an email, Mr Robertson? A. I don't believe so. Q. Thank you. So, to the best of your knowledge, the financial projections Mr Millington is in the process of commissioning from the accounts team, the ones we were taken to at the start, don't actually say anything about the legal status of the arrangement with Mr Chambers, do they? A. Well, I recall a conversation between John Bell and Paul Millington that I was party to, which basically started the process of the financial forecasting to try and assess the financial quantum of what Nigel's — Mr Chambers' profit share might amount to in terms of a future successful development. Q. Absolutely, Mr Robertson. That is what is shown by the document we took you to at the start. But just to go back to that meeting, do you think that's the Thursday discussion that might be referred to in this email? A. Sorry? Q. In this email he refers to "our discussion on Thursday"? A. Yes. Q. Do you think that might be it? It doesn't matter if you can't remember. A. I can't remember, to be honest.”

(2) *Fax dated 4 December 2006*

142. Mr Chambers gave evidence that between 18 August 2005 and July 2012, when Mr Bell retired, the 6 December Fax was only mentioned in correspondence twice. The first occasion was on 4 December 2006 when Mr Chambers sent a fax to Mr Helliwell attaching the 6 December Fax. (I add that although Mr Goodwill sent it on 6 December 1996 to Mr Doherty, the second page behind the fax sheet bore the date 4 December 1996 and for this reason it was often referred to as dated 4 December 1996). In the covering fax Mr Chambers stated as follows:

“Further to our telephone conversation and as you requested, I attach the Heads of Terms for my Development Consultancy Agreement which Geoff drafted (strangely 10 years to the day: is that a coincidence?) As we have discussed before on a number of occasions, I would like to try and progress the agreement and also explore with John and yourself a potential future role in the scheme as outlined in the last paragraph of the Heads. I

will also prepare a summary of Skelton Lake and the CPO Land as you outlined during our conversation.”

143. Mr Chambers’ evidence about this document in his witness statement was that Mr Helliwell asked to see it. He also referred to his request for a potential future role and gave evidence that he could not recall receiving a reply. As I have stated at [30] this fax is inconsistent with Mr Bell agreeing to expand Mr Chambers’ role at the meeting on 18 August 2006. When Mr Banner put this fax to Mr Chambers, he accepted that he did not describe the 6 December Fax as an agreement in its own right or as a development consultancy agreement and that he did not describe any development consultancy agreement as replacing it.

(3) *18 October 2007*

144. On 18 October 2007 a meeting of the board of directors of SPBL took place. Mr Gray had recently been appointed as Managing Director and a board paper was prepared for the meeting entitled “Advisers Roles and Appointments”. It stated that a number of consultants had been engaged on the project to date but were not commissioned by SPBL. These included “Development Consultancy – Nigel Chambers”. Mr Gray explained that the statement that he had not been commissioned by SBPL only really meant that he was not involved in British Coal’s claim under the Tripartite Agreement. Mr Banner then asked Mr Gray to explain what Mr Chambers was engaged to do and on what terms:

“Q. Okay. Mr Chambers' evidence is that he was —his input was involved up until either the land was allocated to the UDP or outline planning permission was granted. Outline planning permission was the second of those, which was 2006. So were you aware of any arrangement, or even agreement, between Skelton and him that would have governed work he did after the grant of outline planning permission? A. That's what I was told was happening by Evans Property Group, yes. Q. What were you told was happening? A. The original agreement was still in place. Q. Even though outline planning permission had been granted? A. Yes. Q. And were you told it was still in place despite outline planning permission had been granted, or were you just told, well, it's still running? A. I was told it was still running. Q. So there was no reference to outline planning permission? A. No.”

(4) *Email dated 9 February 2012*

145. The second occasion to which Mr Chambers referred in his witness statement was an

email dated 9 February 2012, which he received from Mr Charles Clement, the Finance Director of Yorkshire Water, and also a director of Templegate. Mr Clement did not refer to the 6 December Fax but rather to Mr Chambers' "interest" in the Skelton Site:

"I am working with Evans of Leeds on verifying some financial information relating to the Skelton Business Park site in Leeds with which you have had some involvement, in the past, as well as an ongoing interest. James Pitt at Evans has supplied your email address. I am seeking your postal address and I also wanted to check whether you have supplied services through Atlas Property Consultants as well as in your own name. This all relates to the period 1994 to 1996 up to the point that the Land agreement with the Coal Authority was completed. It is in connection with this agreement, which has now come to an end, that I am writing. Please do not hesitate to phone me if you would like any further clarification."

146. Mr Clement referred to Mr Pitt, who had by now taken over the role of Managing Director of Templegate. In March 2009 Mr Chambers and he exchanged emails about the potential overage dispute with British Coal and by email dated 25 March 2009 Mr Pitt wrote to Mr Chambers informing him that there would be no overage payable under the Tripartite Agreement (which also suggested that he would not receive a profit share himself). There was then a long hiatus of almost four years before there was any communication between Mr Chambers and Templegate in relation to the terms of the 6 December Fax.

(5) *Email dated 14 March 2013*

147. By email dated 7 December 2012 Mr Chambers wrote to Mr Pitt attaching the 6 December Fax. He did not receive an immediate reply and on 25 February 2013 he chased Mr Pitt who was prompted to reply the same day. On 14 March 2013 Mr Chambers responded by setting out his own position. I set out the sequence of emails below:

"Further to our telephone conversation earlier this week I attach a copy of my agreement on Skelton from 1996. Now that the situation with the Coal Authority has been resolved, I am aware that there are a small number of points that need to be updated in my agreement. For example, the agreement is currently with White Rose Development Enterprises Ltd and should now probably be with Templegate Developments Ltd."

(Chambers to Pitt, 7 December 2012)

"Thank you for your email. Without prejudice, I have raised this matter and sorry for not responding sooner. We do not recognise the document you attached and it does not appear to form the basis of a binding agreement. As you know the matter dates back to before my time but nevertheless I am not aware of any other documentation we hold in this

regard unless there is something further you are able to supply? Sorry I can't be of more help.”

(Pitt to Chambers, 25 February 2013)

“Further to our telephone conversation I have looked through my files and spoke to Geoff Goodwill earlier this week. I confirmed with Geoff my understanding of the situation and we are both of the opinion that Michael Evans is definitely aware of the matter and also, possibly, Simon Bottomley who was working alongside Geoff in the scheme's early days. We are also clear that John Bell is certainly aware of the agreement, having been involved from its inception.”

(Chambers to Pitt, 14 March 2013)

148. Mr Banner took Mr Chambers through each of these emails in cross-examination. He asked Mr Chambers to explain why he did not produce his note of the meeting on 18 August 2005 or assert that Templegate was already bound by the terms of the 6 December Fax. Mr Chambers' response was as follows:

“Why didn't you say there, "The agreement was with White Rose Development Enterprises, but in 2002 and 2005 John Bell agreed it would move over to SBPL"? A. Yes, but obviously this was just after John retired. So all I sought to do here was to just record in documentary form that that had changed from White Rose to Templegate. Q. Sorry — A. Because John wasn't there anymore. Q. But factually your position must have been that the agreement had already moved over to Templegate? A. Yes. Q. Templegate is just the new name for SBPL. A. Yes, it had, but it just made sense to have that in written form. Q. But this is the point I'm trying to make to you, Mr Chambers. The written form that you wanted to set down should have said on your case: the agreement has already moved over to Templegate. A. Yes, which it did at my meeting with John in August 2005. Q. Right. A. John was no longer there. Q. So why didn't you say that in 2012? A. Well, I did. I asked James to contact John Bell so he could re-affirm that. Q. Sorry, that is a different point. I'm asking you why in this email you are saying the agreement needs to be moved over from White Rose to Templegate, when your evidence is that you understood in 2002 and 2005 that that had already happened? A. Yes, it had happened, but it made sense, as I say, to record that on a document in narrative form, in words. Q. But why didn't you assert that that is what had happened, rather than ask this —(overspeaking) — A. Well, I refer to it as my agreement on Skelton from 1996, and I then ask him to confirm with John that that agreement is in place because we agreed so in April — sorry, in August 2005. Q. The exchange about John Bell comes later. I'm simply asking about this email. Why did you not say in this email, where there's no mention of John Bell, that the agreement has already moved over to Templegate? A. Well, I wouldn't necessarily have to say that. I don't know why I would necessarily say that. I'm just asking for it to be recorded in writing. That's all. That's my answer, yes.”

“You were asked for documents. Why didn't you send your file note from 18 August 2005? A. Well, I assumed the easiest thing to do was to him to confirm it with John Bell. That's the approach I took. Q. So put the job in his lap? A. Yes, just ask him to speak to John, and John would say, "Yes, the agreement is in place". Q. Okay. A. Yes. Q. And you thought that was a better solution than you providing your document of the meeting on 18 August 2005, which then James Pitt could take to John Bell and say, "John, look at this, what do you think of this?" A. Well, if he did—if he managed to speak with John, my intent here was John would be able to confirm that we had the agreement. Q. Yes, but you could have done that by just attaching your file note. Why didn't you attach your file note? A. No, at the time I thought it would be better for him to speak to John Bell. Q. Did the file note exist at this date? A. Yes. Q. So you had it? A. I had it, yes. Q. But you chose not to send it? A. Yes, I chose to ask James to speak to John Bell so he could inform him that we had an agreement.”

(6) *Email dated 20 March 2014*

149. Mr Banner also asked Mr Chambers why he did not “go legal” and take legal proceedings once Mr Pitt had refused to recognise the 6 December Fax as a legally binding agreement. Mr Chambers’ evidence was that he did not take legal proceedings because Mr Bell acknowledged the agreement. On 17 March 2014 Mr Chambers spoke by telephone to Mr Pitt and made a record of the conversation in his notebook or “daybook” (which he had transcribed before the trial). By email dated 20 March 2014 Mr Chambers wrote to Mr Pitt three days later. I set out Mr Chambers’ note (as he transcribed it) and the relevant part of the email immediately below:

“NJC position is acknowledged by the JV/Templegate – JP has flagged up my involvement & “piece of paper” so they are well aware of it. Has discussed paper with John Bell – he had hazy recollection but did agree to existence and my role but thought it was different than papers suggest.”

“Good to speak with you earlier this week. I have noted that the current directors of Templegate Developments Ltd are now fully aware of our 1996 agreement as it has been raised at board meetings.”

150. Mr Banner cross-examined Mr Chambers about the difference between the two documents and put it to Mr Chambers that Mr Pitt had not told him that Mr Bell had acknowledged the existence of a binding agreement. Mr Chambers defended his interpretation by speculating about what Mr Bell had in mind. However, he had to accept that there was no reference to the issue being raised at any board meetings:

“Q. So the first part of this: "NJC position is acknowledged by the

JV/Templegate..." That means that Templegate acknowledges your position. It's not the same as accepting your position, is it? It acknowledges you have a claim. A. Potentially, you could read it that way, yes. Q. And "piece of paper" is in inverted commas, so that's a direct quote, is it, from James Pitt? A. Yes, that's the phrase he used. Q. And "piece of paper" sounds as if it's a somewhat pejorative description. It's not —he doesn't refer to it as an "agreement", does he? He refers to it as a "piece of paper"? A. He doesn't dispute it's an agreement. He just refers to it as "a piece of paper", which it is. Q. Well, he doesn't accept it's an agreement either, though, does he? A. He records afterwards that John Bell acknowledges it, is aware of it. He agreed to its existence. Q. Yes. John Bell agrees a piece of paper exists. That's as far as that goes, isn't it? I think we can all agree a piece of paper exists, but John Bell thought your role was different than the paper suggests. So all that's being said here is that John Bell agrees that the fax exists and that the JV/Templegate acknowledges that you have a position in relation to it. There's no greater concession than that, is there? A. He agrees to its existence, and he agrees to my role. So my reading of that is that he recognises that there is an agreement. Q. Sorry, how do you get to he recognises that there is an agreement, a legally binding agreement? A. Well, he recalls the agreement. He recalls its existence. Q. He recalls the existence of a — A. And he recalls my role in the project. Q. He recalls the existence of a piece of paper. That's all this note says. This is your note. A. Yes. Q. You didn't write that he recalls the existence of "an agreement", did you? A. But he doesn't suggest it's not an agreement. Q. He doesn't admit that it is one either, does he? All he is saying is: I acknowledge there is a fax. That's as much as he says. A. Yes, I think it's more than that. He's probably choosing his words carefully on that point. Q. I think we can see that you think it's more than that. If we go to bundle 1, and your witness statement, at paragraph 85, you say: "I spoke with James on 17 March 2014 and he confirmed to me that he had finally managed to speak with John. James told me during our telephone conversation that he had discussed the Agreement with John ..." That's the "piece of paper", isn't it, rather than the agreement? A. Yes, the agreement on the piece of paper, yes. Q. " ... and that John did acknowledge the existence of the Agreement [the piece of paper] but only had a 'hazy' recollection about it." A. Yes. Q. I suggest to you that your note doesn't support the conclusion that John Bell was conceding the existence of an agreement, a legally binding agreement between two parties. John Bell is simply saying: yes, there was a piece of paper. A. Yes, I think John may have realised then that there was an agreement based on that piece of paper. Q. Why on earth do you say that? A. That was my understanding from the conversation with James. Q. So your — A. My reading of his conversation with me. Q. So you are suggesting what John Bell must have meant, based on your conversation with James Pitt; that's your evidence? A. Yes, I understood it to be the position, that John had said, "Yes, I recall the agreement," because that's what's on the piece of paper, the agreement. Q. So that would explain, would it, why you decided —why you didn't decide to go legal at that stage, because you thought: oh, well, Templegate has acknowledged the existence of my agreement? A. Yes. Q. I see. Let's go to 1379. MR JUSTICE LEECH: Where do I get the directors of TDL are

now fully aware of our 1996 agreement, as it has been raised at board meetings from? Or rather, where did you get that from, in your email dated 20 March 2014? A. I think it's on the —the transcription, the daybook record. MR JUSTICE LEECH: —(overspeaking) —note 8 on 1377, is it? A. "NJC position is acknowledged by the JV/Templegate." MR JUSTICE LEECH: I see. It doesn't say it's been raised at board meetings though, does it? A. No. MR JUSTICE LEECH: I see, thank you."

(7) *Email dated 11 February 2016*

151. By email dated 21 January 2016 Mr Chambers wrote to Mr Pitt asking him to arrange a meeting with the Templegate board of directors and noted that he would discuss matters with Mr Bell. By email dated 10 February 2016 he chased for an answer. By email also dated 10 February 2016 Mr Pitt replied stating that he had been unable to speak to Mr Bell:

"Unfortunately John wasn't at the last two exec meetings so I couldn't bring it up with him in person. Nevertheless, you will recall that when I looked in to this some time ago (and I went back through all the documents and correspondence) there was no evidence of any formal agreement with Templegate Developments Limited and neither were you able to supply such agreement. I'm not sure therefore what the AVL board or John should be considering further to when I tabled the matter with colleagues in February 2013 [sic]?"

152. By email dated 11 February 2016 Mr Chambers replied. He referred to the meeting on 18 August 2005 but he did not produce his note of the meeting (and his evidence was that he did not think to send it at the time). In the email he stated as follows:

"Whilst I note your comments with regard to the agreement between Templegate Developments Ltd and myself the current position is the result of a meeting I had with John Bell, at his request, in August 2005. John was quite clear at this meeting that the joint venture company saw no material advantage in changing existing arrangements as set out in the exchange of correspondence of 4 December 1996. He went on to give me his personal assurance that the joint venture company would look after my interests in the scheme based on those existing arrangements.

At the time, I saw no reason to question the integrity of someone of John's stature or the reputations of either Evans or Yorkshire Water; both honourable and trustworthy companies. I have not been given any reason to change that view in the intervening years.

My purpose in seeking to meet with the current joint venture board is to make them personally aware of my role in the Skelton scheme and to clarify my position looking forward. After personally instigating the

Skelton opportunity, introducing the joint venture company to the proposal with a solus negotiating position with British Coal and over 20 years of personal commitment I am sure that you will agree that this request is reasonable given that the current directors had no direct role, or limited involvement, with the scheme in the important early days. To this end I look forward to hearing from you.”

(8) *Letters dated 22 March 2016 and 8 April 2016*

153. By letter dated 22 March 2016 Mr Pitt wrote back to Mr Chambers stating that he could find no evidence of a contractual relationship and inviting him to produce “evidence of a contractual obligation upon TDL which would of course be honoured.” By letter dated 8 April 2016 Mr Christopher Hill, the company secretary, also wrote to Mr Chambers in similar terms:

“The Board of directors has asked me to write to you on its behalf following its last meeting on 30 March, when it was made aware of the role you claim to have performed in the Skelton scheme and the obligation you believe you are owed. It was also shown James Pitt's letter of 22 March 2016 sent to you on behalf of one of the Company's shareholder members. Following that letter, the Templegate Board has not yet been presented with any documentation to substantiate your position. However, it would be happy to consider your written evidence of a contractual arrangement should you wish to disclose this to us, as it pre-dates any current board member involvement or knowledge. Until such documentation is produced, the Board cannot progress this matter.”

154. Mr Banner asked Mr Chambers why he did not produce the note of his meeting on 18 August 2005 in response to either Mr Pitt’s letter dated 22 March 2016 or Mr Hill’s letter dated 8 April 2016. His answer was as follows:

“Q. 1394. James Pitt writes to you on 22 March: "I refer to your recent communications ... "I have revisited our files and correspondence ... As a result of this exercise I can find no evidence of a contractual relationship or obligation of the kind you are referring to. "As you will appreciate, directors have responsibilities to their shareholders and the company and in the absence of any contractual evidence to the contrary must act accordingly. I would encourage you again to produce evidence of a contractual obligation upon TDL which would of course be honoured." Your reply —sorry, that is followed up by the company secretary's letter on 8 April 2016, which essentially says the same thing. So at that point, why didn't you send the August 2005 document? A. Again, I didn't think to send that. It was a last request to ask the board if they would honour the agreement. Q. Was it just not in your mind, or did you make a positive decision not to send it? A. It wasn't in my mind to send it.”

(9) *2005 to 2009: Mr Chambers' Services*

(i) Mr Chambers

155. Mr Chambers accepted that after meeting on 18 August 2005 no further drafts of the consultancy agreement were exchanged, that the last invoices which he had submitted were for 1994 to 1996 and that he submitted no further invoices. However, he gave evidence that the work which he carried out was of fundamental importance to the future of the Skelton Site. I set out the evidence which he gave in his witness statement in full:

“36. Following Geoff’s departure from TDL in May 2005, I worked closely with his successor, Iain Robertson (“Iain”). As a result of my accumulated and detailed knowledge of the Skelton Project, I took on increased responsibility for the Skelton Project and Iain relied on my input more heavily than Geoff.

37. Iain and I managed the progress of the project via a series of what I would call, progress meetings (the “Progress Meetings”). I have enclosed at p1506 a detailed list of the dates and the locations for each of the Progress Meetings which I attended over the period from 8 June 2005 to 25 May 2006.

38. I prepared an agenda of topics to be covered in each Progress Meeting. During each meeting Iain and I would discuss the progress of each topic and explore and agree what actions needed to be taken, which I would then go away and carry out. My understanding was that each meeting formed the basis of my instructions from TDL to undertake further work to advance the Skelton Project. By way of an example, I have enclosed at p1225-1227 a copy of the meeting agenda which I prepared for the Progress Meeting held on 25 May 2006, together with my own handwritten notes taken during the course of that meeting.

39. During the period of Iain’s overall stewardship of the Skelton Project I undertook a wide and diverse range of workstreams. This involved me in arranging and attending a number of meetings with outside parties and the consultancy team. At all times, Iain was fully aware of my actions and, either verbally or in writing, I would be instructed by him to act on behalf of TDL. I have enclosed at p1508-1510 a list with dates of the meetings held between 16 May 2005 and 23 June 2006 which I attended on behalf of TDL, setting out the date, time and location of each; together with the topic area discussed and the attendees who were present.

40. One of the key roles which I performed whilst Iain was controlling the Skelton Project on behalf of TDL was to promote it as a potential location for a regional casino. I was instructed by Iain to take a leading role in making representations to the Casino Advisory Panel, the RSS and discussions with Leeds City Council. By way of example, I have enclosed at p1206-1209 an email trail ending on 22 March 2006 which demonstrates the format of how the work was undertaken in pursuit of a regional casino

and how Iain instructed and monitored my input in respect of this. The highlighted section identifies a specific written instruction given by Iain to me to liaise with a member of the consultancy team to collate information for onward transmission to Leeds City Council.

41. I was also instructed by Iain to resolve complex rights of way issues across the Skelton Project and the transfer of Skelton Lake under a historic Section 52 Agreement. Between February and May 2006 I also assisted Iain to conclude an agreement relating to the East Leeds Link Road. We also worked together to finalise and agree with Leeds City Council a number of planning conditions on the business park planning application which was finally approved in April 2006.

42. The tasks outlined above were of fundamental importance to the future of the Skelton Project and helped to secure formal approvals for a Section 106 Agreement, a funding contribution arrangement towards the East Leeds Link Road and a completed Decision Notice for the business park scheme. In addition, substantive progress was made towards the resolution of the legal and technical development constraints affecting the Skelton Project.

43. Another key task which I performed from June 2005 onwards, under instruction from Iain, related to the wider regeneration of the Aire Valley, where the Skelton Project is located. To this end, I was asked by Iain to represent TDL at an investor forum set up by Leeds City Council (Aire Valley Regeneration Initiative) whose aim was to promote and attract investment into the area. The early workshop sessions of the forum looked at potential options to develop housing; all of which did not propose consideration of the Skelton Project.

44. During this investor forum process, and at my own instigation, I recommended to Iain that TDL make representations to the forum, in particular a “Housing Market Assessment” report which they had commissioned, that the Skelton Project be considered for major housing development. Thereafter, I drafted the representation on Iain’s behalf. I recall this was the first time that housing use had been formally promoted for the Skelton Project by anyone, either from TDL, or the consultancy team. I have enclosed at p1109 email correspondence between Iain and myself dated 27 June 2005. The highlighted section of the email exchange (which I highlighted) shows direct instructions from Iain requesting that I draft a letter, on behalf of TDL, to set out why the Skelton Project should be actively considered for housing purposes. Following Iain’s instruction, I prepared the draft letter and sent this to him by email on 28 June 2005 to which he responded on 29 June that he would print out the letter on Skelton letterhead and forward to the Aire Valley team. Attached as p1110-1113 is a copy of the draft letter and the email exchange between Iain and myself.

45. After Iain had submitted the letter to the Aire Valley forum and with his authority, I proposed and then drafted a set of detailed proposed amendments to the Housing Market Assessment report in July 2005 in order to promote a significant housing component within the Skelton Project. Attached as p1132-1137 is a copy of my proposed amendments

to the report in red, together with my accompanying letter of 27 July 2005 to Iain's PA, Bev Sylvester. At this time, we were suggesting that the Skelton Project could accommodate around 800 new homes as part of a mixed-use scheme.

46. Towards the latter end of Iain's stewardship of the Skelton Project, Leeds City Council began a review of the adopted UDP and its eventual replacement with the Leeds Local Development Framework Plan (the "LDF"). This included the Aire Valley Action Area Plan (the "AVAAP"), commencing with an Options & Consultation draft in April 2006. At this time, I was instrumental, alongside Iain and the consultancy team, in formulating and submitting the representation into the first stage of the AVAAP. This was principally to promote a significant housing component as part of a wider mixed-use scheme. This followed on from the foundations which Iain and I had laid earlier with the Aire Valley forum and our representations to its Housing Market Assessment report.

47. During my last Progress Meeting with Iain on 25 May 2006 he informed me that his colleague, David Helliwell ("David"), would start to take over responsibility in respect of the Skelton Project, although Iain would deal with any aspects which were particularly well advanced or nearing completion. From that point onwards, I mainly dealt with David and took instruction from him.

48. Initially, David and I conducted similar meetings as to the Progress Meetings I used to have with Iain. I have enclosed at p1507 a breakdown of the dates, times and locations for all the Progress Meetings which were attended by David and myself from 12 July 2006 until 8 March 2007.

49. I was instructed on a number of occasions by David to provide him with detailed, technical information about aspects of the Skelton Project. By way of example, I have enclosed at p1294 an email trail dated 6 December 2006 relating to the transfer of Skelton Lake and CPO land effecting the Skelton Project, together with an accompanying detailed briefing note, prepared jointly by myself and Walker Morris LLP ("Walker Morris") (TDL's solicitors at the time) outlining the current situation on both matters. The highlighted section of the email from David to me sets out a clear instruction for me to produce the joint briefing note with regard to both matters.

50. In addition to the above, I continued to play an active role, reporting to David, in our attempts to resolve a number of other technical Skelton Project constraints, including a series of complex public rights of way. By way of illustration, I have enclosed at p1284 a letter from David, addressed to me, which contains clear and specific instructions for me to obtain the agreement of the Coal Authority to instruct TDL's solicitors to protect their interests with regard to these public rights of way.

51. During David's stewardship of the Skelton Project, a significant number of outside meetings were arranged, either by David/his PA, or me, in order that the interests of TDL could be advanced. To this end, I have enclosed at p1511-1512 a list of the meetings, held between 23 June 2006 and 16 October 2007, which I attended on behalf of TDL, setting out the

date, time and location of each; together with the topic area discussed and the attendees who were present.”

“54. With the full approval and under direct instruction of David, I was asked to represent the interests of TDL at a number of seminars and workshops. Between July and September 2006, I attended a number of events set up by METRO, the transport body for West Yorkshire, regarding potential future improvements to public transport connectivity in the Aire Valley. Similarly, I formally represented TDL at events held by the Aire Valley Investors Forum, the body which replaced the earlier Aire Valley Regeneration Initiative.

55. At the end of 2007, responsibility for the Skelton Project was handed to Ian Gray (“Ian”). I briefed Ian on a number of occasions on progress of the Skelton Project and the planning processes in particular. To this end, work was undertaken with our planning consultants, Barton Wilmore to promote further housing uses on the pulverised fuel ash lagoons, in accordance with the Farrells Masterplan Vision, including a written representation into the RSS Update (attached as p1331-1333). In February 2009 the Farrells Masterplan Vision was formally presented to representatives of Leeds City Council, Yorkshire Forward and the Homes & Community Agency. I have attached as Exhibit NC01 p45-46 plan extracts from this Masterplan Vision which shows the proposed full extent of the Skelton Project.”

156. Mr Chambers also stated that following the meeting on 18 August 2005 he was asked to take on a more extensive role on Mr Bell’s instructions and that he accepted Mr Bell’s instructions. He also stated that he played a major role in progressing the project:

“80. On the instructions of John Bell, I was asked to take on a more extensive role in the Skelton Project from the summer of 2005 onwards, under the overall stewardship of Iain Robertson, then David Helliwell and finally Ian Gray. I accepted John’s instruction and thereafter it is my belief that I continued to fulfill the obligations of our Agreement. At all times I liaised closely with Iain, David and Ian and took direct instructions from them to undertake my tasks.

81. In this approximately three and a half year period, I played a major role in progressing the Skelton Project. Firstly, I continued to spearhead and promote the regional casino scheme with TDL, Kerzner International and the project team. Secondly, I attended meetings of the Aire Valley Forum and provided Iain Robertson with draft representations and proposed amendments to its Housing Market Assessment report to promote significant housing uses within the Skelton Project. Thirdly, I became heavily involved in the Leeds LDF process to promote further housing uses at Skelton. Fourthly, I was instructed by TDL to resolve a number of technical constraints affecting the scheme, including, for example, boundary resolutions, public rights of way and the transfer of Skelton Lake. Finally, I became involved in the Farrells master plan process and RSS to promote further housing land by attempting to remove from the

Green Belt and secure a housing allocation on the pulverised fuel ash lagoons in the southern sector of the Skelton Project.”

157. In cross-examination Mr Chambers accepted that after 2009 he was given no further tasks by Templegate. His evidence was that he made multiple offers of assistance to Mr Pitt and he carried out one task in 2012 (although not for Evans or SBPL):

“Q. But you weren't given tasks by SBPL after that date, were you? A. I was given one task in 2012. Q. One, right. But otherwise you remained interested in the site, but you weren't working for SBPL in the same way you had been working for White Rose? A. Yes, I —on —I think I had, regarding James Pitt, something like 69 contacts with him, be it telephone, email, over that period from 2009 to 2015. That's about 10 per annum. Q. Okay. A. I spent 108 hours doing work. I made several requests or offers of help and assistance to James to get involved in the project, but he didn't take that up. I don't think that is that unusual. What I've tended to find in my experience, once a scheme gains traction, there's seen to be a scheme evolving, then the directors tend to take more control of the project, and the longer it goes on, the less involvement you have. MR JUSTICE LEECH: Can you just summarise for me the single task you say you had after 2012. A. Yes. MR JUSTICE LEECH: Maybe it's dealt with in your witness statement. A. Yes. I was specifically asked by Charles Clement, the finance director of Yorkshire Water, to supply any information that I had on invoices in the sort of 1994–1996 period. I think this was part of the claim, the Lands Tribunal claim that the defendant had with the Coal Authority on the buy–out overage in 2011. So they were quite keen to get my input into that. MR BANNER: Is this the email exchange that's at 1339 in bundle 3? A. Yes. Yes. Q. Mr Clement asks you for details of the services you'd supplied throughout this property consultancy and what you'd supplied in your own name, 1994–1996, and you reply at the top of 1339 saying: "I [forwarded] some information details by post last week ..." And we see that —I'm not sure whether those are the same details or what Mr Clement has drawn up off the back of that —is at 1338. A. Yes.”

158. Mr Banner also challenged Mr Chambers evidence in his witness statement about the significance of his involvement in the promotion of housing development at the Skelton Site. In particular, he challenged Mr Chambers' reliance upon his contribution to the Council's "Housing Market Assessment":

“MR JUSTICE LEECH: This time, there's an outline planning permission for a business park on the same site. So how are they putting forward a plan when the owners at least are proposing to build a business park on there? A. Yes, well, I think this is the point at which the scheme at Skelton starts to change from business park to housing–based; mixed use development starts to come into the development. For example, the reserve land could accommodate housing or the business park could change. MR

BANNER: This — A. It could become smaller. Q. This is a proposal. This isn't an allocation? A. No. Q. As you said earlier, this is part of the process of the allocation? A. Yes. Q. The allocation process takes years and years? A. Yes. Q. So this is —well, what? It's just — A. This is the important initial stages. Q. Well, important in retrospect. But this is —at this time, when there was planning permission for a business park that the landowner was proposing to build, this is nothing. A. Yes. Well, I think by 2007, we realised that the business park wouldn't progress, and this is why we were looking at alternative uses to business park, particularly housing. I mean, this came two years after Iain and I approached Aire Valley Leeds, to consider the site for housing. Q. So this is an idea? A. Well, I think it's more —it's part of a planning process that Leeds City Council undertook. Q. How do you —where do you get the date of 2007 for this? A. From the hard copy document. Q. Yes, where is that? A. Well, I have —it is a publicly available document. Q. Okay. If we go to 1400, page 1400 — MR JUSTICE LEECH: I can understand, Mr Chambers, why you would want to push the idea of converting —moving from a business park to housing as far back as possible. I can understand why that supports your case. But you are not suggesting that you were actually working on this in 2007, were you? A. Well, I was working on bringing housing uses forward from 2005 onwards. MR JUSTICE LEECH: I see.”

159. Mr Chambers also refused to accept that his services did not extend beyond the business park (which would have occupied a substantial area of Phase 2 of the housing development) and insisted that he was involved in plans to develop the reserve land (which falls within Phase 1) and the Green Belt land (which falls within Phase 3):

“Q. And if we go back to 1403, we see map 12 —sorry, 1400 is map 12, which is referred to in the report. A. The plan, yes. Q. And the sort of slightly dusty pink area is the land that, as of November 2017, is now allocated to residential housing? A. Yes. Q. So to the extent that pink area on 1400 includes the reserved land, that's the land on the right-hand side the top of the mushroom, and includes the stalk which was the Green Belt land, those are areas of land that you didn't work on at all when you were working on the business plan, are they? A. Well — Q. The business park, sorry. A. I worked on more than the business park plan. I worked on the scheme from Autex, which was to occupy the reserved land; the car showroom complex; Leeds United wanted the bulk of the site; Kerzner International, who originally looked at the reserved land but incorporated more land; and the housing land. Q. None of those three commercial enterprises you mentioned were looking to put houses on this land, were they? A. The latter one was. Q. Kerzner, the casino outfit? A. No, the housing proposal — Q. No, the first three —(overspeaking) — A. —from 2005 onwards. Q. The first three of the commercial ones. A. The commercial ones aren't housing. Q. Are not housing. A. They're not housing. Q. And Kerzner, you had a commission arrangement with Kerzner, did you? A. No, I was acting for your client, the defendant. Q. So when there are references in the documents to you having a conflict

over Kerzner, what was that about? A. I was never aware of any conflict. That wasn't communicated to me, as I understand it.”

(ii) Mr Bell

160. Mr Blaker showed Mr Bell an agenda or list of issues prepared by Mr Chambers which included a bullet point: “Residential – Aire Valley Housing Market Assessment”. He also showed Mr Bell an email dated 27 June 2005 in which Mr Robertson had authorised Mr Chambers to write a letter to Ms Marie Lynch, the Executive Manager of the Aire Valley, objecting that Skelton Site was not included in the Housing Market Assessment. Mr Bell’s response was as follows:

“I want to ask you, were you personally aware that, as far back as 2005, Mr Robertson was working on trying to unlock the potential of residential use for this land? MR JUSTICE LEECH: Mr Chambers. MR BLAKER: No, Mr Robertson actually. MR BLAKER: Sorry, because I'm going to come to — Mr Robertson. MR JUSTICE LEECH: I beg your pardon. MR BLAKER: —was working on that. A. Yes. Q. You were? A. I wasn't aware of it, but it makes sense. Q. Right. And that carried on throughout Mr Robertson's time working on the project when he was working for Evans and then his role is taken over by Mr Gray; is that correct? A. What happens in these situations, my Lord, is that you put together a team. The team will have environmentalists. They will have traffic engineers. They will have surveyors. They will have a whole host of different planning consultants and so on, and at any given time there might be 20 people in a room, all working towards a common objective, which is to get planning consent for housing. Reports will be produced this thick, and it will cost millions. So the notion that because somebody writes a wee letter, that they are actually taking the prominent role, I think, is misplaced. This is a massive team effort, at the end of which there is a huge amount of documentation and a lot of money has been spent. Now, I don't know whether Nigel was involved in that team effort. I don't believe he was. I don't know if he was or not. If he was, then he should be remunerated for it. But he certainly couldn't lead it, and to my recollection, which is faint, I don't think he was involved in it. So writing that letter and suggesting that he somehow managed to get a change in use towards housing is misleading. It's a huge effort.”

161. Mr Blaker then took Mr Bell to an email dated 24 April 2006 which Mr Chambers sent to Mr Peter Frampton, a planning consultant, enclosing his comments on submissions to be made for the purposes of the Housing Market Assessment. He also took Mr Bell to an email dated 6 December 2006 which Mr Chambers sent to Mr Helliwell enclosing a note on issues relating to Skelton Lake and land acquired by British Coal through compulsory purchase and finally to schedules of project meetings which Mr Chambers had attended

between 16 May 2005 and 16 October 2007 dealing with highways and housing issues. Mr Bell was unaware of these documents.

(10) *Assignment of the Claim*

162. On 8 June 2022 Mr Chambers assigned the benefit of his claim in these proceedings to Tangent. I was not taken to the assignment itself or any notice of assignment which may have been given to the Defendant. Mr Banner and Ms Gailey did not challenge its validity before me at this trial and I was not asked to make any findings as to its effect. In a letter dated 15 May 2024 Freeths denied that the purpose of the assignment was to enable Mr Chambers to avoid meeting an order for costs and in cross-examination he stated that the purpose was to recover VAT. However, he accepted that Tangent's assets, which consisted of £157,000 in cash was offset by loans owed by the company to Mr Chambers and his wife.

IV. The Law

I. Contract

(1) *Formation*

163. It was common ground that in deciding issues of contractual intention the Court should apply an objective test: see Chitty on Contracts 35th ed (2023) Vol 1 at 4—211. In *Pagnan SpA v Feed Products Ltd* [1987] 2 Lloyd's Rep 601 Bingham J (whose decision was upheld by the Court of Appeal) famously stated that the parties are to be regarded as masters of their contractual fate and it is their intentions which matter and to which the Court must strive to give effect. However, the entire passage in which that dictum appears is of particular relevance in the present case. Bingham J set out the law at 610 col 2 to 611 col 2:

“The general principles to be applied in deciding the issue in this case are not, I think, open to much doubt. The Court's task is to review what the parties said and did and from that material to infer whether the parties' objective intentions as expressed to each other were to enter into a mutually binding contract. The Court is not of course concerned with what the parties may have subjectively intended.”

“It is furthermore clear that where exchanges between parties have continued over a period the Court must consider all of these exchanges in context and not seize upon one episode in isolation in order to conclude

that a contract has been made. There will be some cases where continued negotiations after a contract has allegedly been made will lead to the inference that the parties never in truth intended to bind themselves, as in *Hussey v Horne-Payne* (1879) LR 4 App Cas 311. This will be the more obviously so where a term raised by one or other party early in the negotiations had not been the subject of agreement at the time of the alleged contract.”

“Where the parties have not reached agreement on terms which they regard as essential to a binding agreement, it naturally follows that there can be no binding agreement until they do agree on those terms: see *Rossiter v Miller* (1878) 3 App Cas 1124 at p.1151 per Lord Blackburn. But just as it is open to parties by their words and conduct to make clear that they do not intend to be bound until certain terms are agreed even if those terms (objectively viewed) are of relatively minor significance, the converse is also true. The parties may by their words and conduct make it clear that they do intend to be bound, even though there are other terms yet to be agreed, even terms which may often or usually be agreed before a binding contract is made.”

“The parties are to be regarded as masters of their contractual fate. It is their intentions which matter and to which the Court must strive to give effect...I think, furthermore, that the Court must bear constantly in mind the subject matter with which it is dealing. The relevant principles of the law of contract are, no doubt, of universal application but the proper inference to draw may differ widely according to the facts of the particular case. One case may concern a protracted negotiation, perhaps conducted in writing through lawyers between parties who have no dealings of any kind before. Another may concern a series of quick-fire exchanges between professionals, both of them practitioners of the same trade, both having had many previous dealings, and with a wide measure of common experience, knowledge, language and understanding between them. One could not sensibly approach these cases in the same way. Inferences which it would be appropriate to draw in one case might be quite inappropriate in the other. But the Court’s task remains essentially the same: to discern and give effect to the objective intentions of the parties.”

164. In *DAZN Ltd v Coupang Ltd* [2025] EWCA Civ 1083 the Court of Appeal recently confirmed that it is necessary to consider the parties’ whole course of conduct in deciding whether they have entered into a legally binding contract. Popplewell LJ followed *Pagnan* (above) and the principles articulated by Males LJ in *The Ever Given* [2024] EWCA Civ 260, [2024] 2 Lloyd’s Rep 86 before identifying four aspects of those principles which merited further observation at [5] to [11]:

“5. The legal principles applicable were not substantially in dispute. In *Smit Salvage BV v Luster Maritime SA (The Ever Given)* [2024] EWCA Civ 260 [2024] 2 All E.R. (Comm) 504 [2024] 2 Lloyd’s Rep. 86, Males LJ said:

“18. The principles to be applied in deciding whether parties have concluded a legally binding contract even though they recognise that some matters are still to be agreed are well established and were not disputed. The leading cases are *RTS Flexible Systems Ltd v Molkerei Alois Mueller GmbH & Co KG* [2010] UKSC 14, [2010] 1 WLR 753, *Pagnan SpA v Feed Products Ltd* [1987] 2 Lloyd’s Rep 601, and *Global Asset Capital Inc v Aabar Block Sarl* [2017] EWCA Civ 37, [2017] 4 WLR 163.

19. In summary, it is well established that the whole course of the parties’ negotiations must be considered; that it is possible for parties to conclude a binding contract even though it is understood or agreed that a formal document will follow which may include terms which have not yet been agreed; that whether this is what the parties intend to do must be determined by an objective appraisal of their words and conduct; and that the burden lies on the party asserting that such a contract has been concluded to establish that it has.

20. There are well-known formulae which can be used to make clear that parties have not yet reached the stage of a binding contract, such as ‘subject to contract’ or, in a maritime context, ‘subject details’ or ‘fixed on subjects’, but the absence of such terms (which were not used in the present case) is not decisive. All depends on the parties’ words and conduct towards each other, considered in their context.”

6. Four aspects of these principles merit further observation. The first is the particular importance of the requirement that the Court should look at the whole of the negotiations between the parties, both before and after those which are said to constitute the making of a binding contract. In *Global Asset v Aabar*, Hamblen LJ said:

“28. It is well established that when deciding whether a contract has been made during the course of negotiations the court will look at the whole course of those negotiations –see *Hussey v Horne-Payne* (1878) 4 App Cas 311.

29. As Lord Cairns observed in that case at 316: “...You must not at one particular time draw a line and say “We will look at the letters up to this point and find in them a contract or not, but we will look at nothing beyond”. In order fairly to estimate what was arranged and agreed, if anything was agreed between the parties, you must look at the whole of that which took place and passed between them”.

30. The rationale of this approach is that focusing on one part of the parties’ communications in isolation, without regard to the whole course of dealing, can give a misleading impression that the parties had reached agreement when in fact they had not - see Lord Selborne in *Hussey* at 323.”

7. The rationale identified in [30] applies equally to the converse. Focusing on one part of the parties’ communications in isolation, without regard to the whole course of dealing, can give a misleading impression that the parties had not reached agreement when in fact they had.

8. As Longmore LJ observed in *GNER v Avon Insurance* [2001] 2 Lloyd’s

Rep 649 at [29], a focus on what the parties have said after the moment at which it is contended that a contract was concluded may be very relevant to whether a term has been agreed. It may equally be very relevant to whether a concluded contract has been made. This is because, in the memorable phrase of Bingham J in *Pagnan*, the parties are the masters of their contractual fate in deciding what terms they regarded it as essential should be agreed in order for a binding agreement to come into effect (see Lloyd LJ in *Pagnan* at p. 619 RHC at (6)). If subsequent communications show that the parties considered themselves to have made a binding agreement notwithstanding that further terms remained to be agreed or a further document executed, that is powerful evidence that such a binding agreement was made.

9. Secondly, where the parties have agreed that there will be a subsequent formal written contract, the question of whether their agreement is subject to contract, in the sense that they do not intend it to have legal effect unless and until such a formal contract is signed, will be heavily dependent on whether they have agreed all the terms which they regard as essential, or whether there is to be left to the subsequent contract agreement of terms which the parties regard as significant to their rights and liabilities. This too is an aspect of the principle that the parties are the masters of their contractual fate. Two cases illustrate this approach. In *British Steel Corporation v Cleveland Bridge and Engineering Co Ltd* [1984] 1 All ER 504, Robert Goff J held that no contract had been concluded when it was contemplated that it would be subject to standard terms but without agreement on whose terms, and the standard terms of the parties contained very different liabilities for defective goods and delay. By contrast in *Immingham Storage Company v Clear Plc* [2011] EWCA Civ 89, 135 Con LR 224, this court upheld an agreement in which there was to be a subsequent formal contract but the parties had agreed “all the terms of any significance to a contract of the type under consideration.” David Richards J, giving the judgment of this court, said at [26]:

“[26] These factors point, overwhelmingly in our judgment, to an intention to create a contract if the claimant accepted the defendant’s offer. Set against those factors, the provision that a ‘formal contract will then follow in due course’ does not indicate that the claimant’s acceptance of the signed quotation will be no more than an agreement subject to contract. It is, as stated by Parker J in *Von Hatzfeldt-Wildenburg v Alexander* [1912] 1 Ch 284 at 289, [1911–13] All ER Rep 148 at 151, ‘a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through’”.

10. Thirdly, in construing written communications between the parties, it is important to recognise that business people conducting commercial negotiations will often not use the precision of language which lawyers aspire to in contract drafting. Their language may be imprecise, ungrammatical and impressionistic. Their communications must be interpreted by reference to the substance and sense of what is said, not by the kind of intense examination of the words, syntax and grammar to which a contract carefully drafted by lawyers may be subjected.

11. Fourthly, it will be relevant if the parties' negotiations take place in a context where performance of any agreement reached is urgent. If so, that makes it more likely that the parties would wish to be bound notwithstanding that further details may remain to be agreed or a formal contract drawn up."

165. The Court may also take into account the parties' wider conduct in deciding whether a contract was made. In particular, where one party has carried out work or performed obligations which are the subject matter of the contract, this may be a strong indication that there is a binding contract. In *TTMI Sarl v Statoil ASA* [2011] EWHC 1150 (Comm), [2011] 2 All ER (Comm) 647 Beatson J (as he then was) stated as follows at [43] and [45]:

"43. It is common ground between the parties that courts have regarded the fact that services are rendered, work undertaken, or payment is made as "a very relevant factor" in deciding whether a binding contract is made. Most of the cases concern conduct by one or both parties after incomplete negotiations or in situations in which the terms that have been negotiated are uncertain, or where an agreement has been made "subject to contract" but no formal contract has been drawn up before the services are rendered, the work is undertaken, or the payment is made: see *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co. KG (UK Production)* [2010] UKSC 14, 1 WLR 753 at [45] – [55] in which Lord Clarke of Stone-cum-Ebony, who gave the judgment of the Supreme Court, analysed the authorities including the important judgments of Robert Goff J in *British Steel Corp. v Cleveland Bridge and Engineering Co. Ltd.* [1984] 1 All ER 504 and Steyn LJ in *Trentham (G Percy) v Archital Luxfer Ltd* [1993] 1 Lloyd's Rep. 25. In the latter case the third of the four matters Steyn LJ at 27 identified as of importance was the fact that a transaction is executed rather than executory which he stated can be "very relevant". The fact the transaction is performed on both sides will, he stated, make it difficult to submit that the contract is void for vagueness or uncertainty, makes it easier to imply a term resolving any uncertainty, or alternatively may make it possible to treat a matter not finalised in negotiations as inessential."

"45. *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co. KG (UK Production)* concerned the installation of two production lines at one of the defendant's factories. It was stated at [54] that "whether the court will hold that a binding contract was made depends upon all the circumstances of the case" of which performance of the work is but one. In that case the price was agreed and included in a letter of intent, one party invoiced the other for percentages of the price and sums were paid by the other party, and there was an agreed variation to the order in which the production lines were to be installed. It was also stated (see [58]) that in such circumstances "the no contract solution is unconvincing".

166. Mr Blaker and Mr Kelly relied on *New Media Holding Co LLC v Kuznetsov* [2016]

EWHC 360 (QB) as an example of a case in which the Court held there to be a binding contract based on a term sheet, which is a familiar document in the finance world. In that case, the parties signed a term sheet for an investment under which contained the following right to require a holding company to redeem its shares:

“The Company share redemption

At any time following the date of this term sheet Mr. Gusinski has the right, upon his own discretion, to require the Company share redemption for the price of 333 333 (Three hundred thirty three thousand three hundred thirty three) US dollars with the interest of the rate of 9% per annum payable from November 27, 2007 until the date of transfer in accordance with this term sheet.”

167. Simler J (as she then was) held that the term sheet gave rise to a binding contract. She directed herself that whether there is a binding contract and if so, on what terms, depends on what is said or done by the parties and whether that leads objectively to a conclusion that they intend to create legal relations and have agreed on all terms which they consider or the law requires as essential to create a binding contract. It does not depend on their subjective intentions. She also stated that: “The governing criterion is the reasonable expectations of honest sensible businessmen”: see [99]. She accepted that there were some factors which pointed against an intention to create legal relations including the fact that a term sheet “is often used in a commercial context to describe a framework agreement or template to be used to develop a more detailed legal document”: [103] and [104]. But in deciding that there was a binding agreement she placed strong reliance on the language and terms of the document itself at [105]:

“The language used in the Term Sheet is consistent with a legally binding agreement and not merely a document that was aspirational. The rights and obligations set out are expressed in unqualified terms. For example the “right... to require” company share redemption; the word “shall” is used in clause 4, 5, 6 and 7. In context, the fact that the preamble refers to the Term Sheet as “describing principal terms and conditions” suggesting that further agreement on other matters might be required, does not mean that the Term Sheet itself was not contractual. An objective appraisal of the words and conduct of these two experienced businessmen leads to the conclusion that they did not intend agreement of any additional terms to be a precondition to a legally binding agreement. To the knowledge of both Mr Gusinski and Mr Kuznetsov, as a result of the agreement reached orally, there is an express law and jurisdiction clause, expressed to apply to “this term sheet” and not merely to some of its terms, or to any future

agreement. It is difficult to see what purpose such a clause was intended to serve absent an intention to create a legally binding agreement. The Term Sheet also contains detailed provision for service of the notice of redemption, including emails and addresses, which would have served little or no practical function if the agreement was aspirational only.”

168. With the guidance from these authorities in mind, I adopt the following principles in approaching the questions whether Mr Chambers entered into a binding contract with WRDE and then a binding contract with SBPL:

- (1) Although Mr Chambers’ case is that on 29 November 1996 he entered into an oral agreement with WRDE (as evidenced by the 6 December Fax) and that on 18 August 2005 he entered into an oral agreement with SBPL, the Court’s task is to review what the parties said and did over the entire thirty year period between May 1996 and April 2016: see *DAZN v Coupang* at [8].
- (2) The test which the Court must apply is whether honest, reasonable and sensible businessmen would have understood and expected that a legally binding contract had come into existence: see *New Media Holding v Kuznetsov* at [99]. In addressing that question, the commercial background is critical and the kind of issues which the Court must consider are set out in the last paragraph from the extract in *Pagnan* (above). The question whether performance of any agreement is urgent is also of particular relevance where the parties intend to enter into a formal contract: see *DAZN v Coupang* at [11].
- (3) One critical factor which the Court must assess is whether the parties have agreed all of the terms which they regard as essential. However, the parties are masters of their own fate and it is for them to decide what terms are essential. Where the parties have reached agreement on some terms but do not intend to be bound until all of the essential terms are agreed, there is no binding contract: see *DAZN v Coupang* at [8] and [9].
- (4) Mr Chambers and Mr Bell were cross-examined in great detail about the contemporaneous documents. But their evidence is only admissible and of any weight where it is relevant to the Court’s assessment of what Mr Bell and Mr Chambers said to each other said as opposed to what they meant or intended. Mr Robertson and Mr Gray were also cross-examined about the 6 December Fax but

their evidence is of very limited weight and relevant only to the question what an honest and reasonable businessman would have understood or intended.

- (5) In particular, I remind myself that internal documents such as Mr Chambers' notes or internal emails sent or received by Mr Bell are only of any evidential weight if they are relevant to the Court's determination of what they said to each other as opposed to their understanding of the negotiations or what they subjectively intended. In *DAZN v Coupang* Popplewell LJ referred to "subsequent communications" in the last sentence of [8] and I understood him to be referring to communications between the parties themselves (rather than any other communications).
- (6) The words and expressions which Mr Chambers and Mr Bell used to communicate with each other are not to be subjected to "the kind of intense examination of the words to which a contract drafted by lawyers may be subjected". For example, both were subjected to searching cross-examination about what they meant by an "agreement" or an "arrangement" and in assessing the weight to be attached to communications of this kind, I must have in mind that business people in conducting negotiations may use language which is imprecise, ungrammatical and impressionistic: see *DAZN v Coupang* at [10].
- (7) The fact that services are rendered, work undertaken, or payment is made is "a very relevant factor" in deciding whether a binding contract is made: see *TTMI v Statoil* (above) at [43]. The Court must assess, therefore, what weight to attach to the services which Mr Chambers provided and which WRDE and later SBPL freely accepted where the Defendant denies that a contract was made. The Court must decide whether in those circumstances "the no contract solution is unconvincing": see *TTMI v Statoil* at [45].

(2) *Certainty of Terms*

169. Even if the parties intend to be bound by a contract, it may be so vague and uncertain that it cannot be enforced: see *Chitty* (above), Vol 1 at 4—188. The leading case remains *G Scammell & Nephew Ltd v Ouston* [1941] AC 251 in which the House of Lords held that an agreement to purchase goods "on hire purchase" was too uncertain to be enforced. Although there is a considerable overlap between the question whether the parties have

agreed all of the essential terms and the question whether an agreement is void for uncertainty because it is incomplete or too vague to be enforced, there is a clear distinction between them. In *Barbudev v Eurocom Cable Management Bulgaria EOOD* [2012] EWCA Civ 548, [2012] 2 All ER (Comm) 459, Aikens LJ explained the difference at [32]:

“On the question of an enforceable contract or not, it is for the parties to decide at what stage they wish to be contractually bound. To use the vivid phrase of Lord Bingham (as Bingham J) the parties are “masters of their contractual fate”. They can agree to be bound contractually, even if there are further terms to be agreed between them. The question is whether the agreement is unworkable or fails for uncertainty. However, where commercial men intend to enter into a binding commitment the courts are reluctant to conclude that such an agreement fails for uncertainty.”

(3) *Intention to Create Legal Relations*

170. In certain circumstances, the Court will not enforce an agreement which is complete and otherwise satisfies the test for a binding contract because the parties did not intend to create legal relations. In the case of commercial relationship, there is a presumption that the parties intended to create a legal relationship and the burden is on the party asserting that the contract was not binding to prove otherwise: see *Chitty* (above), Vol 1 at 4—197 at 4—198. The editors group the many cases on this topic into a number of familiar categories which include “goodwill agreements”: see, e.g., *Orion Insurance Co PLC v Sphere Drake Insurance PLC* [1992] 1 Lloyd’s Rep 239 (Hirst J). The editors also include “Vague Agreements” at 4—227 (footnotes excluded):

“Vagueness negating contractual intention

The parties may agree on terms that are sufficiently certain but also agree terms that deprive that agreement of contractual force. They may do so by express words, as in the “subject to contract” cases discussed earlier in this chapter. Alternatively, the vagueness with which the agreement is expressed may negative any contractual intention. It has been held that a husband’s promise to let his deserted wife stay in the matrimonial home had no contractual force because it was not “intended by him, or understood by her, to have any contractual basis or effect”. The promise was too vague: it did not state for how long or on what terms the wife could stay in the house. So, too, the use of deliberately vague language was held to negative contractual intention where a property developer reached an “understanding” with a firm of solicitors to employ them in connection with a proposed development, but neither side entered into a definite

commitment. Likewise, the “possibility of a seven-figure sum” share award was too uncertain and was merely an “indication of ‘jam tomorrow’” that fell short of the necessary intention to create legal relations. Again, the heads of terms of an agreement proposing that a farming business would lease some land to a plant operator was not binding because there were a number of clear indicators from the wording of the provisions that the parties had not objectively intended the document to be legally binding, except for an agreed period of exclusivity in which to conduct negotiations. For the same reason, “letters of intent” or “letters of comfort” or a Memorandum of Understanding may lack the force of legally binding contracts. The assumption in all these cases was that the parties had reached agreement, but lack of contractual intention prevented that agreement from having legal effect.”

171. Mr Banner and Ms Gailey relied on *LNT Aviation Ltd v Airbus Helicopters Ltd* [2022] EWHC 309 (Comm) in which Mr Andrew Sutcliffe QC (sitting as a High Court Judge) held that the parties did not intend to create legal relations because they had not reduced the terms of their agreement to writing. In that case, the correspondence contained a number of references to goodwill: see [134]. But the judge also held that the parties would not have intended to create legal relations orally and without the opportunity to take legal advice at [135]:

“Moreover, the fact that the arrangement between the parties was not reduced to writing indicates that they did not intend themselves to be legally bound. In my view, it is unlikely that AHUK would have intended to create legal relations where (on LNT's case) it was potentially assuming an obligation to incur a liability of some £450,000, without drawing up, possibly with the assistance of lawyers, a written agreement which stated each party's obligations in a clear and unambiguous manner.”

J. Estoppel by Representation

172. Mr Blaker and Mr Kelly relied on the doctrine of estoppel by representation and the following passage in Keane (formerly Handley) *Estoppel by Conduct and Election* 3rd ed (2023) at 1—0015:

“An estoppel by representation resolves a contradiction between an earlier statement of fact by the representor and his later statement on the same subject by treating his earlier statement as the truth. Where a representor by his words or conduct has made a representation which justified the representee in believing that a certain state of fact exists, and in that belief the representee altered his position, the representor is not permitted to affirm against the representee that a different state of fact existed at that

time if the representee would be materially prejudiced by his change of position if a departure from the representation were permitted. The representee must take the objection at the proper time, or it will be waived.”

173. They also relied on the decision of Robert Goff J in *Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank Ltd* [1984] QB 82 that a representation by one party that an otherwise invalid contract or gratuitous promise is contractually binding may give rise to an estoppel by representation. The decision was affirmed by the Court of Appeal on the alternative basis that there was an estoppel by convention. Having held first that there were numerous representations and secondly that they influenced the conduct of the opposing party Robert Goff J continued as follows at 108E-G:

“Third, I am satisfied that to hold that the plaintiffs are estopped from denying the invalidity of their guarantee is permissible, despite the general principle that neither law nor equity will enforce a purely gratuitous promise. For, by confirming the bank's erroneous belief that the guarantee was binding and effective and covered the Nassau loan, the plaintiffs contributed to the continuance of the bank's error as to the true legal effect or, rather, lack of legal effect of that document, and to the bank's failure to take the opportunity of putting matters right.

Fourth, it makes no difference, in my judgment, that the guarantee was not of itself, in law, a binding contract. I accept Mr. Morritt's analysis that in strict law it was of itself no more than a piece of paper, a standing offer which, unaccepted, had long since lapsed. But, for the reasons I have already given, I can see no reason why, in principle, a representation that such a non-contractual document has a certain contractual effect should be incapable of giving rise to an estoppel precluding the representor from thereafter going back upon that representation where, as in the present case, it would be unconscionable for him to do so.”

174. Mr Banner and Ms Gailey did not submit that this analysis was wrong or that it was implicitly overruled by the Court of Appeal. Nor did they take the point that Tangent's claim went beyond the permissible limits of the doctrine of estoppel by representation which does not permit a party to perfect a cause of action or bring proceedings based on a gratuitous promise by relying on such an estoppel. I set out Mr Chambers' pleaded case below. If it were successful on the facts, then I accept that it could give rise to a binding estoppel by representation.
175. Mr Banner and Ms Gailey did, however, rely on *Canada and Dominion Sugar Co Ltd v Canadian National (West Indies) Steamship Co Ltd* [1947] AC 46 at 56 (Lord Wright) as authority for the proposition that a representation must be “sufficiently clear and

unqualified” and *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 C.L.R. 387 at [21] for the proposition that any representation must relate to an existing fact or existing facts and not a future promise or prediction. Again, I accept that submission. It was for Tangent to demonstrate that on 18 August 2005 Mr Bell made a clear and unequivocal representation that the 6 December was binding and that in context it was objectively certain what this meant.

176. Mr Banner and Ms Gailey also placed particular reliance upon *Baird Textile Holdings Ltd v Marks & Spencer PLC* [2001] EWCA Civ 274, [2002] 1 All E.R. (Comm) 737. In that case the parties had been in a longstanding commercial relationship for 30 years and Baird had been one of M&S’s major suppliers. However, the relationship was not governed by an “umbrella” contract but by an ad hoc system of individual orders for clothes and other items. When M&S terminated the relationship with effect from the end of the current season, Baird brought proceedings asserting that there was a binding contract or, alternatively, that M&S was estopped from denying that there was such a contract. Morrison J struck out the claim and his decision was upheld by the Court of Appeal.
177. Sir Andrew Morritt V-C (with whom Judge and Mance LJ agreed) held that any contract was too uncertain to be enforced: see [30]. Having cited *Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank Ltd* (above) he also dismissed the claim based on estoppel for the following reasons:

“37. As in the case of the contractual claim, it is important to appreciate exactly what is being alleged and why. The material allegation in paragraph 15 is that M&S is estopped from denying that “the relationship with BTH could only be determined by the giving of reasonable notice”. But by itself this claim, which has undoubted echoes of *Hughes v Metropolitan Railway Co* (1877) 2 App Cas 439 and *Central London Property Trust Ltd v High Trees House Ltd* [1947] 1 KB 130, does not lead to the relief sought. For that purpose it is essential to establish an obligation by estoppel that, in the words of paragraph 12, “during the subsistence of the relationship Marks & Spencer would acquire garments from BTH in quantities and at prices which in all the circumstances were reasonable”. As counsel for Baird put it in their written argument “BTH contends that an equity generated by estoppel can be a cause of action”. They rely on a series of dicta as pointers in that direction contained in *Amalgamated Investment & Property Co. Ltd v Texas Commerce International Bank Ltd* [1982] QB 84, *Taylor's Fashions v Liverpool Trustees* [1982] QB 133, *Habib Bank v Habib Bank* [1981] 1 WLR 1265, *The Hendrik Sif*

[1982] 1 Ll. R. 456, *Holiday Inns v Broadhead* (1974) 232 EG 951, *Re Basham* [1986] 1 WLR 1498 and *Gillett v Holt* [2000] 3 WLR 815.

38. In my view English law, as presently understood, does not enable the creation or recognition by estoppel of an enforceable right of the type and in the circumstances relied on in this case. First it would be necessary for such an obligation to be sufficiently certain to enable the court to give effect to it. That such certainty is required in the field of estoppels such as is claimed in this case as well as in contract was indicated by the *House of Lords* in *Woodhouse AC Israel Cocoa Ltd v Nigeria Produce Marketing Co Ltd* [1972] AC 741 and by Ralph Gibson LJ in *Troop v Gibson* [1986] 1 EGLR 1, 6. For the reasons I have already given I do not think that the alleged obligation is sufficiently certain. Second, in my view, the decisions in the three Court of Appeal decisions on which M&S rely do establish that such an enforceable obligation cannot be established by estoppel in the circumstances relied on in this case. This conclusion does not involve the categorisation of estoppels but is a simple application of the principles established by those cases to the obligation relied on in this. I do not consider that any of the dicta in the line of cases relied on by Baird could entitle this court to decline to apply those principles.”

178. Mance LJ gave a concurring judgment in which he agreed that where the parties did not agree to any legally binding commitment, it would be wrong to grant relief based on estoppel. He also dismissed Baird’s argument that it was unnecessary for the Court to find that an unequivocal representation was made because the Court could award reliance-based compensation rather than the expectation measure of damages. He stated as follows at [94] and [96]:

“94. As I have already said, the fact that there was never any agreement to reach or even to set out the essential principles which might govern any legally binding long-term relationship indicates that neither party can here objectively be taken to have intended to make any legally binding commitment of a long-term nature, and the law should not be ready to seek to fetter business relationships with its own view of what might represent appropriate business conduct, when parties have not chosen, or have not been willing or able, to do so in any identifiable legal terms themselves. These considerations, in my judgment, also make it wrong to afford relief based on estoppel, including relief limited to reliance loss, in the present context.”

96. On this basis, he submits that there is no need for any unequivocal assurance as to, or any clear conventional definition of, the conduct to which M & S are to be bound; and that “proportionate” compensation can be awarded on a reliance basis on the broad assessment by the court of what is equitable. The principles to this effect stated in English cases such as in *Jones v Watkins*, *Gillett v Holt* and *Holiday Inns v Broadhead* were, however, stated in contexts where the parties *either* envisaged that rights already existed *or* contemplated and intended that they would be created

by a future contract. This was also the case in *Waltons Stores*, where a landowner was encouraged by a potential lessee to undertake major demolition works on his own land on the firm (though in law, under an equivalent provision to the Statute of Frauds, unenforceable) understanding that a draft lease in agreed form, requiring such demolition and construction of a new building, would actually be executed. In the present case, special and unusually close though the business relationship was, it was between parties who neither made nor, objectively, intended to make any further contracts beyond the seasonal and design contracts to which I have already referred. They must be taken to have been well-aware of the legal significance of contracting or not contracting. Mr Field accepted that the question was ultimately one of risk. In my view, these considerations indicate that the risk fell on Baird in the present situation.”

K. Unjust Enrichment

(1) *The Cause of Action*

179. In *Barton v Morris* [UKSC] 3, [2023] AC 684 Lady Rose JSC stated that when faced with a claim for unjust enrichment a Court must ask itself four questions: see [77]. She also dealt with the unjust factor “failure of basis” at [81] citing Lord Toulson’s judgment in *Barnes v Eastenders Cash & Carry PLC* [2014] UKSC 26, [2015] AC 1. I set out both passages below:

“77...When faced with a claim for unjust enrichment, a court must first ask itself four questions: (1) has the defendant been enriched? (2) was the enrichment at the claimant's expense? (3) was the enrichment unjust? (4) are there any defences available to the defendant?”

“81. Lord Toulson JSC (with whom Baroness Hale DPSC and Lord Kerr of Tonaghmore, Lord Wilson and Lord Hughes JJSC agreed) referred to the word "unjust" in the term unjust enrichment as being in some respect a term of art. He approved of the statement in *Goff & Jones on Unjust Enrichment*, 8th ed (2011), now in 10th ed (2022) at para 1-08) that unjust enrichment is not an abstract moral principle to which the courts must refer in deciding cases, but an organising concept that groups decided authorities that share a set of common features. Some of those decided authorities are cases where there has been a "failure of basis". Failure of basis does not necessarily require failure of a promised counter-performance: "it may consist of the failure of a state of affairs on which the agreement was premised": para 106.”

180. I am grateful to Mr Banner and Ms Gailey, who quite properly drew my attention to *Jones v Griffith* [2025] EWHC 797 (KB), even though it supported Mr Chambers’ claim. In that case His Honour Judge Jarman KC (sitting as a Judge of the High Court) held that

it was “manifest” that free acceptance remains a discrete way in which the principles of unjust enrichment may operate: see [23] to [25]. He explained the principle of “free acceptance” at [23]:

“Where there has been no failure of basis, mistake, duress, or undue influence that qualifies or negatives consent to the conferring of the benefit, so making restitution necessary, a claimant may invoke the principle of free acceptance as an unjust factor within the third limb of *Benedetti v Sawiris*. According to *Goff & Jones* 10th ed (2023), “The principle of free acceptance has a (unique) dual role in the law of unjust enrichment, since it provides both a test for assessing enrichment, and articulates an independent unjust factor ...The principles of free acceptance applicable to unjust enrichment and to free acceptance as an unjust factor are not necessarily interchangeable” (1-02). At 2-03, the principle of free acceptance is articulated as being that a defendant will be held to have benefited from the services rendered if he, as a reasonable man, should have known that the claimant expected to be paid for them, and yet did not take a reasonable opportunity open to him to reject the proffered services. The authors state that this means free acceptance is not like other unjust factors, such as mistake and undue influence, where the claimant's intention to benefit the defendant is defective. Nor is it like failure of basis, which is concerned with conditions placed on a claimant's intention to benefit the defendant. Instead, free acceptance focuses on the defendant's intention. The authors observe that, since in free acceptance, the claimant's intention to benefit the defendant has been freely formed and fully carried out, it has not been a straightforward matter to identify why, exactly, it is unjust to allow the defendant to receive the benefit. The authors consider that recent authorities, including *Benedetti v Sawiris*, have not explained the point, instead merely assuming that because a benefit has been freely accepted, it must, therefore, be unjust for the defendant to retain it.”

(2) *Valuation of Services*

181. If the claim for unjust enrichment succeeds, then the Court has to assess the basis on which the value of Mr Chambers’ services should be calculated. In *Benedetti v Sawiris* [2013] UKSC 50, [2014] AC 938 the Supreme Court held that the test to be applied was “the price which a reasonable person in the defendant's position would have had to pay for the services”: see [17] (Lord Clarke JSC). In *Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55, [2008] 1 WLR 1752 a developer was responsible for unlocking the development potential of a property on the basis of an understanding that the owner would sell it to him. But no binding agreement was reached between the parties. The House of Lords held that he was entitled to a quantum meruit based on the value of his services, not a share of the development value. Lord Scott explained the reason for this

decision at [41] and [42]:

“41. But what is the extent of the unjust enrichment? It is not, in my opinion, the difference in market value between the property without the planning permission and the property with it. The planning permission did not create the development potential of the property; it unlocked it. The defendant company was unjustly enriched because it obtained the value of Mr Cobbe's services without having to pay for them. An analogy might be drawn with the case of a locked cabinet which is believed to contain valuable treasures but to which there is no key. The cabinet has a high intrinsic value and its owner is unwilling to destroy it in order to ascertain its contents. Instead a locksmith agrees to try to fashion a key. He does so successfully and the cabinet is unlocked. As had been hoped, it is found to contain valuable treasures. The locksmith had hoped to be awarded a share of their value but no agreement to that effect had been concluded and the owner proposes to reward him with no more than sincere gratitude. The owner has been enriched by his work and, many would think, unjustly enriched. For why should a craftsman work for nothing? But surely the extent of the enrichment is no more than the value of the locksmith's services in fashioning the key. Everything else the owner of the cabinet already owned. So here.

Quantum meruit

42. It seems to me plain that Mr Cobbe is entitled to a quantum meruit payment for his services in obtaining the planning permission. He did not intend to provide his services gratuitously, nor did Mrs Lisle-Mainwaring understand the contrary. She knew he was providing his services in the expectation of becoming the purchaser of the property under an enforceable contract. So no fee was agreed. In the event the expected contract did not materialise but a quantum meruit for his services is a common law remedy to which Mr Cobbe is entitled. The quantum meruit should include his outgoings in applying for and obtaining the planning permission, which should be taken to be reasonably incurred unless Mrs Lisle-Mainwaring can show otherwise, and a fee for his services assessed at the rate appropriate for an experienced developer. To the extent, of course, that Mr Cobbe's outgoings included the fees of planning consultants whom he employed, there must not be double counting. The amount of the quantum meruit for Mr Cobbe's services would, in my opinion, represent the extent of the unjust enrichment for which the defendant company should be held accountable to Mr Cobbe.”

182. Mr Blaker and Mr Kelly relied on *Mate v Mate* [2023] EWHC 238 (Ch) in support of the argument that the Court could award a profit share as a remedy for unjust enrichment. In that case Andrew Sutcliffe KC (sitting as a Judge of the High Court) held that a number of the members of a family had been unjustly enriched at the expense of another family member, because she had provided services to them which unlocked the development potential of some farmland on the understanding that she would receive a share of the

profits: see [238] to [258]. The judge heard detailed evidence from both the parties and experts and made the following findings of fact:

“260. I find that, had Julie not raised the possibility of removing the Green Belt restriction in relation to the Netherton Moor land in the discussion with her brothers at the funeral tea in March 2004 and then worked on the project from 2008 onwards, no one else in the family would have done so. Moreover, neither Andrew nor Robert nor anyone else in the family would have taken steps to engage specialist consultants to assist them in removing the Green Belt restriction. As a result, no developer or other third party would have come forward to express an interest in the development of the Netherton Moor land and the land would therefore remain undeveloped.”

“276. I prefer the evidence of Mr Creighton. I consider that Julie and Mr Hartley were responsible for the release of the Netherton Moor land from the Green Belt and its allocation for housing and that Persimmon made no or only a negligible contribution to that process.

277. Nor do I accept Mr Spawforth's suggestion that Julie and Mr Hartley's work after Persimmon became involved might have caused confusion for the Council regarding the availability of the Netherton Moor land and whether its ownership or control was contested. I prefer Mr Creighton's view that their submissions in relation to the Core Strategy and the draft Local Plan were appropriate and proportionate and ensured that the Council was aware the Netherton Moor sites remained available for inclusion in the Local Plan.

183. The judge also found that Julie performed “a role akin to that of a land promoter” and that such a promoter would have earned a commission of between 15% and 30%: see [278] to [284]. He was prepared to assess the value of her services by reference to the commission which a land promoter would have received but awarded a profit share of 7.5% for a number of detailed and case specific reasons. For present purposes, the most relevant of those reasons are at [297]:

“Third, it is necessary to have regard to the fact that, whilst Julie was performing a role akin to that of a land promoter, she was not in fact a professional land promoter appointed under a contract nor did she play any role in the later stages of the planning process which resulted in the grant of planning permission. Although Mr Creighton considered that a land promoter might have negotiated a commission fee towards the higher end of the normally applicable range, I do not consider that is the appropriate starting place in assessing the market value of Julie's services. I have arrived at a fee of 7.5% as representing the market value of the services performed by Julie by taking the figure at the lower end of the range, namely 15%, and halving that figure, to reflect the fact that (1) Julie did not have any such formal arrangement and (2) the value of Persimmon's services was broadly equivalent to the value of the services provided by

Julie. This conclusion is supported by the risk evaluation. Julie's services had the effect of eliminating 50% of the risk (accepting as I do Mr Creighton's evidence in that regard). Persimmon's services were responsible for eliminating the remaining risk.”

(3) *Limitation*

184. In their joint judgment in *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners* [2020] UKSC 47, [2022] AC 1 Lord Reed DPSC and Lord Hodge JSC (with whom Lord Lloyd-Jones JSC and Lord Hamblen JSC agreed) stated that restitutionary claims for the recovery of money are normally subject to a limitation period of six years from the date on which the cause of action accrued on the basis that such claims are founded on simple contract and fall within section 5 of the Limitation Act 1980.

185. Both parties were agreed that the limitation period for a claim based on a failure of basis accrues when the basis fails and cited *Anron Bunkering DMCC v Glencore Energy UK Ltd* [2023] EWHC 295 (Comm), [2023] 1 WLR 1912 (Simon Colton KC sitting as a Deputy Judge of the High Court) for that proposition. Mr Blaker and Mr Kelly also relied on the test which the judge applied at [45]:

“In my judgment, it is not a requirement that the contract in question be terminated in a sale of goods case before a claim in unjust enrichment can be brought. The test is whether “the state of affairs contemplated as the basis or reason for that payment [had] failed to materialise”, and that test may, in appropriate circumstances, be met without termination of the contract. To be clear, there will be circumstances where the test is not met without termination: for example, where defective goods are delivered, the buyer cannot recover an advance payment, or an instalment, unless and until it has decided to reject the goods: *Yeoman Credit Ltd v Apps* [1962] 2 QB 508 (CA). Similarly, in the case of late delivery, if delivery remains a possibility under the contract, then it may not be possible to conclude that there is a failure of basis unless and until delivery ceases to be a possibility—which may, in reality, be only if and when the contract is brought to an end. But in other circumstances, it may be concluded that the basis has failed to materialise even without any party terminating the contract.”

186. The editors of Goff & Jones on Unjust Enrichment 10th ed (2022) state the general rule is that time usually starts to run when the recipient has been enriched because by that date the cause of action is complete. However, they also agree with the judge in *Anron Bunkering DMCC v Glencore Energy UK Ltd* (above) that failure of basis cases provide

an exception because the cause of action is not complete until the basis for the payment of money or the provision of goods or services has failed: see 33—17. They also agree that it is not usually necessary for a demand for payment to be made before time begins to run: see 33—18.

L. Agency

(1) *Actual Authority*

187. Neither party cited any relevant authority on actual authority and both appeared to accept that it was a question of fact whether Mr Bell and Mr Goodwill had express actual authority to enter into a contract with Mr Chambers. Further, Mr Blaker and Mr Kelly did not argue that either Mr Bell or Mr Goodwill had implied actual authority or usual authority to contract with Mr Chambers. Bowstead and Reynolds on Agency 23rd ed (2024), Article 22(2) provides that the burden of establishing the conferral of authority rests on the party asserting its existence.

(2) *Ostensible Authority*

188. Mr Banner and Ms Gailey relied on *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] QB 469 and the well-known statement of principle set out by Diplock LJ at 503:

“An ‘apparent’ or ‘ostensible’ authority ... is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the ‘apparent’ authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.”

189. Mr Blaker and Mr Kelly did not plead or explain how either WRDE or SBPL is said to have held either Mr Goodwill or Mr Bell out at the meeting on either 29 November 1996 or 18 August 2005, but I would accept as a matter of general principle that the Managing Director of a company’s ultimate parent and who is also a director of the subsidiary itself,

will normally be clothed with authority to bind the company: see further below.

V. The Contract Claim

M. Mr Chambers' Services

190. It is not easy to assess what weight to attach to the evidence which Mr Chambers gave about the services which he performed for WRDE and then SBPL. I must attach significant weight to that evidence because he worked on the Skelton Site for a long period of 15 years from 1994 to 2009. However, I have to balance this work against the fact that the Council did not adopt the AV Action Plan until 2017 and Templegate did not obtain planning permission for housing until July 2019, a full ten years after Mr Chambers ceased to work for the company in any meaningful way. The fourth factor which Popplewell LJ identified in *DAZN v Coupang*, namely, urgency was not present on either 29 November 1996 or 18 August 2005. On the other hand, WRDE (and then SBPL) may have been prepared to enter into a binding contract with Mr Chambers for a profit share because the likelihood of payment was so speculative.

191. I accept that Mr Chambers honestly believed the evidence which he gave both in his witness statement and in cross-examination. But given that he performed the relevant work so long ago, that evidence was highly impressionistic and here was an obvious danger that, with the benefit of hindsight, Mr Chambers overstated both the time which he spent and the significance of the tasks which he carried out. I propose to approach the weight to be attached to the work which he did by considering each relevant period and then comparing Mr Chambers' evidence with the available documents.

(1) 1994 to 1996

192. The Defendant admitted in the Defence that Mr Chambers introduced the Skelton Site to WRDE and Mr Blaker and Mr Kelly submitted that it was not open to Mr Banner and Ms Gailey to challenge this allegation of fact at trial. I accept that submission. But in any event I accept Mr Chambers' evidence that he saw the development potential of the Skelton Site at a very early stage and introduced British Coal to WRDE with British Coal's authority. In fairness to Mr Banner, he did not really challenge this evidence and what he really challenged was the significance of Mr Chambers' role. In particular, he challenged the suggestion that Mr Chambers was involved in introducing Yorkshire

Water and that its land was a ransom strip without which the development could not proceed. Mr Chambers accepted that he did not persuade Yorkshire Water to sell its land to WRDE and that Mr Goodwill did so himself. But he did not accept that Yorkshire Water held a ransom strip.

193. In my judgment, the best evidence of the extent and significance of Mr Chambers' role is contained in Mr Goodwill's memo dated 15 October 1996: see [51] and [52] (above). It contains a clear contemporaneous assessment of Mr Chambers' role. Mr Goodwill was an officer or executive of WRDE but he also supported Mr Chambers' claim for a profit share. Based on that memo I find that Mr Chambers identified the development potential of the Skelton Site, persuaded British Coal to object to the UDP (in its original form), introduced the opportunity initially to Yorkshire Water and then to WRDE. However, I also find that Mr Goodwill and not Mr Chambers "delivered" the Yorkshire Water land and that British Coal would have refused to enter into the Tripartite Agreement and sell its own land to WRDE unless he had done so. I am satisfied, therefore, that Mr Chambers played an important role in introducing the Skelton Site to WRDE but that he was not solely responsible for doing so.
194. It was common ground that Mr Chambers was paid £30,000 both for the introduction itself and also for the work which he carried out after he made the introduction in 1994. Mr Goodwill had also agreed to pay him a further £20,000. It is also possible to compare those fees with the other costs which WRDE incurred during the same period. An internal briefing note dated 31 March 2003 enclosed a spreadsheet headed: "Schedule of Costs/Income to 31 December 2003" which shows that the overall sum which WRDE incurred between 9 July 1994 and 26 November 1996 was quite modest. It also shows that a number of other professionals attended the UDP inquiry (including solicitors, surveyors and planning consultants).
195. There was a strong suggestion in Mr Chambers' evidence and his counsel's submissions that Mr Chambers carried out a lot more work during the period 1994 to 1996 than he was paid for. I do not accept this. There is no contemporaneous documentary evidence that Mr Chambers provided additional services for which he was not paid and this is not consistent with the overall costs which WRDE incurred. I find that he was fully remunerated by WDRE for the introduction to British Coal and his work in relation to the UDP inquiry (or would have been if he had received the additional £20,000 and any

out of pocket expenses which he had incurred).

196. There was no dispute either that Mr Chambers had a detailed knowledge of the Skelton Site. But it was not part of his case or his evidence that this knowledge and expertise was unique or that his services could not have been provided by another professional adviser with the same or similar qualifications. I have found that he recognised its development potential and brought the joint venture partners together. But I also find that this was his sole justification for the payment of a profit share. Mr Chambers accepted this in cross-examination when Mr Banner put it to him that there was no justification for paying him a profit share for the housing development when he had been involved in promoting a business park:

“Q. Your case is that Templegate has now obtained residential planning permission for all of the mushroom, and you claim a profit share from the profits from the current residential development. That's correct, is it? A. On the whole site. Q. On the whole site? A. On the whole site, which I introduced to your clients in 1994, and they acquired in the tripartite agreement. Q. So you're claiming a profit share because you made an introduction in 1994? A. Because I put the concept to the joint venture company at that point in time, and I also have an involvement on the housing, reserved land, and the lagoons. Q. Okay. MR JUSTICE LEECH: What concept did you put to the joint venture partners? What was the concept that you put to them? A. Initially? MR JUSTICE LEECH: Well—you just—you just said in evidence that you'd put a concept: " ... I put the concept to the joint venture company at that point in time ... " A. Yes, the land promotion concept was put to the joint venture by me initially, the whole landholding. MR JUSTICE LEECH: The land promotion concept? A. Yes. MR JUSTICE LEECH: That it might be developed. A. It could be developed for any use. It was just, in 1994, there was an opportunity to allocate and develop the land as a business park, because Leeds were looking to allocate three, potentially four, business parks in the Unitary Development Plan. That was the means that I saw initially to get land out of the Green Belt and allocate it for some form of development.”

(2) *1996 to 2003*

(i) The Planning applications

197. Mr Chambers gave evidence that during this period he “worked closely” with Mr Goodwill and the professional team to prepare and submit two planning applications. He also gave evidence that Mr Goodwill and he “spearheaded and controlled the progress of

the two planning applications”. I accept that Mr Chambers had some involvement in the preparation of the planning applications but I do not accept that he managed or controlled the process and I attach limited weight to the general impression which he gave about his participation in the preparation of both planning applications. I do so for the following reasons:

- (1) Mr Chambers did not suggest that he was a member of the professional team acting for WRDE or that he gave legal, planning or other professional advice to WRDE. Moreover, even if he was advising in a general capacity, he did not refer to any written advice, planning applications or technical documents which he had himself prepared or for which he would have been entitled to charge if he had been on a standard retainer.
- (2) He produced very few documents in relation to the planning process and referred to only three detailed letters which he wrote. First, he referred to the letter dated 26 September 2000 to Mr Peter Frampton of Wood Frampton, WRDE’s planning consultant, commenting on the Council’s planning brief (and Mr Blaker put a similar letter to Mr Bell). Secondly, he relied on two letters dated 9 March 2001 and 16 March 2001 which he sent to Mr Best commenting on the planning applications.
- (3) The letter dated 26 September 2000 to Mr Frampton provides some evidence of Mr Chambers’ role. Mr Frampton was coordinating the professional team’s response to the Council’s draft planning brief. Mr Chambers’ letter was long and detailed (over three to four pages) and undoubtedly took time to prepare. But it is clear that he had not been instructed to prepare or submit the response to the planning brief or to give advice to WRDE on its terms. Furthermore, it provides no support for his evidence that he was managing or controlling the entire process.
- (4) Mr Chambers also gave evidence that he attended 17 meetings during 2000 and 2001. I accept that this is not negligible and amounted to one meeting every six weeks on average. Moreover, he did not suggest that he had a coordinating role at these meetings or produce any minutes to make good his evidence that he was controlling the process. If each meeting lasted 3 hours on average, then Mr Chambers spent 51 hours over two years attending meetings, which was not so

unduly onerous and consistent with him wishing to preserve his position during the negotiations for his consultancy agreement.

- (5) Mr Chambers did not calculate the time which he spent or the fees which he would have charged for his time between 1996 and 2003. However, the schedule of costs (above) records that the total costs which WRDE incurred in relation to the Skelton Site between 9 July 1994 and 16 December 2003 was £1,388,873.42. £506,000 were in-house costs and the total figure included Mr Chambers' own fees. On average, therefore, WRDE spent less than £100,000 per year over 10 years on a large professional team of external consultants (together with disbursements). This puts Mr Chambers' contribution in perspective.

(ii) Kerzner

198. Mr Chambers relied on the introduction which he made to Kerzner in both his witness statement and his oral evidence not least because the Casino development which he was promoting involved some element of housing. In cross-examination, he stated unequivocally that he was acting for SBPL in relation to the negotiations whereas Mr Bell stated that he was acting for Kerzner and sat on their side of the table. On this issue, I accept Mr Bell's evidence and I reject Mr Chambers' evidence. I attribute no weight to his evidence about the negotiations with Kerzner for the following reasons:

- (1) In both his witness statement and cross-examination Mr Chambers relied on a letter dated 18 June 2003 which he sent to Mr Comley of Kerzner⁵ in which he stated that he had been working on the Skelton Site and acting for WRDE for 10 years. However, there is no evidence that he had the authority of SBPL to send that letter and he did not write to Mr Goodwill until the following day. Although he referred to a telephone call with Mr Goodwill, it was clear that he was trying to interest both parties in the possible development of a casino rather than acting as SBPL's agent.
- (2) There is no evidence that SBPL ever retained Mr Chambers to act as its agent or authorised him to negotiate with Kerzner on its behalf. In his letters dated 19 September 2003 and 11 November 2003 Mr Chambers was still trying to interest

⁵ Mr Chambers gave the date 19 June 2003 for this letter but it is clear that he was referring to the letter dated 18 June 2003 to Kerzner and Mr Blaker put that letter to Mr Bell.

SBPL in the project (enclosing a general report which he had prepared on the casino sector). Further, in his manuscript note Mr Goodwill recorded that Mr Bell was “lukewarm” although Mr Chambers “was free to introduce opportunities elsewhere but not ruled out for the future”. He also recorded that he had informed Mr Chambers of this.

- (3) In his letter dated 19 December 2003 Mr Chambers set out the detailed terms which he was prepared to accept to act for SBPL (at Mr Goodwill’s suggestion). It is clear from this letter that he was not expecting to be paid for the earlier letters which he had written pitching for the work. Moreover, he referred in terms to “his existing instructions with Kerzner International” which involved an hourly rate of £75 per hour. In my judgment, this letter provides clear contemporaneous support for Mr Bell’s evidence that Mr Chambers was instructed by Kerzner and not by SBPL.
- (4) Mr Chambers gave evidence that he was never told by Mr Goodwill that he would be placing himself in a position of conflict if SBPL instructed him. I accept this evidence. But whether or not Mr Goodwill told him this is beside the point. It is clear from his handwritten note on 5 January 2004 that Mr Bell was not prepared to give Mr Chambers an agency role for that reason and this also provides contemporaneous support for Mr Bell’s evidence that he was acting for Kerzner. If he had not been, there would have been no conflict.
- (5) Mr Chambers gave no evidence and produced no documents to suggest that Mr Bell ever changed his mind and instructed him to act for SBPL in negotiations with Kerzner. Moreover, those negotiations ultimately came to nothing. In my judgment, Mr Chambers relied on the Kerzner negotiations in evidence in an attempt to give the impression that he carried out more work for SBPL than was actually the case.

(iii) Leeds United/Autex

199. Mr Chambers relied on his involvement with Autex and Leeds United. But he produced no documents to evidence his involvement or the extent to which he was retained to act by WRDE or the work which he performed. Again, both schemes came to nothing and I attribute no weight to Mr Chambers’ evidence in relation to them. The inference which I draw is that, like Kerzner, Mr Chambers was trying to introduce both parties to the

Skelton Site and would only have been entitled to charge for his work if either scheme had got beyond this very preliminary stage.

(3) *2003 to 2005*

200. Mr Chambers gave evidence about the work which he performed from 2003 to 2005 in paragraphs 34 and 35 of his witness statement: see [128]. Those paragraphs were consistent with Mr Goodwill's email dated 12 May 2005 and I accept that evidence. Mr Chambers did not state in terms that he was no longer involved in the planning or allocation process but, in case there is any doubt I find as a fact that Mr Goodwill's email dated 12 May 2005 accurately set out the workstreams with which Mr Chambers was involved both as at that date and also as at 18 August 2005.
201. It is more difficult to assess the significance of the five workstreams which Mr Goodwill identified or how time-consuming they were. I attribute little weight to Mr Chambers' representations to the RSS to promote a regional casino development. It was an extension of his retainer from Kerzner and was highly speculative. All of the other matters can be loosely described as "title matters" which required detailed legal input. Mr Chambers was not a lawyer or able to give legal advice in relation to any of them but he was liaising with British Coal in relation to three of the four. Given his former relationship with British Coal, it was entirely understandable why Mr Goodwill had asked him to become involved in these issues.
202. The work which Mr Chambers carried out in 2003 to 2005 is primarily relevant to the determination of what was agreed at the meeting on 18 August 2005. I accept that at that meeting Mr Chambers believed that he was entitled to a profit share because of the "concept" which he had introduced to WRDE. But I also accept Mr Bell's evidence that he did not believe that the five workstreams which Mr Goodwill identified in his email dated 12 May 2005 justified any kind of profit share and that they were "certainly items that you would pay an agent to do".
203. I also find that the five workstreams which Mr Goodwill identified in his email dated 12 May 2005 do not fall within the description of the "core service" set out in the 6 December Fax. They did not involve planning and development consultancy and, to the extent that they involved project management, Mr Chambers was managing four discrete title matters. Indeed, it is clear from Mr Goodwill's email that Mr Chambers was not

involved in planning and development consultancy because he identified these as matters “with which he is not, at present, but could become, involved”.

(4) *2005 to 2006*

(i) General

204. Mr Chambers’ evidence was that the tasks which he carried out over the year between May 2005 (when Mr Robertson was appointed in place of Mr Goodwill) and June 2006 were “of fundamental importance to the future of the Skelton Project”. I am prepared to accept that Mr Chambers continued to spend time and effort in assisting SBPL to promote the Skelton Site during this period but I also find that Mr Chambers exaggerated or overplayed the importance of his contribution during this period. In particular:

- (1) Mr Chambers produced schedules of seven meetings with Mr Robertson between 8 June 2005 and 25 May 2006 and three meetings with Mr Helliwell. He also produced two schedules of other meetings between 16 May 2005 and 16 October 2007 both of which he headed “Schedule of Project Meetings Attended by Nigel Chambers”. Mr Chambers did not give evidence about when he prepared these schedules. But he gave evidence that they involved him “in arranging and attending a number of meetings with outside parties and the consultancy team”.
- (2) Mr Chambers relied on the agenda of a meeting with Mr Robertson on 25 May 2005 to illustrate the wide scope of the work in which he was involved. It is clear, however, that he prepared this agenda for his first meeting with Mr Robertson and the inference which I draw is that he did so to try to persuade Mr Robertson to give him a wider role in the Skelton Site. I do so because the agenda was prepared at almost the same time as Mr Goodwill’s email dated 12 May 2005.
- (3) Further, a number of the meetings which Mr Chambers described were not “project meetings” relating to the Skelton Site but public meetings or seminars. For example, he relied on a meeting on 4 July 2004 which he attended. But this was not a project meeting but a workshop entitled “Aire Valley Leeds: Public Transport Links” which Mr Chambers either attended as a guest or paying attendee of the organisers. The descriptions which he gave of other meetings also tended to suggest that a significant number of “project meetings” fell into the same category.

- (4) Mr Chambers continued to emphasise his role in promoting the Skelton Site for development as a casino. He stated that this was one of the “key roles” which he was instructed by Mr Robertson to perform and that he took a “leading role” in making representations to various bodies. However, the only documentary evidence upon which he relied was an email chain dated 22 March 2006 in which he asked Mr Robertson to assist him to provide plans to the Council for its submission to the Casino Advisory Panel.
- (5) He also continued to emphasise his role in dealing with title matters stating that he was “instructed by Iain to resolve complex rights of way issues”. But given that he was not a lawyer, it was very difficult to understand precisely what his role was. Indeed, the correspondence which he produced demonstrated that one of the “complex rights of way issues” which Mr Robertson asked him to resolve was to check the boundaries on a plan. By letter dated 3 November 2005 he wrote to Mr Chambers asking him as follows: “I should be pleased if you would check the plan enclosed and advise whether the correct boundaries are identified.”
- (6) Finally, Mr Chambers called Mr Robertson to give evidence on his behalf and he did not support Mr Chamber’s evidence that the tasks which he carried out were of fundamental importance to the future of the Skelton Project. Indeed, Mr Robertson stated in terms (and confirmed in cross-examination) that he used Mr Goodwill’s email dated 12 May 2005 as an aide-memoire for the tasks which Mr Chambers needed to carry out.

(ii) Housing

205. Mr Chambers also placed a lot of emphasis on his early recognition that it might be possible to develop the Skelton Site for housing rather than as a business park. He stated that a “key task” which Mr Robertson instructed him to perform was to attend the investor forum and that he was given “direct instructions” to draft a letter and that in July 2005 he proposed amendments to the Housing Market Assessment report: see [155]. Again, I find that Mr Chambers exaggerated or over-played the importance of these events. In particular:

- (1) Mr Chambers produced a delegate list for the launch of the “Aire Valley Leeds Investors Forum”. It is clear from this that he attended on behalf of Atlas and that

it was a public event. Mr Chambers did not produce or refer to any other minutes of forum meetings or the report itself.

- (2) On or before 24 June 2005 Mr Robertson sent a copy of the initial or draft report to Mr Chambers and recommended that Mr Robertson set up a meeting with Aire Valley Leeds (the organisation which produced the report). He also offered to draft a letter. By email dated 27 June 2005 Mr Robertson accepted that offer and Mr Chambers prepared a three page letter and although Mr Chambers did not produce a copy I am prepared to accept that Mr Robertson sent it on SBPL notepaper.
- (3) By letter dated 18 July 2005 Mr Robertson wrote to Ms Marie Lynch, the Executive Manager of Aire Valley Leeds. He referred to a meeting which they had both attended and it is clear from the contemporaneous documents that Mr Chambers also attended this meeting and drafted this letter. Mr Robertson also passed on a soft copy of a further version which Mr Chambers amended and sent back on 27 July 2005. He also drafted another letter for Mr Robertson to send in September 2005 chasing up the amendments to the HMA Report.
- (4) I am prepared to accept that Mr Chambers spent a number of hours considering the various drafts of the report and preparing a number of letters and that this work involved a familiarity with the planning position and an attention to detail. What I do not accept, however, is that this was a “key task” which was of great importance to unlocking the development potential of the Skelton Site for housing. As Mr Banner put to Mr Chambers, these were very early days indeed.
- (5) Moreover, as is clear from a letter dated 24 October 2005 which Ms Lynch wrote to Mr Robertson, the purpose of the report was not to determine specific areas for housing development but simply to assess demand. Indeed, she also stated that consultation would shortly commence on the development options when SBPL would be able to put forward the Skelton Site for housing development:

“The report to the AVLRB will be primarily for information and will highlight not only these key issues but also other issues raised during the consultation on the draft Housing Market Assessment report. As part of development of the AAP for Aire Valley Leeds we will shortly commence consultation on the potential development options for the area. You will be consulted as a major landowner/developer and this

will give you the opportunity to put forward the Skelton Business Park site as a potential housing site. Also I can confirm that this HMA report will not become an SPD.”

- (6) Mr Chambers produced no documentary evidence to suggest that he was involved in this second stage of consultation, far less that he played a “key role” either in coordinating the evidence or writing the submissions which SBPL. Indeed, I accept Mr Bell’s evidence that he was not involved and that Evans assembled a large professional and technical team to do so.
206. Mr Chambers also gave evidence that in April 2006 he was “instrumental” in formulating and submitting representations for the first stage of the AV Action Plan. He produced a notice which the Council had published headed “Regulation 25 ‘Alternative Options’ Consultation Report April-June 2006”. It stated that this report had been published in April 2006 inviting comments on alternative land uses and transport options and that it included a questionnaire for consultees to indicate their preferences. It also stated that on 11 April 2006 a workshop had been held which Mr Goodwill had attended in his capacity as Chair, Aire Valley Leeds Marketing Group together with Mr Chambers.
207. I am prepared to accept that Mr Chambers attended a seminar and submitted a questionnaire. But in the absence of clear documentary evidence, I do not accept that Mr Chambers did so in any capacity other than as a local property consultant with a professional interest in the outcome of the consultations. Furthermore, I do not accept on the basis of this two page document that Mr Chambers played a significant role on behalf of SBPL in promoting “a significant housing component as part of a wider mixed-use scheme”.
- (5) *2006 to 2009*
- (i) General
208. Mr Chambers gave evidence that he attended three meetings with Mr Helliwell on 12 July 2006, 26 July 2006 and 8 March 2007 and that by letter dated 29 November 2006 Mr Helliwell asked him to obtain the agreement of Mr Mark Carey, who was acting for British Coal, to instruct Walker Morris. In the last paragraph of that letter Mr Helliwell stated:

“I do not feel that we have enough time for a meeting with Mark Carey but I would be grateful if you would liaise with him and obtain his agreement for me to instruct Richard Sagar at Walker Morris to put matters in hand straightaway in order to protect Skelton Business Park Limited’s position. Presumably Mark Carey will liaise with Ian MacPherson at the Coal Authority but in any event, I will ask Richard Sagar to do likewise.”

209. I set out Mr Helliwell’s request to Mr Chambers because he was in substance asking Mr Chambers to send an email or make a telephone call to British Coal’s agent to agree to the instruction of Walker Morris. This is entirely consistent with Mr Goodwill’s email dated 12 May 2005 and Mr Chambers’ liaison role with British Coal. However, Mr Chambers invested this letter with great significance because it “contains clear and specific instructions for me to obtain the agreement of the Coal Authority to instruct TDL’s solicitors to protect their interests with regard to these public rights of way”. This was a good example of Mr Chambers over-stating the significance of a simple task which he was asked to carry out.
210. Mr Chambers produced a schedule of 15 project meetings between 23 June 2006 and 16 October 2007 of which at least seven were seminars or public meetings. He gave evidence that he attended these meetings with “the full approval and under the direct instruction of” Mr Helliwell and that he was asked to represent SPBL at them. He produced no written instructions to attend any of these meetings and in the absence of any written instructions, I do not accept that Mr Helliwell required Mr Chambers to attend any of these seminars or public meetings or to represent SBPL at them. He may well have told Mr Helliwell that he intended to attend them or that it would be useful for him to do so. But I do not accept that he was instructed to do so.

(ii) Housing

211. Mr Chambers also gave evidence that he provided support to Mr Helliwell in relation to a masterplan exercise conducted by a firm called Farrells, who were architects and urban designers, and that when Mr Gray took over responsibility for the Skelton Site at the end of 2007 he briefed Mr Gray on a number of occasions in relation to the planning process. He also gave evidence that he undertook work with Barton Wilmore, a firm of planning consultants, to promote further housing uses on the pulverised ash lagoons.
212. Mr Gray stated in his first witness statement that Mr Chambers was integral to the smooth

running of the Skelton Site. But when Mr Banner asked him to confirm this, he gave no detail. The only evidence which he gave was that: “We would have ongoing conversations, especially about the Aire Valley Action Plan and the strategic planning nature and —so, yes.” The only document to which Mr Chambers referred in his witness statement was a letter dated 30 January 2009 which Barton Wilmore sent to the RSS on behalf of the Yorkshire and Humber Development Consortium (of which SBPL was a member) in response to the 2009 update of the Yorkshire and Humber Plan.

213. I am unable to attach very much weight to this evidence. The evidence of both Mr Chambers and Mr Gray was vague and in the most general terms. He did not produce any drafts of documents which he helped to produce and it is difficult to understand what role he had in making representations to the RSS given that SBPL had instructed a firm of planning consultants. But in any event, this evidence is of very limited evidential value to the Court in deciding whether the parties entered into a binding contract on either 29 November 1996 or 18 August 2005. Mr Gray gave evidence that he was “told to stay out of dealing with the relationship with Nigel” and Mr Chambers did not suggest that he asked Mr Gray for assurances in relation to the terms of any consultancy agreement.

(iii) Mr Bell’s instructions

214. Finally, Mr Chambers gave evidence that “on the instructions of John Bell” he was asked to take on a more extensive role in the summer of 2005 and that “I accepted John’s instructions and thereafter it is my belief that I continued to fulfil the obligations of our Agreement.” I reject that evidence. It was never put to Mr Bell that he gave these instructions to Mr Robertson either at or after the meeting on 18 August 2005 and Mr Chambers produced no documentary evidence to support this evidence. Further, if Mr Bell had given these instructions to Mr Robertson, then I have no doubt that he would have communicated those instructions to Mr Chambers in writing.
215. Furthermore, Mr Chambers’ evidence was inconsistent with his fax dated 4 December 1996 to Mr Helliwell. It is clear from that fax that he had not been given any of the potential roles set out below the line in the 6 December Fax and was now asking to be given such a role. Moreover, he made no reference to fulfilling the obligations in any agreement. Indeed, when Mr Banner put the fax to him he accepted that it did not describe it as an agreement at all.

216. Finally, I make it clear that in reaching this conclusion I have also weighed up the evidence which Mr Robertson gave in his witness statement and I am satisfied that it does not support Mr Chambers' evidence. Mr Robertson could not recall Mr Bell giving him any instructions in relation to Mr Chambers' role. He also relied on Mr Goodwill's email dated 12 May 2005 as "an aide-memoire for what tasks needed to be carried out by Nigel under TDL's direction": see paragraph 7. I discount entirely the general description of Mr Chambers' work in paragraph 8 because Mr Robertson prepared that evidence without seeing the email dated 12 May 2005 or, indeed, the note of the meeting on 13 May 2005 (as he confirmed in cross-examination).

N. The 29 November 1996 Meeting/6 December Fax

(1) The Statements of Case

217. Mr Chambers' pleaded case was that he was the "introducer of the Skelton site" and that by his 23 July 1996 letter, he wrote to Mr Goodwill requesting that he be remunerated on a profit share basis rather than receiving fees or being paid on a time basis and that this request led to the meeting on 29 November 1996. He also pleaded that Mr Goodwill and Mr Bell had authority or held themselves out as having authority to reach agreement with him. The Amended Particulars of Claim set out his case as to what was decided as follows:

"14. The attendees discussed how Nigel Chambers should be remunerated in the future and it was agreed that Nigel Chambers would receive 10% of the profits achieved from the development less the costs incurred by WRDE.

15. Geoff Goodwill of WRDE sent Nigel Chambers' solicitor at Irwin Mitchell fax dated 6 December 1996 setting out what was agreed at the meeting. It was agreed inter alia that:

(i) Nigel Chambers would provide core services of "Planning and development consultancy and project management";

(ii) Nigel Chambers had already received remuneration of £30,000 plus VAT (in fact he only ever received the sum of £30,000);

(iii) There would be no further payments until WRDE "achieves overall profit at which point NC entitled to 10% of WRDE net pre-tax profit (i.e. after all relevant costs and any profit share payments to British Coal and Yorkshire Water Estates arising from (i) unserviced land sales, (ii) serviced land sales (iii) the land element of built development activity by WRDE; and

(iv) The agreement made it clear that Nigel Chambers would be reimbursed for previously authorised third party expenses/disbursements.”

218. The Defendant admitted the fact that Mr Chambers was the introducer of the Skelton Site but denied its relevance on the basis that he was paid a fee at the time. The Defendant did not advance a positive case about what took place at the 29 November 1996 meeting but denied that Mr Bell and Mr Goodwill had actual or ostensible authority to reach agreement with Mr Chambers. The Defendant also denied that the 6 December Fax constituted a binding agreement for reasons set out earlier in the Defence:

“9.1 Properly construed, the document does not constitute a concluded agreement. It is a one-page document that purports to deal with a complex commercial arrangement in bullet point form and in incomplete sentences. The words “subject to WRDE [i.e. White Rose Development] Board approval” appear in the headnote and it is unsigned...

9.2 Further, the terms of the December 1996 Fax are too uncertain to be contractually binding in any event. In particular, the calculation of the alleged 10% share due to Mr Chambers does not include definitions, for example, of the point at which White Rose Development would be in “overall profit” (and thereby liable to pay Mr Chambers), nor of “all relevant costs and any profit share payments to British Coal and Yorkshire Water Estates” (emphasis added) or of the “profits arising from built development” (all of which are supposedly excluded from the calculation), nor is there elsewhere a definition of the “material breach” which would entitle a party to terminate the agreement, nor a longstop date by which the alleged payment obligation had to have arisen. Without such definitions the agreement is so uncertain as to be commercially unworkable, which, moreover, is also an indication of the parties’ lack of the necessary intention to create legal relations.”

219. As Mr Banner and Ms Gailey pointed out in their written opening submissions, Mr Chambers’ case was “slightly opaque” because it was unclear whether his case was that the 6 December Fax constituted the 1996 Agreement or whether the 1996 Agreement was made at the 29 November 1996 meeting and the 6 December Fax was intended to be a record of that agreement. I understood Mr Chambers’ case to be the latter and that any opacity was due to the fact that it was also his case that the 6 December Fax came to be labelled or treated as the 1996 Agreement by the parties in correspondence and later at the 18 August 2005 meeting.

220. Mr Banner and Ms Gailey also pointed out that the 1996 Agreement was pleaded as a

contract for “core” planning, development, consultancy and project management services (although the time period during which Mr Chambers was required to perform them was not set out in the Particulars of Claim). I accept this submission and I recognise the importance of the way in which Mr Chambers chose to put his case and, in particular, that if there was a contract for services there ought to have been a meeting of minds about what services Mr Chambers agreed to provide. What is also clear from the Amended Particulars of Claim and the Reply is that it was Mr Chambers’ case that the 6 December Fax recorded both accurately and also comprehensively what was agreed at the meeting the week before.

(2) *Background*

221. I have already set out the background to the Skelton Site itself and the previous correspondence between the parties in detail and I have set out my findings in section M (above) in relation to the services which Mr Chambers performed by 29 November 1996. In particular, I have found that he played an important role in introducing the Skelton Site to WRDE. But I have also held that he had been paid an introduction fee and for the work which he had carried out to date.
222. Mr Goodwill gave evidence in his witness statement that he had lengthy discussions with Mr Chambers and had agreed in principle that he would be paid a profit share if or when profits materialised from the Skelton Site. This evidence was uncontested and I accept it. The contemporaneous documents also demonstrate that Mr Goodwill felt a personal obligation to Mr Chambers to try to secure such terms for him. However, it is also clear from his memo dated 15 October 1996 that Mr Goodwill deliberately held off entering into a binding contract with Mr Chambers until after the Tripartite Agreement was in place.
223. Indeed, by 29 November 1996 British Coal and Yorkshire Water had already sold their land to WRDE and entered into the Tripartite Agreement. Mr Chambers was not a party to that agreement or even informed of its terms and although he had brought the parties together, British Coal, Yorkshire Water and WRDE did not regard him as a partner or co-venturer in the development of the Skelton Site. British Coal and WRDE had both refused to give Mr Chambers an equity stake in the project and British Coal had refused to pay Mr Chambers a fee at all.

224. Viewed objectively, I find that by 29 November 1996 Mr Chambers was not in a strong bargaining position and certainly not as strong a bargaining position as he evidently believed when he gave evidence to me. Whilst Mr Goodwill had recognised his role in introducing the parties, WRDE had already acquired the site and entered into the Tripartite Agreement. Moreover, it would not have been unreasonable for the board of WRDE to take the view that Mr Chambers had agreed a conventional fee for the introduction and for the further work which he had carried out on WRDE's behalf and that this fee was what WRDE was obliged to pay him.

(3) *What was agreed on 29 November 1996?*

(i) Profit share

225. Mr Chambers gave evidence that when he used the expression "DEAL AGREED" in his meeting note he was referring to the 10% profit share. Mr Bell could not recall the meeting and Mr Goodwill gave no evidence about the meeting at all beyond stating that extensive negotiations took place. I accept Mr Chambers' evidence and I find as a fact that Mr Bell and Mr Goodwill agreed to pay a 10% profit share to Mr Chambers at the 29 November 1996 meeting.

226. Mr Chambers also gave evidence in his witness statement that it was agreed that he would receive 10% of the profits achieved from the development of the Skelton Site less the costs incurred by WRDE. His meeting note records that it was agreed that he would be paid 10% of the net profits from both serviced and unserviced land and that if WRDE developed the site he would receive "10% of the "calculated" land value". The 6 December Fax used the term "the land element of built development activity by WRDE" and excluded "Profits arising from built development".

227. I am satisfied that Mr Chambers and Mr Goodwill were referring to the same thing, namely, the residual land value of those parts of the Skelton Site which WRDE developed itself. The "calculated" land value was a reference to the Tripartite Agreement and, although Mr Chambers had not yet been provided with a copy, I am satisfied that he was familiar with this terminology and trying to capture the same idea as Mr Goodwill. Based on the meeting note and the 6 December Fax I find that Mr Chambers' agreed profit share was 10% of the profit which WRDE earned on the sale of (i) serviced land, (ii) unserviced land, and (iii) land developed or built on by WRDE itself but limited to the profit on the

land element or site value and excluding the profit from the development itself.

(ii) “Legally contracted”

228. When Mr Chambers gave evidence he used the words “DEAL AGREED” in the meeting note and he then referred to the words “legally contracted”. I have set out the passage from his cross-examination in full at [56] to put it in context but because of its significance I reproduce the relevant few lines here:

“So you've put in capital letters "DEAL AGREED". Just help me, what do you say is being agreed here? A. The 10% profit share. Q. Just the 10%? A. Yes, the "A) legally contracted". Q. Okay. A. That was agreed.”

229. I understood from this exchange that he was giving evidence that not only did the parties agree a deal for a 10% profit share but they expressly acknowledged at the meeting that this deal was legally binding with immediate effect. I am not satisfied that any of Mr Bell, Mr Goodwill or Mr Chambers gave evidence that the deal which they had agreed for a 10% profit share was a “legal contract” or that they would treat it as “legally contracted” or even that they used words to that effect. But if this was Mr Chambers’ evidence, I reject it. He did not give this evidence in his witness statement and neither did Mr Goodwill. Further, Mr Chambers demonstrated no independent recollection of what took place at the meeting and if it was his case that he had refreshed his memory from his note and believed that this was what Mr Bell and Mr Goodwill had agreed, I would have expected him to plead this allegation and to give evidence in chief to this effect. He did not do so.
230. Furthermore, I do not accept that when properly interpreted Mr Chambers’ handwritten notes support such a finding of fact. The words “A) Legally contracted” follow the phrase “2 parts to remuneration” and are to be contrasted with “B) exchange of informal letters”. In my judgment, the natural and obvious interpretation of those words is that the parties agreed that there would be two parts to Mr Chambers’ remuneration, that Part A would be “legally contracted” i.e. that it would be the subject matter of a legally binding contract and that Part B would be the subject matter of an exchange of informal letters and that although Mr Chambers would be considered for three possible roles, there were no guarantees and that the remuneration for those roles would be fee based and flexible on both sides.

231. The syntax of the note also supports this conclusion. If Mr Chambers or Mr Bell or, for that matter, Mr Goodwill had intended to say that what they had just agreed was a contract which was legally binding, the note would have recorded this and Mr Chambers would not have used contract as a verb rather than as a noun (albeit in the passive voice). In my judgment, the obvious interpretation of the note is that something was to be legally contracted in the future and not that the deal which the parties had just agreed was a legal contract.
232. This interpretation of the meeting note is also consistent with the 6 December Fax which Mr Goodwill described in the heading as the “basis” for Mr Chambers’ “ongoing involvement” rather than the terms of a contract. Further, the fax drew a distinction between the core services which Mr Chambers would be obliged to provide, i.e., planning and development, consultancy and project management services and the “Potential Future Role in WRDE built development activity”, which Mr Goodwill described below the unbroken line in the last paragraph at the foot of the page and which involved “no commitment”. It is clear from that paragraph that Mr Goodwill was setting out the same terms as Mr Chambers had done in Part B of his note. For example, Mr Goodwill referred to “no commitment by WRDE to NC involvement” and that his potential roles would include agency.
233. This interpretation is also supported by the evidence which Mr Bell gave about the way in which he would operate as a rule: see [57]. I accept that evidence and Mr Blaker and Mr Kelly did not challenge it. Moreover, they offered no reason why Mr Bell would have departed from his normal practice at this particular meeting. Although Mr Goodwill had developed a personal relationship with Mr Chambers, Mr Bell had not met him before. Equally importantly, there was no urgency to enter into a binding contract. Indeed, in his letter dated 23 July 1996 Mr Chambers justified the grant of an equity stake in the Skelton Site on the basis that it might take between 10 and 20 years for the site to achieve its full potential.
234. Finally, Mr Chambers accepted in his witness statement that Mr Bell and Mr Goodwill told him at the meeting that the deal would need to be approved by the board of WRDE and this was expressly stated at the head of the 6 December Fax. I consider whether the board ratified any agreement made on 29 November 1996 in considering the authority of Mr Bell and Mr Goodwill. But the fact that the deal agreed on 29 November 1996 was

expressly stated to be subject to board approval also supports the conclusion that the parties agreed that Part A of Mr Chambers' remuneration would be the subject matter of a contract.

235. I find on the balance of probabilities, therefore, that at the 29 November 1996 meeting Mr Bell and Mr Goodwill agreed with Mr Chambers that Part A of Mr Chambers' remuneration, namely, his profit share was to be "legally contracted" and that what they meant by this was that it would be the subject matter of a legally binding contract in the future by contrast with Part B of his remuneration which would be the subject matter of an exchange of informal and non-binding letters ("but no guarantee").

(iii) Services

236. As Mr Banner and Ms Gailey pointed out, there are a number of differences between Mr Chambers' note of the meeting on 29 November 1996 and the 6 December Fax. In particular, Mr Chambers' note made no mention of any services at all (whether core or otherwise). In cross-examination, Mr Chambers pointed out that his note referred to his "input" and I accept that this was a reference to work which he might be required by WRDE to carry out. But his note did not use the word "services" or specify their nature or even suggest that he might have any obligation to perform them. This is to be contrasted with the 6 December Fax which specified Mr Chambers' core services as planning, development, consultancy and project management.
237. Further, Mr Chambers' note expressly stated that his input was required "only to receipt of opp/UDP". I accept his oral evidence that "opp" was a reference to outline planning permission and that what he recorded was that his input would be required until the receipt of the UDP and the grant of outline planning permission. By contrast, Mr Goodwill described Mr Chambers' ongoing involvement as continuing "throughout the UDP and planning processes and preparation of the site for development". But against the "core service" he did not place a temporal limit on his provision of his services at all.
238. Mr Banner put it to Mr Chambers that his obligation to provide development and project management services was bound to arise after the allocation made in the UDP and the grant of outline planning permission. In answer, Mr Chambers suggested that what Mr Goodwill had in mind was the project management of the planning process. I found his evidence on this issue unconvincing and because Mr Goodwill had not addressed it in his

witness statement or given oral evidence, this was no more than speculation. But in any event, it is clear from the 6 December Fax that Mr Goodwill expected Mr Chambers to provide “development consultancy” as part of his core service to WRDE which is only consistent with Mr Chambers being obliged to provide his services until the site had been prepared for development.

239. I am not satisfied on a balance of probabilities that the parties reached agreement at the 29 November 1996 meeting either in relation to the core services which Mr Chambers would be required to perform in order to earn his profit share or in relation to the time period over which he was required to provide them. Beyond the single word “input” Mr Chambers made no reference to any discussion of the services which he would be required to provide either in his note or in his witness statement. Furthermore, in the 23 July 1996 letter which Mr Goodwill asked him to prepare, Mr Chambers did not identify or enumerate the services which he was prepared to provide beyond giving an assurance that he would give the scheme his full attention.

(4) The Subsequent Correspondence

240. Even though the parties agreed that Part A of Mr Chambers’ remuneration would be governed by a legally binding contract and did not agree what core services he would provide (or for how long), it does not follow that a binding contract did not come into effect immediately or, perhaps more accurately, that a binding contract came into existence conditional only upon the approval of the board of WRDE. As the authorities illustrate, the parties were masters of their own contractual fate and I must examine all of their communications in order to decide whether, as reasonable and commercial parties, they understood that they were bound immediately by the terms agreed at the meeting.

(i) The 6 December Fax

241. I begin with the 6 December Fax itself and, in particular, what it did not say. It did not state that a contract had been made at the meeting on 29 November 1996 or use layman’s language to that effect. Mr Chambers’ case was that it was an accurate record of the meeting and, if the parties had entered into a binding contract, Mr Goodwill could have been expected to record this. Furthermore, the fax was not headed “Agreement” or “Contract” and it did not contain a signature block. Again, if Mr Goodwill had intended

to reduce the oral agreement to a written contract to be signed immediately after the meeting, he might have been expected to head the fax “Agreement”, to sign it and to ask Mr Chambers to do so too.

242. I turn next to the text of the 6 December Fax. Although he summarised the terms which he understood to have been agreed at the meeting, Mr Goodwill did not use complete sentences or clauses and used only two phrases which refer to either entitlement or obligation (“is entitled” and “will be reimbursed”), neither of which was expressed to arise immediately. Indeed, the fax stated that no further payments would be made to Mr Chambers until WRDE had achieved an overall profit. Mr Chambers would also have been able to compare the 6 December Fax with his own notes of the meeting and to identify the differences (both of fact and emphasis).
243. I do not accept that the use of the two phrases “is entitled” and “will be reimbursed” would have led a reasonable commercial party to believe that the terms of the 6 December Fax were intended to be binding immediately and I find that reasonable commercial parties in the position of Mr Chambers and WRDE would not have understood themselves to be bound by either the document itself or its terms. Indeed, I am satisfied that the 6 December Fax was very different to the term sheet in *New Media Holding Co LLC v Kuznetsov* (above) where the right of redemption was expressed to arise at any time following the date of the term sheet: see [166].
244. I also attribute significant weight to the purpose for which Mr Goodwill provided the 6 December Fax to Mr Chambers and the way in which he described it to Mr Goodwill immediately after the meeting. In particular:
- (1) It is clear from Mr Chambers’ letter dated 29 November 1996 (and, therefore, sent the same day as the meeting) that he had asked Mr Goodwill to prepare a “skeleton outline” to enable him “to discuss the Skelton agreement” with Mr Doherty, his solicitor. Mr Chambers drew a distinction, therefore, between the document which Mr Goodwill had agreed to prepare and the contract to be finalised between solicitors. There is no suggestion that he treated the “skeleton outline” to be binding or expected Mr Goodwill to do so too.
 - (2) In his letter dated 6 December 1996 chasing Mr Goodwill, Mr Chambers described the anticipated document as “your notes regarding the Development Consultancy

Agreement as discussed on Wednesday”. Again, he drew a distinction between the document which he was expecting from Mr Goodwill and the consultancy agreement to be finalised between solicitors. Again, there is no suggestion that he treated Mr Goodwill’s “notes” to be binding or expected Mr Goodwill to do so too.

- (3) On the same day, and in response, Mr Goodwill sent the 6 December Fax directly to Mr Doherty “in connection with your meeting with Nigel Chambers this morning”. He did not ask Mr Doherty to take instructions and confirm that it accurately recorded the terms which had been agreed at the meeting on 29 November 1996 or to confirm that his client agreed to those terms. Again, there is nothing to suggest that Mr Goodwill treated the 6 December Fax as binding or as any more than an aide-memoire.
- (4) In his letter dated 9 December 1996 Mr Chambers described the 6 December Fax once he had seen it as “the outline” and “the draft outline” and he asked for copies of both the Tripartite Agreement and the Yorkshire Water Agreement to enable him “to draw up some Heads of Terms for your approval prior to instructing our solicitors”. By the time he had seen the 6 December Fax, therefore, he described it in almost exactly the same way as in his earlier letters. Furthermore, he now considered it necessary for the parties to enter into Heads of Terms before moving to instruct solicitors because there were further issues to be ironed out first.
- (5) Whether or not the board of WRDE approved the terms agreed between Mr Bell, Mr Goodwill and Mr Chambers at the board meeting on 11 December 1996 (and I consider this below), Mr Goodwill or the company secretary did not write to Mr Chambers immediately after the meeting to confirm that an agreement had been approved by the board of WRDE. If the parties had entered into a binding contract conditional only upon that approval, Mr Chambers would have chased for written confirmation that it had been approved and Mr Goodwill or the company secretary would have confirmed the position one way or the other.

245. In my judgment, the correspondence between the parties immediately before and after Mr Goodwill sent the 6 December Fax confirms that they did not intend either the oral agreement made on 29 November 1996 or the fax itself to be contractually binding. Indeed, the inference which I draw from his letter dated 9 December 1996 is that, having

compared his recollection and his own notes of the meeting with the 6 December Fax, Mr Chambers believed that there were a number of issues which needed to be resolved between principals before solicitors could be instructed to prepare a formal contract and that it would be necessary for them to agree Heads of Terms before they could do so.

(ii) The drafting process

246. On 1 October 1997 Mr Doherty sent the first draft of a consultancy agreement to Mr Goodwill and between that date and August 2002 the parties negotiated over its terms but without success. I will refer to this period and the negotiations between the parties as the “**drafting process**”. Two features of the drafting process stand out. First, it is striking that none of the documents to which I was taken by counsel or which were put to Mr Chambers or Mr Bell involved a statement or assertion that the parties had already entered into a contract by which they were bound. Secondly, it is striking that the parties negotiated for almost five years but were unable to reach agreement.
247. By themselves, these two features of the drafting process tend to confirm that the parties did not intend either the oral agreement made on 29 November 1996 or the 6 December Fax to be contractually binding. However, against these features I have to balance the fact that neither the parties nor their solicitors headed their correspondence “subject to contract”. Furthermore, the fact that Irwin Mitchell prepared draft Heads of Terms which were expressed to be “subject to contract” but did not send the document to Mr Goodwill or Walker Morris (or use the formula “subject to contract” on their correspondence more generally) is a point in Mr Chambers’ favour rather than against.
248. What I find most compelling about the drafting process and the evidence upon which I place most weight is Mr Chambers’ own approach to the process. The correspondence and the draft consultancy agreements provide clear evidence that Mr Chambers did not consider himself bound either by an oral agreement or by the terms of the 6 December Fax and wanted at various stages himself to depart from the terms which he now claims the parties were bound. For example:
- (1) In the Irwin Mitchell draft Mr Chambers attempted to incorporate the terms of the Tripartite Agreement by reference including the entirety of clause 15 which provided the mechanism for the determination of the overage payments, defined the “Calculation Date” and provided detailed definitions of “Development Costs”.

He also asked to extend the Calculation Date by 10 years. Irwin Mitchell also wanted to include a term which would enable Mr Chambers to register a restriction at the Land Registry giving him a right of veto over any potential sales.

- (2) It is entirely understandable why Mr Doherty adopted this device and it is clear why Mr Chambers wanted him to do so. He saw his role as an introducer as justifying the same or similar terms as the landowners themselves. But none of this was agreed at the meeting on 29 November 1996 or recorded in the 6 December Fax. Furthermore, Mr Chambers did not even obtain the agreement in principle of Mr Bell and Mr Goodwill that his consultancy agreement should incorporate or mirror the Tripartite Agreement.
- (3) In November 1999, and two years later in the process, Mr Chambers sought to persuade WRDE to enter into two separate agreements. It was clear from Irwin Mitchell's letter dated 13 December 1999 what motivated this request and Mr Banner explored this in cross-examination. The 6 December Fax had recorded that WRDE would have the right to terminate for material breach and Mr Chambers was concerned that there was a risk that he might lose the right to his profit share if he agreed to the detailed terms of the Walker Morris draft and then committed a material breach of them.
- (4) Mr Chambers accepted in answers to questions from me that he was now saying that the profit share would not come to an end even if he had committed a material breach of the consultancy agreement. He justified this on the basis that the terms which he was being asked to agree were very "onerous" and that the negotiations had "moved beyond" the 1996 Agreement. But he did not explain why he did not consider himself bound by the 6 December Fax or why he had to accept terms which were unreasonable or too onerous and had not been agreed at the meeting.

249. I find, therefore, that throughout the drafting process the parties negotiated with each other on the basis that they were not constrained or bound by an oral agreement made at the meeting on 29 November 1996 or by the terms of the 6 December Fax. Furthermore, I am satisfied that in doing so they were acting as reasonable, commercial parties. Both parties were advised by experienced, specialist solicitors who were attempting to achieve the best possible terms for their clients. If there had been a binding contract, their

solicitors would have approached the negotiation of the consultancy agreement in a very different manner.

(5) *Essential Terms*

250. It is tempting to draw the conclusion that there were a number of essential terms which the parties failed to agree on 29 November 1996 because they were unable to reduce that agreement to writing with the benefit of legal advice over a period of almost five years. In my judgment, however, it would not be appropriate to reach such a conclusion without examining the key terms themselves. It is not unusual for parties to reach a perfectly workable agreement only for their lawyers to try to improve on it unsuccessfully. I, therefore, consider whether there were any critical essential terms which the parties failed to consider or agree either at the meeting or in the 6 December Fax.

(i) Longstop date

251. The 6 December Fax recorded that Mr Chambers was not to be paid until WRDE achieved “overall profit” but neither the fax nor his note of the meeting recorded any discussion about when that right would crystallise or the profit and profit share were to be calculated. When he was cross-examined about his letter dated 11 July 1997 Mr Chambers gave evidence that the 1996 Agreement did not have an end date and lasted the whole life cycle of the development: see [74]. But from the first draft of the consultancy agreement he proposed that there should be a longstop date on which his profit share was to be calculated and he continued to press for a longstop date as far into the future as possible.

252. In particular, Mr Chambers originally proposed a longstop date of 30 April 2011 on the basis that the Calculation Date in the Tripartite Agreement should be extended by 10 years. WRDE accepted a long-stop date of 30 April 2011 in the Walker Morris draft. But Mr Chambers was still proposing a date of 30 April 2015 in the draft LOA which he sent to Mr Goodwill in November 2001.

253. In my judgment, it was essential for the parties to agree the Calculation Date for his profit share or the 1996 Agreement would have been unworkable for the reasons which I explore below. Furthermore, I am not satisfied that WRDE would ever have agreed to an open-ended agreement so that it remained liable to pay a profit share to Mr Chambers

even if he ceased to be involved with the development and both the UDP allocation and the outline planning permission which Mr Chambers assisted SBPL to obtain were never implemented (as is the position now).

254. Finally, I am not satisfied that Mr Chambers would ever have agreed to an open-ended agreement either and throughout the drafting process and at the meeting on 18 August 2005 he continued to press both for a Calculation Date and for interim payments. Indeed, if Mr Chambers' profit share did not crystallise and become payable until the very last plot of land on the Skelton Site was sold, WRDE could easily have avoided paying it at all by retaining a small parcel or strip of land and maintaining that until the parcel was sold its "overall profit" could not be calculated.

(ii) Overall profit

255. As stated, the 6 December Fax provided for no payment until WRDE "achieves overall profit". But there was no discussion or agreement about what that meant. In particular, the parties did not discuss how the agreement would operate if the Skelton Site was developed in a number of different phases or, indeed, if individual plot sales were staggered over time. In his letter dated 7 December 1999 Mr Doherty asserted that it had been agreed that Mr Chambers would be entitled to payments as and when parts of the site were sold or individual units let.
256. There was no suggestion that any such discussion took place on 29 November 1996 or that such an agreement was reached. Indeed, this is one of a number of examples of Mr Chambers trying to improve on what was said to him at a meeting and in response, Walker Morris stated that no such agreement had been reached and that Mr Chambers would be entitled to a single payment on the Calculation Date.
257. In my judgment, it was essential for the parties to agree detailed terms setting out when Mr Chambers' profit share would be payable and, in particular, whether it would be payable on the sale of individual phases or individual units (whether freehold or long leasehold) and, in the absence of agreement to such terms or to a Calculation Date, the agreement which was reached on 29 November 1996 was unworkable. This is illustrated by the following passage from Mr Chambers' cross-examination:

"Q. Why do you say you're entitled to all of the —10% of all of the

estimated profits from phases 1, 2 and 3 now, when those profits are necessarily off in the future? A. Well, phase 1 is complete. Phase 2, I assume, is in the process of achieving a profit, and phase 3 will come after. Q. Why are you entitled to 10% of everything now? A. Well, if we could have had a proper conversation, we could have structured a deal which reflects the phasing. Q. Why do you say you're entitled to 10% of everything now? A. Because, I mean, phase 3 will have a value now. It has planning permission. Q. So you say you're entitled to 10% of — A. Of the value of phase 3. Q. —(overspeaking) —in relation to phase 3, because it hasn't been sold? A. Yes, but it has a value as a result of planning permission. Q. And you say that value crystallises now, and you are entitled to 10% of —(overspeaking) —now? A. Yes, that value could be crystallised now. Q. Could be? A. Could be, yes. Q. And what if the profits from phases 1 or phase —has to be —sorry. What if the profits from phase 1 have to be put back in to finance phase 2 and the profits from phase 2 have to be put back in to finance phase 3, how does that affect your calculation? A. Well, I have not been provided with financial information from your clients, but based on my experience, given that phase 1 has been sold and phase 2 is in the process of being sold, very shortly a profit will be realised, an overall profit. Q. And what about phase 3? A. And then phase 3 will follow on from there. Q. And what if phase 3 requires financing through some of the profits from phase 1 and 2? A. I would assume if you did a calculation, there would be a profit from phases 1 and 2, even with putting infrastructure in phase 3. Q. You would assume that? A. I'd assume that based upon discussions your clients had with Homes England, who provided loans.”

258. The terms set out in the 6 December Fax or in Mr Chambers’ meeting notes do not provide the answers to any of the questions which Mr Banner put to Mr Chambers and, in my judgment, he had no convincing answers to any of them. It is particularly striking that he argued that the profit on Phase 3 had crystallised and that SBPL had achieved an overall profit from the Skelton Site even though earlier in his cross-examination he argued that the agreement was open-ended.

(iii) Development costs

259. Similar issues arise in relation to costs. The 6 December Fax stated that Mr Chambers would be entitled to a 10% profit share “after all relevant costs and any profit share payments to British Coal and Yorkshire Water Estates” but it did not define what costs were relevant for this purpose and should be deducted from profits. The Tripartite Agreement contained a very detailed definition of “Development Costs” and it is unsurprising that Mr Doherty wanted to incorporate it into the Irwin Mitchell draft of the

consultancy agreement. But this definition was never agreed. Furthermore, at the meeting on 18 August 2005 Mr Bell rejected out of hand Mr Chambers' attempt to incorporate the terms of the Tripartite Agreement again.

260. In my judgment, it was also essential for the parties to agree a detailed definition of "all relevant costs" before the agreement for the payment of Mr Chambers' profit share could take effect. It may well be that both parties intended to use the definition in the Tripartite Agreement but Mr Chambers strongly resisted the Defendant's case that the Calculation Date from the Tripartite Agreement should be implied into the 1996 Agreement. In my judgment, without such a definition it was not possible to give practical effect to the agreement. Again, I give a simple example which arose during the drafting process. In the Irwin Mitchell draft and in order to maximise the potential profit, Mr Chambers tried to extend the definition of "Development Costs" in the Tripartite Agreement to include "third party grants and contributions are taken into account (notably any contribution from Swayfields)." It would have been impossible to resolve this issue without a definition of "all relevant costs" at all.

(iv) Services

261. In a conventional contract for the engagement of a professional adviser, e.g. a solicitor, it would not normally be essential to describe in great detail the services which the professional is required to perform or, indeed, to incorporate terms which might otherwise be implied as a matter of law, e.g., a duty to exercise reasonable care. Few engagement letters spell out the precise scope or length of the retainer because its scope will be the subject matter of detailed discussion between client and professional and may well evolve over time. Furthermore, it is not essential to agree the time period of the retainer because it will usually be terminable by the client for cause or on reasonable notice.
262. The present case is not a conventional one, however. The Walker Morris draft contained an unusual remuneration structure but otherwise standard terms for a professional retainer including duties to give priority to the services, to devote sufficient time to them, to keep records, a duty of care and a duty of confidentiality. Mr Chambers considered these terms onerous and was not prepared to agree to them unless two separate agreements were drawn up: one for the provision of services and one for the profit share.

His reason, as he explained, was that he was not prepared to take the risk that WRDE might terminate the entire agreement for a material breach of any of these obligations.

263. It is clear that there was a significant difference between the parties' expectations following the meeting on 29 November 1996. Mr Goodwill and Mr Bell understood that they had agreed a contract for services with Mr Chambers and instructed Walker Morris on that basis. By contrast, he understood that he was being remunerated first and foremost for introducing the Skelton Site to WRDE and his "input" up to the UDP allocation and outline planning permission was almost an afterthought. Indeed, he was not even prepared to accept that he owed a duty to maintain professional standards at all: see [83]. He made this point a number of times in his evidence including in the following passage towards the end:

"Q. Your case is that Templegate has now obtained residential planning permission for all of the mushroom, and you claim a profit share from the profits from the current residential development. That's correct, is it? A. On the whole site. Q. On the whole site? A. On the whole site, which I introduced to your clients in 1994, and they acquired in the tripartite agreement. Q. So you're claiming a profit share because you made an introduction in 1994? A. Because I put the concept to the joint venture company at that point in time, and I also have an involvement on the housing, reserved land, and the lagoons. Q. Okay."

264. In my judgment, it was essential for the parties to agree the specific services which Mr Chambers was to provide, the time period for which he would be required to do so and the terms governing the performance of those obligations, e.g. how much time Mr Chambers was to devote to these services before the profit share agreement could take effect. It was essential to agree those terms because WRDE's right to terminate the agreement depended on them as Mr Chambers himself recognised.

(6) *Conclusions*

(i) Contractual formation

265. I have found that on 29 November 1996 Mr Bell and Mr Goodwill agreed with Mr Chambers that he would receive 10% of the net profit earned by WRDE on the sale of (i) serviced land, (ii) unserviced land and (iii) the site value of developed land and that this agreement would be the subject matter of a legal contract to be drawn up and executed

by the parties. I am not satisfied, however, that at that meeting the parties agreed the core services which Mr Chambers would provide or the duration of that obligation.

266. I have found that reasonable, commercial parties would not have expected or intended themselves to be bound by the 6 December Fax or its terms and that this is confirmed by the correspondence between 29 November 1996 and 9 December 1996. I have also held that throughout the drafting process the parties negotiated with each other on the basis that they were not constrained or bound by an oral agreement made at the meeting on 29 November 1996 or by the terms of the 6 December Fax and that in doing so they were acting as reasonable, commercial parties. Finally, I have found that there were a number of essential terms which had to be agreed before reasonable, commercial parties would have expected to be bound or which had to be agreed before the profit share agreement was workable at all.
267. Having reviewed the evidence for the entire period from 29 November 1996 until August 2002 when Mr Bell instructed Mr Goodwill to cease negotiations over the terms of the consultancy agreement, I am satisfied on a balance of probabilities that the parties did not intend to be contractually bound by the profit share agreement until or unless they had negotiated, agreed and entered into a formal agreement (which they never did).
268. Finally, I make it clear that in reaching these conclusions I have taken into account WRDE's internal documents upon which Mr Blaker and Mr Kelly relied and, in particular, the draft minutes of the board meeting on 11 December 1996, the documents relating to the negotiation and agreement of the Shareholders Agreement and the financial models and the emails which accompanied them. In my judgment, those documents were not relevant or admissible on the question whether a binding agreement came into existence and had very limited weight in relation to the question of what was said and agreed at the meeting on 29 November 1996.
269. I consider the draft minutes again when I address the authority of Mr Bell and Mr Goodwill. The Shareholders Agreement itself was of very little weight because it did no more than permit SBPL to enter into an agreement with Mr Chambers if it agreed to do so. I derive little assistance from the fact that SBPL was advised to include such a term (other than that it was sensibly advised at the time). As for the other documents and, in particular, Mr Bell's annotation to the draft agreement, I attribute little weight to it for

the reasons which Mr Bell gave in evidence. In assessing the weight to be attributed to all of these documents, I have kept in mind the third observation of Popplewell LJ in *DAZN v Coupang* (above) at [10]. This observation is all the more important to keep in mind when the communications upon which reliance is placed do not cross the line and pass between the parties.

(ii) Certainty of terms

270. If I had found that the parties intended to be contractually bound by the terms agreed at the meeting on 29 November 1996 or as set out in the 6 December Fax, I would have been extremely reluctant to find that it was void for uncertainty. However, with some hesitation, I find in the alternative that the agreement is too uncertain and unworkable to be enforceable and I hold that it is void for uncertainty. In particular, I find that in the absence of an agreed Calculation Date, there is no certainty about when Mr Chambers' profit share crystallises or accrues due and that the terms "overall profit" and "all relevant costs" are too uncertain to be applied to the Skelton Site as it is now configured.
271. I might have been prepared to accept that the agreement was sufficiently certain to enforce Mr Chambers' right to a profit share on the sales of (i) serviced and (ii) unserviced land. Contrary to the position which Mr Chambers adopted in his evidence, I might even have been prepared to accept that the agreement was sufficiently certain if "overall profit" was construed as the overall profit on the final sale of the final plot on all three phases of land and that this met Mr Banner's point about the re-investment of the profits of Phase 1 into Phase 2 and Phase 3. But even so, I consider the agreement to be too uncertain to enforce in relation to category (iii) the site value of land which SBPL has itself developed and sold. Even if Mr Chambers' right to a profit share does not arise until the very last plot of land is sold, it is impossible to enforce the agreement without a clear definition of relevant costs as in the Tripartite Agreement.

(iii) Intention to create legal relations

272. I have found that when analysed objectively and from the point of view of reasonable, commercial parties, there was no intention to enter into a binding contract until WRDE and Mr Chambers had negotiated, finalised and entered into a detailed consultancy agreement. In that sense, therefore, the parties did not intend to create legal relations on 29 November 1996 or 6 December 1996. I have also held that a number of essential terms

were not addressed or agreed at the meeting and in the fax. In my judgment, the vagueness of the agreement and failure to agree those terms also negatives contractual intention: see *Chitty* (above) at 4—227.

273. However, if I had found that the parties intended to enter into a binding contract on either of those dates and that it was sufficiently certain to be enforced, I would not have held that the Defendant had discharged the burden of proving that the parties did not intend to create a legal relationship. This case does not fall into any of the recognised categories and *LNT Aviation Ltd v Airbus Helicopters Ltd* (above) is distinguishable because it involved an agreement which the parties entered into as a matter of goodwill only.

O. The 18 August 2005 Meeting

(1) The Statements of Case

274. Mr Chambers' pleaded case was that it was agreed at the meeting on 18 August 2005 that the 6 December Fax (or the agreement which it evidenced) would form a binding contract between SBPL and himself. He also pleaded that Mr Bell had authority or held himself out as having authority to reach agreement with him. The Amended Particulars of Claim set out his case as to what was decided as follows:

“46. A meeting took place on 18 August 2005 at the offices of Evans Property Group in Leeds. The meeting was attended by Nigel Chambers and John Bell in his capacity as a senior director of SBPL.

47. Nigel Chambers took a near contemporaneous note of the meeting. John Bell explained that he was not happy with the draft consultancy agreement prepared by Irwin Mitchell.

48. John Bell wanted to know more about how far the parties had developed a new written agreement since the 1996 Agreement. It was explained that there had been a number of different drafts but nothing had been agreed.

49. John Bell said that the parties should “stick with the existing arrangements”. He saw “no material advantage in preparing or drafting anything else” and he said that he was happy to accept the “ambiguity of the original terms set down by Geoff in 1996.”

50. Further, John Bell said that SBPL would “look after [Nigel Chambers'] interests in the scheme” and that he “would do very well. It was agreed at the said meeting that the terms of the 1996 Agreement would continue to apply. John Bell had authority and/or held himself out as having the authority of the Defendant to be able to reach agreement with Nigel Chambers.

51. It was agreed at the time by the parties that the 1996 Agreement would form a binding contract between SBPL and Nigel Chambers and that no further efforts would be made to try and replace it or amend it.

52. Nigel Chambers was satisfied that a contract had been formed between himself and SBPL. As a result of the agreement there was no further correspondence on the point for a further seven years.”

275. The Defendant denied Mr Bell’s description as a senior director of Evans and the accuracy of Mr Chambers’ typed note of the meeting but otherwise admitted paragraphs 46 to 48: see the Amended Defence, paragraphs 65 to 68. Its case as to the substance of the meeting was as follows:

“Paragraphs 49-52 are denied. Mr Bell has a limited recollection of this meeting (which again took place nearly twenty years ago) but insofar as he does recall it he remembers that he expressed his irritation with the draft consultancy agreement, and made it clear that an agreement in such terms would never be agreed by the Defendant. Mr Chambers did not dispute this and thereafter Mr Chambers was seemingly content not to raise the issue further. Mr Bell anticipated, although this did not in the event materialise, that Mr Chambers would henceforth raise invoices for his services to the Defendant. Further (as pleaded above) (i) it is evident from the terms of the December 2006 Fax that no binding agreement was concluded between Mr Bell and Mr Chambers in 2005; (ii) Mr Bell did not have the requisite authority (either actual or ostensible) to make any representations of the kind now asserted by Mr Chambers, and was therefore inherently unlikely to have done so or to have held himself out as having any authority to do so, and (iii) it is denied that the terms of December 1996 Fax were sufficiently certain to constitute a binding agreement in any event.”

(2) *Background*

276. My findings of fact and legal conclusions in relation to the 1996 Agreement form an important part of the background to the meeting between Mr Chambers and Mr Bell on 18 August 2005. It is far less likely that reasonable commercial parties would have expected and intended to be bound by the 6 December Fax if WRDE and Mr Chambers had not agreed to be bound in the first place. Nevertheless, it does not follow that because there was no binding contract before that meeting that Mr Bell did not agree to bind SBPL to the terms of the 6 December Fax and I must go on and consider all of the relevant evidence in relation to that meeting.

(i) Mr Chambers’ typed notes

277. In order to determine whether the parties entered into a binding contract on 18 August 2005 one critical issue which I have to decide is whether to accept that Mr Chambers' notes of the meetings on 13 May 2005 and 18 August 2005 are a complete and accurate record of what was said on each occasion. It is common ground that Mr Chambers made manuscript notes at the meeting and then prepared the typed notes after the meeting. His pleaded case was that the typed notes were "near contemporaneous" but he did not retain the manuscript notes to enable the Court to compare them.
278. Mr Chambers gave evidence that he typed up the notes within about 24 hours of each meeting and I accept this. I also accept that when he typed up his notes, he had a clear recollection of the meeting. But I do not accept that he would have been able to remember word for word what he said to Mr Bell or Mr Bell said to him unless he had made a written record in manuscript at the time. Mr Chambers also gave evidence that where he put words in inverted commas, those were the exact words which either Mr Bell or he used. When I asked him to explain the status of the other words which he used, he accepted that he had not recorded verbatim what was said or taken the description from his notes but described them as "the principal matters we discussed".
279. I accept that the words which Mr Chambers put in speech marks or inverted commas in his typed notes of both meetings appeared in his manuscript notes and I find on a balance of probabilities that those words were spoken either by Mr Chambers or Mr Bell at the meetings. But I am not satisfied that the remainder of Mr Chambers' notes of 13 May 2005 and 18 August 2005 are an accurate record of what was precisely said at either meeting and I treat the remainder of each note as setting out the gist or, as Mr Chambers put it, the principal matters discussed. I have reached this conclusion for the following reasons:
- (1) Both notes are unusual for both their formality and their detail. During the course of the trial, I was taken to a number of handwritten notes of meetings made by Mr Chambers and none of them is as detailed as the two typed notes. Mr Chambers rarely used complete sentences and often recorded the matters discussed by a single word or phrase. However, his notes consist of complete sentences and paragraphs.
 - (2) Most of that detail is not in inverted commas and which Mr Chambers supplied after the event. For example, paragraph [6] of the note of the 18 August 2005

meeting is decidedly odd because the only word in inverted commas is “might” in a three line sentence of 28 words. If Mr Chambers only wrote down that word, then he reconstructed all but one word of that paragraph. He may have done so a day or so later. But it does prompt the question why he added all the additional detail.

- (3) Further, the single most important sentence in both meeting notes was without doubt the last sentence of paragraph [4] of the note of the meeting on 18 August 2005. That sentence begins with the three words: “Accordingly, both parties...”. That sentence would not look out of place in a pleading but it is impossible to imagine either Mr Bell or Mr Chambers using those words at the meeting. Furthermore, the word “Accordingly” suggests that the words in the remainder of the sentence were not spoken and that the sentence recorded an inference drawn by the listener. Indeed, when Mr Banner pressed him on this sentence, Mr Chambers accepted that Mr Bell did not use those words.
- (4) Both notes have a noticeable self-serving tone. For example, in the second and third paragraphs of the note of the meeting on 13 May 2005 Mr Chambers added the words “agreed profit share arrangement” and “existing profit share arrangement” and in the fourth paragraph he added the words “prior to the profit share” at the end of the paragraph. Mr Chambers clearly wanted to mention this as often as possible in the note.
- (5) Mr Chambers gave evidence that he made typed notes on the advice of Mr Goodwill who told him that “Mr Bell was a particular individual” and to take detailed notes to ensure that everything was “copper-bottomed”. The inference which I draw is that Mr Goodwill (who would have been aware that Mr Bell rarely took notes or sent emails to record meetings in his busy day) advised Mr Chambers to ensure that he have detailed notes available in case there was a dispute. Mr Chambers clearly took that advice.
- (6) Finally, as I have found, Mr Chambers had a tendency to try to improve on what was said or agreed at meetings or on the telephone in subsequent correspondence even when he was writing to WRDE or SBPL within a matter of days. I have given examples in assessing the general credibility of his evidence above. In my judgment, he tried to improve on what Mr Bell said to him at both meetings in case

it was necessary to rely on those notes later. Mr Chambers may not yet have had litigation in view. But I am satisfied that he understood the benefit of having detailed notes of both meetings.

(ii) Mr Chambers' services

280. I have held that Mr Goodwill's email dated 12 May 2005 set out accurately the five workstreams in which Mr Chambers was involved by the summer of 2005 and that those workstreams did not involve him carrying out the core services identified in the 6 December Fax. Finally, I have held that there was a clear difference of opinion between Mr Chambers and Mr Bell about the value of Mr Chambers' services. Mr Chambers thought he was entitled to a profit share because he introduced the concept of development to WRDE and Mr Bell did not believe that the work which he was carrying out justified any kind of profit share. Although I refer here to the subjective views of both witnesses, it is an important part of the background to the meeting on 18 August 2005 that after the departure of Mr Goodwill there was no shared understanding that Mr Chambers was entitled to a profit share.

(iii) The August 2002 oral discussion

281. I am prepared to accept that in August 2002 Mr Goodwill and Mr Chambers had a conversation in which Mr Goodwill told Mr Chambers that Mr Bell had instructed him to discontinue the negotiations for a consultancy agreement. This is unsurprising given that the parties had been unable to agree terms for over five years. I reject Mr Goodwill's evidence, however, that Mr Bell told him to inform Mr Chambers that he could rely on the 6 December Fax or treat it as binding or that Mr Goodwill also made such a representation to Mr Chambers.
282. It is inherently improbable that Mr Chambers could recall clearly a single telephone call which took place 24 years ago and which was undocumented either at the time or since. It is even less likely that Mr Goodwill would also have an independent recollection of his own discussion with Mr Bell. It was obvious that Mr Chambers and Mr Goodwill had discussed their evidence on this issue together and, in my judgment, this is another example of Mr Chambers trying to improve on his evidence to explain why he made no attempt to assert that the 6 December Fax was a binding contract between November 2001 and Mr Goodwill's departure in 2005.

(2) *What was said on 13 May 2005?*

283. I find that at the meeting on 13 May 2005 Mr Bell informed Mr Chambers that Mr Goodwill was leaving SBPL on 31 May 2005 and that Mr Bell and he discussed both Mr Chambers' current tasks and also potential tasks in the absence of Mr Robertson. Although Mr Bell could not recall saying so, I find that he used the words "last push" and that he did so in the context of the title issues with which Mr Chambers was dealing. The obvious inference to draw (and the one which I draw) is that Mr Bell told Mr Chambers that the next 3 to 6 months would be the "last push" for Mr Chambers to complete his tasks on behalf of SBPL.
284. I also find Mr Chambers proposed and Mr Bell agreed that Mr Chambers would produce a further draft of the consultancy agreement limited to four or five pages and that Mr Bell used the phrase "to give the agreement definition" or something very similar. Mr Bell did not accept that he used those words but his recollection was that he asked Mr Chambers to present him with a consultancy agreement which reflected a more traditional consultancy role. I accept that evidence and I find that Mr Bell used the words "to give the agreement definition" in that context.
285. Finally, I accept that Mr Chambers asked Mr Bell about expanding his future role and Mr Bell agreed that he was prepared to consider it. He accepted in cross-examination that he was prepared to agree to a traditional consultancy agreement with an enlarged role. I do not accept that Mr Bell volunteered that if Mr Chambers' existing and proposed tasks became "too time consuming" then he would be willing to look at some form of short term income. I am prepared to accept that either Mr Bell or Mr Chambers used the word "time-consuming" and he wrote it down. But it is difficult to be certain about the context.
286. Finally, I accept that the three action points at the end of the note are broadly speaking accurate and that they were agreed once Mr Robertson had returned to the room. To this extent, therefore, I accept that Mr Chambers' typed note of the meeting is accurate but not otherwise. I also agree with Mr Bell that it would have made no sense for him to agree to make interim payments as well as 10% profit share.

(3) *What was said on 18 August 2005?*

287. *Paragraph [1]*: I am satisfied that [1] is accurate. Mr Bell could remember saying the

first sentence and although he did not necessarily accept that he used the words “slightly offended” he accepted that the gist of the paragraph was accurate. I also accept Mr Bell’s evidence that the reason why he so strongly objected to the provision which permitted Mr Chambers to register a restriction was because it was not the kind of term which would be expected in a traditional consultancy agreement.

288. *Paragraph [2]*: Mr Bell did not accept that he asked the question in [2] but I am satisfied that Mr Chambers and he must have had a brief discussion to recap on the drafting process (as I have described it above). I accept, therefore, that, however the point arose, Mr Chambers told Mr Bell that a number of drafts had been prepared over the years but nothing acceptable to both parties had been agreed.
289. *Paragraph [3]*: I find on a balance of probabilities that Mr Bell used the expressions “stick with the existing arrangements” and the phrase “ambiguity of the original terms set down by Geoff in 1996” and that he said that he saw “no material advantage in preparing or drafting anything else.” Mr Chambers recorded him using all of these phrases and although he initially stated in evidence that he had not used those words, he did accept that he might have done in his witness statement and explained what he meant by them in cross-examination.
290. *Paragraph [4]*: I find on a balance of probabilities that Mr Bell also told Mr Chambers that SBPL would look after his interests in the scheme and that Mr Bell confirmed that he would “do very well”. I also find that he said that as Mr Chambers got to know Evans better, he would become more comfortable with the company. Mr Bell accepted that he said or conveyed this to Mr Chambers. Finally, I accept that there was some discussion about legal fees as set out in the third sentence of [4] and that Mr Chambers indicated that he did not wish to incur more legal fees.
291. However, I do not accept that the last sentence of [4] is accurate or that either of the parties stated: “Accordingly, both parties confirmed that the terms from December 1996 should stand as the agreement between the parties.” Mr Bell gave evidence that he did not believe that this was said and Mr Chambers accepted that it was not said either. He accepted in cross-examination that: “Yes, that was just, yes, where we said to each other “Yes Okay then, we will stake [sic] with those existing arrangements. That will be the arrangement between us.”

292. I find that the parties did not confirm that the 6 December Fax would stand as the agreement between them. In my judgment, this was a clear attempt by Mr Chambers to improve on what had been agreed orally at the meeting and what they said to each other was that they would “stick with the existing arrangements” as Mr Chambers had recorded in the first sentence of [3].
293. *Paragraphs [5] to [7]:* I accept that these three paragraphs set out a number of the principal matters which were discussed at the meeting. I find that Mr Chambers and Mr Bell discussed “built development”, the payment of fees to Mr Chambers and a project management role. Mr Bell accepted at least twice in cross-examination that he told Mr Chambers that he was prepared to consider enlarging Mr Chambers’ role in the context of development. He also accepted that he considered that Mr Chambers ought to be paid for his work by agreement if he submitted invoices and agreed to a conventional fee structure. I accept that evidence all of which is consistent with the gist of Mr Chambers’ note. However, I do not accept that Mr Bell told Mr Chambers that SBPL had limited manpower for the reasons which he gave in evidence. I accept that what Mr Bell told Mr Chambers was that SBPL would consider enlarging his role if it needed outside assistance.
294. In making these findings of fact I have taken into account Mr Bell’s email dated 24 August 2005 and I have asked myself whether it supports a finding of fact that Mr Bell agreed with Mr Chambers that the 6 December Fax “should stand as the agreement between the parties”. In my judgment, that email is consistent with the findings which I have just made. Mr Bell used the expression “existing agreement” twice in the first paragraph of his email whereas Mr Chambers referred to “existing arrangements” in his typed note and used the same word in cross-examination. Both clearly had the same conversation in mind and, bearing in mind the guidance given in *DAZN v Coupang*, I see no real distinction between them. The critical issue is what both witnesses meant by “the existing arrangements” and I return to this below.
295. In the light of the individual findings which I have made, I find as a fact that the parties did not expressly agree either that the terms of the 6 December Fax (or the agreement which it evidenced) would continue to apply or that those terms would form a binding contract between them. Nevertheless, I must go on and consider what Mr Bell represented to Mr Chambers by using the expression “stick with the existing arrangements” and what

Mr Chambers understood by that phrase.

(4) *“Stick with the existing arrangements”*

296. Mr Bell’s evidence in his witness statement was that he gave Mr Chambers a choice between the existing arrangements which were ambiguous and uncertain or that he could achieve certainty by agreeing to be paid on a traditional consultancy basis. In cross-examination he amplified this. His evidence was that he may have said: “If we don’t agree, then we are going to go with the existing arrangements, which involves dispute and quantum meruit”.

297. Mr Chambers accepted that Mr Bell said that the terms of the 6 December Fax were ambiguous. He was only prepared to accept, however, that he agreed to accept “a small degree of ambiguity” and he insisted that the ambiguity related only to “built development”. But he also accepted that if there were problems, the parties would try and sort them out later and that: “it was better to accept a small degree of ambiguity on the agreement which we already had”.

298. There was no difference between the evidence of the two witnesses in relation to the meaning of the words “existing arrangements”. I am satisfied that Mr Bell was referring to the terms of the 6 December Fax as the “existing arrangements” and that Mr Chambers understood the phrase in this way. In my judgment, the real issue between the two witnesses was what Mr Bell meant by the words “stick with”. His evidence was that he meant “live with” whereas Mr Chambers’ evidence was that Mr Bell meant (and he understood Mr Bell to mean) “accept as binding”.

299. I remind myself that this issue has to be resolved objectively and not by reference to what Mr Bell subjectively thought he meant or what Mr Chambers subjectively understood him to mean. In my judgment, when viewed objectively, Mr Bell represented to Mr Chambers and he agreed that they would live with the terms set out in the 6 December Fax and not that they would accept those terms as binding. I make this finding for the following reasons:

- (1) At the meeting on 13 May 2005 Mr Bell gave Mr Chambers the opportunity to put forward a simple consultancy agreement and he chose to revert to the Irwin Mitchell draft which was completely unacceptable to Mr Bell. The parties also

discussed the unsuccessful attempts to agree a consultancy agreement from 1996 onwards. Mr Bell's representation that they would "stick with" the existing arrangements must be understood in the context that the parties had been unable to agree terms for over eight years.

- (2) After using the phrase "stick with the existing arrangements" Mr Bell pointed out immediately that the terms of those arrangement were ambiguous. He would hardly have done so if he considered it binding. By doing so, he was drawing attention to the obvious risk that it might give rise to a dispute (as indeed it has done) and that a Court might not find that it was not binding (as indeed I have done).
- (3) Mr Bell then said that there was "no material advantage in preparing or drafting anything else". In my judgment, the obvious and natural meaning of those words was that there was no point in trying going through the drafting process again given the history of unsuccessful negotiations (which Mr Chambers and he had just discussed). In substance, Mr Bell was telling Mr Chambers that he would have to live with the risks associated with the 6 December Fax not that it was binding.
- (4) Mr Bell then assured Mr Chambers that he would look after his interests and that he would "do very well". It would have been unnecessary for Mr Bell to give general assurances of this kind if he had just accepted that the 6 December Fax was binding and I accept his evidence about what he was intending to convey to Mr Chambers: see [121] and [122]. I also accept that viewed in context and objectively this is what a reasonable, commercial party would have understood.
- (5) It is unnecessary for me to decide whether the parties went on to discuss the calculation of profits from unserviced and serviced land sales or from "built development" although I consider it highly unlikely. I do so because there is no suggestion that either Mr Bell or Mr Chambers brought a copy of the 6 December Fax to the meeting on 18 August 2005 and it is difficult to see how they could have had a meaningful discussion about its precise terms without having it in front of them.
- (6) But even if Mr Chambers' note is accurate, then the parties were doing no more than discussing a real problem about the enforcement of the terms in the 6 December Fax. I have held that it was void for uncertainty precisely because it is

impossible to calculate the profits on “built development” without a detailed definition of development costs.

300. Accordingly, I dismiss the allegation in the second sentence of paragraph 50 of the Amended Particulars of Claim that it was agreed at the meeting on 18 August 2005 that the terms set out in the 6 December Fax would continue to apply. I also dismiss the allegation in paragraph 51 that it was agreed by both parties that the 6 December Fax (or the agreement which it evidenced) would form a binding contract between SBPL and Mr Chambers.

(5) *The Subsequent Correspondence*

301. I can deal with the subsequent correspondence very briefly. Between 2005 and 2012 (when Mr Bell retired) the 6 December Fax was only mentioned once in correspondence, namely, in the fax dated 4 December 2006. Mr Chambers described it as the “Heads of Terms for my Consultancy Agreement”. He did not refer to the meeting on 18 August 2005 or state that Mr Bell had represented or agreed that the 6 December Fax was binding, or that he had relied on such a representation or agreement or even assert that it was binding. Further, there was no reply from Mr Helliwell in evidence acknowledging that it was binding and Mr Chambers could not recall one.

302. Parties are, of course, free to agree that a term sheet or heads of terms take effect immediately as a binding contract but there was no evidence before me that such a practice had been adopted in the past by these parties. Moreover, Mr Chambers gave no evidence that he understood “Heads of Terms” to be binding and on each of the occasions in which he used that expression, he anticipated that the Heads of Terms would be followed by a formal contract drawn up by solicitors: see, e.g., his letters dated 30 January 1997 and 8 March 1997.

303. The only other document to which Mr Chambers could point before Mr Bell’s retirement was an email dated 9 February 2012 from Mr Clement. However, Mr Clement did not mention the 6 December Fax and I do not accept that he was referring to it when he described Mr Chambers’ “ongoing interest” in the Skelton Site. It was clutching at straws to refer to this as a reference to the 6 December Fax and Mr Chambers did not refer to it himself in his reply dated 19 February 2012 or to the meeting on 18 August 2005, or state that he had relied on any agreement or representation which Mr Bell had made at that

meeting.

304. Mr Chambers referred to the 6 December Fax in a number of emails between 7 December 2013 and 8 April 2016 but, subject to one exception, he did not refer to the meeting on 18 August 2005 or state that he had relied on any agreement or representation which Mr Bell had made at it. Nor did SBPL accept or acknowledge that the 6 December Fax was binding. The one document in which Mr Chambers mentioned the meeting on 18 August 2005 was his email dated 11 February 2016.
305. In the last sentence of the first paragraph Mr Chambers stated that Mr Bell gave him his “personal assurance that the joint venture company would look after my interests in the scheme based on those existing arrangements”. However, he did not produce a copy of his note of the meeting or assert that at the meeting both parties confirmed that the terms from 6 December 1996 should stand as the agreement between them. Nor did he assert that he had relied on such an agreement in any way. Mr Chambers could not explain why he did not produce the note.
306. Finally, Mr Chambers relied on his conversation with Mr Pitt on 17 March 2014 and his subsequent email dated 20 March 2014. It is clear from Mr Chambers’ own note of the conversation that Mr Pitt did not accept that the 6 December Fax was a binding contract or suggest that Mr Bell had done so. Nor did he say that the board of SBPL was fully aware of “our 1996 agreement” or that it had been raised at board meetings. Mr Chambers had to accept that Mr Pitt had made no mention of board meetings and, in my judgment, this was another example of Mr Chambers trying to improve on what a senior executive of SBPL had said to him orally when he came to record it in correspondence only a few days later.
307. In my judgment, the correspondence between the parties between 2005 and 2016 provides no evidence that on 18 August 2005 the parties agreed to be bound by the terms of the 6 December Fax. I find that following that meeting reasonable commercial parties would not have understood or intended themselves to be bound by either the document itself or its terms and that SBPL did not encourage Mr Chambers to believe that the terms of the 6 December Fax were binding in any of the correspondence after 18 August 2005.
308. I also find that in the subsequent correspondence Mr Chambers did not rely on any representation by Mr Bell at the meeting on 18 August 2005 that the 6 December Fax

would form a binding contract between SBPL and himself or that a contract had been formed between them. Mr Chambers made no mention of the meeting on 18 August 2005 in correspondence from the date of that meeting until his email dated 11 February 2016. Furthermore, it is striking that he did not refer to the last sentence of paragraph [4] of his note of the meeting or suggest that he had relied on any confirmation by Mr Bell that the 6 December Fax should stand as the agreement between the parties.

309. Finally, I have rejected Mr Chambers' evidence in his witness statement that after 18 August 2005 Mr Bell gave instructions for him to take a more extensive role and that he did so in the belief that he was continuing to fulfil the obligations in the 6 December Fax. There was no suggestion that Mr Bell gave such instructions or that they were communicated to Mr Chambers or that he relied upon them in any of the subsequent correspondence.

(6) *Mr Chambers' services*

310. Before reaching a final conclusion on whether there was a binding contract, I must balance the findings which I have made about the meeting on 29 November 1996, the 6 December Fax and the meeting on 18 August 2005 and the subsequent correspondence, against Mr Chambers' evidence that he continued to provide his services to WRDE and then SBPL from 1996 to at least 2009.

311. The parties agreed before trial that they would invite the Court to accept that Mr Chambers undertook some work in relation to the Skelton Site and that the task of identifying precisely what each piece of work was, its duration and value were matters for a quantum enquiry. Nevertheless, it was necessary for me to form some preliminary views about the importance of that work and a sense of its value for the purpose both of assessing whether there was a binding contract and also for determining the basis on which Mr Chambers was entitled to be remunerated if his unjust enrichment claim succeeded. For the reasons which I have set out above I attach limited weight to the evidence which Mr Chambers gave about the services which he provided to SBPL between 2005 and 2009. In my judgment, the appropriate course is to test my findings on the contractual issues by reference to a worked example. I also make it clear that it will be open to Mr Chambers to prove the quantum of his claim by direct evidence in the normal way (if the issue arises).

312. For present purposes, I am prepared to assume that from 1996 to 2009 Mr Chambers devoted a significant amount of his professional time and resources to the Skelton Site. Between 1994 and 1996 Mr Chambers was paid £30,000 and Mr Goodwill agreed to pay him a further £20,000 (which he agreed to forego for a profit share). It follows that WRDE paid him (or agreed to pay him) £25,000 per year. For present purposes, and doing the best I can, I am prepared to assume in Mr Chambers' favour that he devoted at least as much of his professional time between 1996 and 2009 as he had done between 1994 and 1996 and on this basis WRDE and SBPL would have paid him £350,000.
313. The Bank of England's inflation calculator states that there has been a change in the value of goods and services of 103% since 1996 and 16.2% since 2009. The average increase in the value of goods and services between 1996 and 2009 is, therefore, 60% and the value of the £350,000, if paid to Mr Chambers between 1996 and 2009, would be worth £560,000 in December 2025. The question which I have to ask myself is whether Mr Chambers would have devoted his professional time and provided services which were worth £560,000 to SBPL (at today's prices) if there had not been a binding contract in existence during that period.
314. This is a very substantial sum but after careful consideration I have reached the conclusion there is no inconsistency between the findings which I have made and the time and professional services which Mr Chambers devoted to the Skelton Site. From the very outset Mr Chambers was determined to try and persuade WRDE to agree to grant him first an equity stake, and then a profit share in the Skelton Site. Furthermore, Mr Bell made it clear to him at the meeting on 18 August 2005 that SBPL would pay for his services if he would agree to accept a conventional consultancy fee. Finally, I have no doubt that after 1996 Mr Goodwill would have agreed to pay Mr Chambers for his continuing services if he had charged for his time on a conventional basis.
315. This is not a case, therefore, where one party has provided services and the other has refused to pay for them. It is a case where the parties could not agree about the basis on which the professional was to be paid and remained at odds over that issue whilst he continued to perform them. The inference which I draw is that Mr Chambers was prepared to take the risk that WRDE and then SBPL would have no obligation to pay for his services if no binding contract for a profit share materialised. Indeed, in 2009 he continued to volunteer his services to Mr Pitt many times even though he had had no

dialogue with SBPL since the meeting on 11 August 2005 and Mr Helliwell had not replied to his fax dated 6 December 2006.

VI. The Estoppel Claim

(1) The Statements of Case

316. Mr Chambers alleged that SBPL made two representations or series of representations to him. First, he alleged that since 2001 SBPL had represented to him “that he was to continue working for SBPL” and, secondly, he relied on the representations which were said to have been made by Mr Bell on 18 August 2005 (and which I have set out above). His case as pleaded in the Amended Particulars of Claim was as follows:

“35. Further, since about 2001 SBPL represented to Nigel Chambers that he was to continue working for SBPL.

36. In reliance upon the said discussions and instructions to continue acting for SBPL, Nigel Chambers carried out the work set out both above and below.

37. In doing so Nigel Chambers was acting to his detriment in that he would not have carried out the said work gratis and without any prospect of future payment.”

“53. Further, in reliance upon the clear representations made by John Bell on behalf of SBPL, Nigel Chambers carried out work on behalf of SBPL, details of which are set out broadly above.

54. The work carried out by Nigel Chambers was to his detriment in that he would not have carried out the said work gratis and without any prospect of future payment.”

317. The Defendant denied paragraphs 35 to 37 and 53 to 54 and averred that if Mr Chambers had submitted invoices for its work, it would have paid them. It also denied that, as pleaded, any estoppel could give rise to a cause of action: see the Amended Defence, paragraphs 55 to 57 and 70. Mr Chambers also asserted in the Reply:

“44. In the particular factual circumstances of this case the Defendant is estopped from denying the existence of a contract formed in 1996 between Nigel Chambers and WRDE.

45. If no contract was formed in 2005, John Bell on behalf of the Defendant represented through his words and the Defendant’s subsequent conduct that the terms of the 1996 Agreement would continue to apply. Nigel Chambers relied upon such representations and or conduct and acted to his detriment in that he continued to carry out work at the instruction of and for the Defendant.

46. Thus, the Defendant is estopped from denying that it continued to act upon the terms of the 1996 Agreement.”

(2) *The Representations*

(i) Mr Chambers that he was to continue working for SBPL

318. Mr Blaker and Mr Kelly did not address Mr Chambers’ case as pleaded in the Amended Particulars of Claim, paragraphs 35 to 37. Nor did Mr Chambers address it in his witness statement (or not directly) and Mr Blaker did not put this case to Mr Bell. But even if SBPL expressly represented to Mr Chambers that he could continue to work for it, I fail to see how this could have given rise to any form of estoppel. It is common ground that Mr Chambers did go on working for SBPL and it freely accepted his services. But, as I have found, it did not enter into a binding contract for a profit share.

(ii) The terms of the 1996 Agreement would continue to apply

319. Paragraphs 47 to 49 and the first sentence of paragraph 50 of the Amended Particulars of Claim contain a summary or paraphrase of the statements which Mr Bell is quoted as saying in Mr Chambers’ note of the meeting on 18 August 2005. I have found that he made those statements at the meeting but that he did not make the statements pleaded in the second sentence of paragraph 50 and in paragraph 51. For the reasons which I have set out in detail at [292], [295] and [296] to [299] I also find that Mr Bell did not make an unequivocal representation that SBPL accepted that the 6 December Fax was binding.

320. Mr Chambers also sought to rely on the Defendant’s conduct after the meeting on 18 August 2005 in the Reply. I have found that SBPL did not encourage Mr Chambers to believe that the terms of the 6 December Fax were binding in any of the correspondence after the meeting. I have also rejected Mr Chambers’ evidence that Mr Bell gave instructions for him to undertake a more extensive role at or after the meeting on 18 August 2005 or that this was communicated later to Mr Chambers. Mr Blaker and Mr Kelly did not identify any other conduct upon which they relied in support of Mr Chambers’ estoppel claim (as pleaded in the Reply) either in their opening or closing written submissions. I, therefore, dismiss the allegations in paragraphs 53 and 54 of the Amended Particulars of Claim and paragraph 45 of the Reply.

(3) *Reliance*

321. Even if Mr Bell represented to Mr Chambers that the terms of the 6 December Fax would form a binding contract between the parties or that it would continue to apply either at the meeting on 18 August 2005 or thereafter, I am not satisfied on a balance of probabilities that Mr Chambers relied on those representations. He made no mention of the meeting on 18 August 2005 until 11 February 2016. Even then, he did not suggest that Mr Bell made any of the representations pleaded in the Amended Particulars of Claim or rely on his typed notes of the meeting.
322. I have also found that Mr Chambers was prepared to take the risk that WRDE and then SBPL would have no obligation to pay for his services if no binding contract for a profit share materialised. I am satisfied that he did not submit invoices to SBPL and Templegate after 18 August 2005 because he hoped to persuade the management of SBPL to agree to pay him a profit share if or when the Skelton Site was finally developed. I therefore dismiss the allegations that after 18 August 2005 he would not have been prepared to provide his time and services “gratis” to SBPL and then Templegate, if Mr Bell had not made the pleaded representations to him.

(4) *Uncertainty*

323. Finally, I have held that if the parties did agree to enter into a binding contract on 29 November 1996 or on the terms of the 6 December Fax, that agreement was too uncertain to be enforced. If it had been necessary for me to do so, I would have followed *Baird Textile Holdings Ltd v Marks & Spencer PLC* (above) and held that the representations which Mr Bell is alleged to have made at the meeting on 18 August 2005 could not give rise to an estoppel because the terms which he represented as binding and continuing to apply to the relationship between the parties are too uncertain to be capable of enforcement by the Court.

VII. The Unjust Enrichment Claim

(1) *Unjust Enrichment*

324. Mr Banner and Ms Gailey accepted that prima facie the Defendant had been enriched at Mr Chambers’ expense in the sense that he did not seek payment for services which he provided to SBPL after its formation in 2000 (and before that to WRDE). I agree but without the qualification. They adduced no evidence at trial to persuade me to reach any

other conclusion. I am also satisfied that it would be unjust to permit the Defendant to retain the benefit of the services which Mr Chambers provided from 2001 to 2009 because there was either a failure of basis or because the Defendant freely accepted those services.

325. In my judgment, there was a failure of basis because the parties were unable to agree the terms of the consultancy agreement which they anticipated at the meeting on 29 November 1996 or in the 6 December Fax. The Defendant also freely accepted those services knowing that Mr Chambers did not intend to provide them (or not all of them at least) without being rewarded by the Defendant and that the reward which he hoped to agree was a contractual right to a 10% profit share. Indeed, Mr Bell made it clear both at the meeting on 18 August 2005 and in his evidence that he considered that Mr Chambers was entitled to be paid on a quantum meruit basis for the work which he did.

(2) *Remedy*

326. The real issue between the parties was whether a reasonable person in the Defendant's position would have had to pay a profit share of 10% for the services of Mr Chambers or would have had agreed to pay him a quantum meruit basis (as Mr Bell suggested). In my judgment a reasonable person in the position of the Defendant in 1996 or 2000 would not have agreed to pay Mr Chambers a profit share but would have agreed to pay him a reasonable fee for his services based on a conventional time basis, i.e. a fee based on a reasonable hourly rate for each hour worked together with any additional out of pocket expenses. I have reached this conclusion for the following reasons:

- (1) I have held that Mr Chambers played an important role in unlocking the development potential of the Skelton Site but that he was not solely responsible for doing so. Further, I am not satisfied that in making that introduction he was acting as “land promoter” as opposed to an agent for British Coal. He called no expert evidence to prove that he fulfilled the role of a land promoter and I was not asked to make a finding of fact that he did.
- (2) Furthermore, British Coal refused to pay him a fee and he was paid a fee for the introduction by WRDE. Again, he did not call any expert evidence to establish what additional fee it was reasonable to expect WRDE to pay. In *Mate v Mate* Julie called expert evidence both to prove that she acted as a “land promoter” and also

to establish what fee reasonable landowners in the position of her family would have agreed to pay.

- (3) But in any event, Mr Chambers failed to persuade either British Coal or WRDE to enter into a contract to pay him a profit share or give him an equity stake either before the parties entered in the Tripartite Agreement or thereafter. Indeed, he was never able to persuade WRDE or SBPL to enter into a binding contract to pay him a profit share (whether of 10% or otherwise). Mr Blaker and Mr Kelly did not suggest that it was unreasonable for the parties to the Tripartite Agreement to refuse to recognise Mr Chambers as a partner or co-venturer in the Skelton Site and I am not satisfied that they were.
- (4) In my judgment, therefore, there was no real difference between the introduction which was made in the present case and Mr Cobbe's services in *Yeoman's Row Management Ltd v Cobbe* (above). Mr Chambers provided the initial key to unlock the development value of the Skelton Site but he did not provide the land or negotiate the terms of the Yorkshire Water Agreement and the Tripartite Agreement. Nor did he provide any funding either to promote the development or to develop it.
- (5) To pursue the analogy further, WRDE (and then SBPL) had to find a number of other keys to unlock the development of the Skelton Site. But although he tried to persuade me that he provided the keys to these locks, I am not satisfied that any of the services which Mr Chambers provided after the initial introduction would have justified the payment of a profit share as opposed to reasonable fees calculated on a time basis. Mr Chambers was a member of a large professional team all of whom contributed over time to the development of the Skelton Site.
- (6) Further, I am not satisfied that Mr Chambers played a very significant role in persuading the Council to allocate the Skelton Site for housing development in the AV Action Plan or obtaining planning permission for any of the individual phases. The AV Action Plan was only adopted and planning permission only granted 8 years after Mr Chambers ceased to work for SBPL. I have also held that Mr Chambers exaggerated his contribution to the development of the Skelton Site for housing. Furthermore, between 2003 and 2009 Mr Chambers was primarily

involved in liaising with British Coal over individual title issues.

327. I hold, therefore, that the Defendant is liable to pay Mr Chambers a reasonable fee for the services which he provided from 2001 until 2009 (and for any work which he performed thereafter) calculated by reference to the time which he spent at a reasonable hourly rate together with expenses and, subject to the question of limitation, I would have ordered an inquiry to determine these issues. I would also have permitted the parties to adduce expert evidence to establish what a reasonable hourly rate would have been during the relevant period for those services.

(3) *Limitation*

328. My preliminary view is that the cause of action for the claim for unjust enrichment founded on free acceptance accrued when Mr Chambers performed the relevant services and SBPL or Templegate accepted them and that the cause of action founded on failure of basis accrued when it became clear that a contract for a profit share would not materialise. In the absence of authority, it is my preliminary view that an objective test should be applied and that on the facts of the present case time began to run when a reasonable person in the position of Mr Chambers would have realised that the Defendant did not accept that the terms of the 6 December Fax were binding and that it was not prepared to enter into a contract to pay him 10% of the profits of the development.

329. On the basis of the correspondence before me, I might well have held that time began to run on 8 April 2016 when Mr Hill, the company secretary, wrote to Mr Chambers. However, I am conscious that I was not taken to the Letter of Claim or any other correspondence after that date. Moreover, this was not an issue which the parties developed in any detail in their written submissions or addressed orally (and I make no criticism given the range of factual and legal issues which they had to address and the Court had to resolve over a relatively compressed trial timetable).

330. Subject to any further submissions on the fairness of such a course at handing down, I propose to allow the parties to argue the question of limitation and, in particular, to argue the question of when the cause of action for unjust enrichment accrued and time began to run both as a matter of law and on the facts. I make it clear that I will not permit the parties to adduce further witness evidence given that they should have called all relevant witnesses at the trial. But I see no reason why they should not refer to the correspondence

in the trial bundle and any further relevant correspondence between both principals and solicitors.

VIII. Board Approval

P. Authority

331. The question of authority only arises if I am wrong and an otherwise binding contract came into existence on (i) 29 November 1996 and then (ii) 18 August 2005. If the findings which I have made are wrong and the parties intended to enter into a binding contract, I now go on to consider whether WRDE and then SBPL were bound by contract with Mr Chambers. Finally, I go on to consider whether board approval was necessary and, if so, whether if it was given.

(1) Actual Authority

332. The evidence in relation to actual authority was unsatisfactory. Mr Bell gave evidence in his witness statement that he did not believe that he had the power to agree to pay Mr Chambers a 10% profit share on behalf of WRDE although he could not recall what his delegated powers under Evans' standing orders were at the time. Given that those standing orders were not in evidence (and I was not even taken to the Articles of Association of WRDE) it is not possible to establish with certainty what Mr Bell's actual authority was.

333. I would have expected the Defendant to make full disclosure of the relevant corporate documents to enable the Court to resolve this issue. Further, since the burden was on Mr Chambers to prove actual authority, I would have expected him to seek disclosure of these documents if the Defendant did not produce them. However, I was not taken to any of the correspondence relating to disclosure and it was not suggested that the Defendant was in breach of its disclosure obligations. I have to assume, therefore, that after so many years the relevant documents are not available.

334. I am not satisfied on a balance of probabilities that either Mr Bell or Mr Goodwill had actual authority to agree to pay Mr Chambers a 10% profit share. It is clear that Mr Goodwill authorised the payment of Mr Chambers' invoices and I draw the inference that both Mr Bell and he had personal authority to make or authorise payments up to a certain

limit. But I accept Mr Bell's evidence that he had no actual authority to agree to pay Mr Chambers a profit share and that board approval was required because terms of that nature required the agreement of Yorkshire Water, as Evans' joint venture partner. I, therefore, dismiss the allegation that either Mr Bell or Mr Goodwill had actual authority to enter into a contract on the terms agreed on either 29 November 1996 or in the 6 December Fax or on 18 August 2005.

(2) *Ostensible Authority*

335. Strictly speaking, that disposes of Mr Chambers' case on authority because there is no allegation that either WRDE or SBPL held Mr Bell or Mr Goodwill out as having authority to enter into a contract (or as having authority to make representations about their own authority or, indeed, the authority of each other). Mr Chambers' case was that they held themselves out as having authority: see the Amended Particulars of Claim, paragraphs 13 and 50. Nevertheless, I will go on and consider the case as pleaded on the basis that WRDE held out Mr Bell as having authority to make representations about his own and Mr Goodwill's authority by appointing him as a director of the company or the Managing Director of Evans.

(i) 29 November 1996/6 December 1996

336. There is no dispute that Mr Bell and Mr Goodwill told Mr Chambers that the terms agreed on 29 November 1996 were subject to board approval and Mr Goodwill repeated this at the head of the 6 December Fax. Mr Chambers gave evidence that he understood the agreement to be binding subject only to board approval and I set out the relevant passage in dealing with the board meeting below. In my judgment, the issue which I have to determine is whether the statement "subject to WRDE approval" made by Mr Bell and Mr Goodwill was a representation that "we have no authority to bind WRDE and the board must approve the terms" or the alternative representation that "we have authority to bind WRDE but this contract is conditional only upon the board approving it".

337. Neither party relied on any authority in relation this issue. Mr Blaker and Mr Kelly cited *East Asia Co Ltd v PT Satria Tirtama Energindo* [2019] UKPC 30, [2002] All ER 294 for the proposition that a party may not rely on the ostensible authority of an agent if they are put on inquiry and fail to make the inquiries which a reasonable person would have made. I have no doubt that this is now an accurate statement of the law. But it provides

no assistance in the present case where the question is how to interpret the relevant representation or holding out.

338. In my judgment, this issue must be determined from the perspective of the reasonable person and such a person would have understood Mr Bell to be saying that Mr Goodwill and he had no authority to enter into a contract and that the board of WRDE had to approve it. In reaching that conclusion I take into account the background to the meeting and the 6 December Fax and also the correspondence which followed the meeting on 29 November 1996. None of that correspondence suggests that Mr Chambers considered either WRDE or himself to be bound subject only to board approval.

(ii) 18 August 2005

339. Mr Chambers' note records that Mr Bell informed him that he was not prepared to put forward the draft consultancy agreement which Mr Chambers had sent to him shortly before the meeting: see [1]; and I have also accepted that this paragraph of the note is accurate. In cross-examination Mr Chambers accepted that Mr Bell was making it clear that he could not reach an agreement on his own and that he would have to refer it to the board. In my judgment, Mr Chambers made a clear admission that Mr Bell did not hold himself out as having authority to bind SBPL.

340. I have set out the passage from Mr Chambers' cross-examination in full at [119]. Having made the admission, he then tried to withdraw or qualify it by drawing a distinction between a new agreement (for which Mr Bell would require board approval) and agreement to the terms of the 6 December Fax (for which he would not). When I pointed out that Mr Bell was representing a different company, he fell back on Mr Bell's position as Managing Director of Evans as shown in the accounts and asserted that it was logical to assume that he could bind the company.

341. I accept Mr Chambers' admission and I attribute little or no weight to his attempt to withdraw or qualify it. He accepted that Mr Bell represented that he could not reach an agreement with him and that he would have to refer such an agreement to the board. Once Mr Bell made this clear to him, he knew that any agreement reached at the meeting could not be binding immediately even though Mr Bell was the Managing Director of Evans and a director of SBPL.

342. Even if Mr Bell gave an unqualified assurance that SBPL “would stick by the existing arrangements” and a reasonable commercial party would have understood him to be agreeing or representing that SBPL was bound by the terms in the 6 December Fax, I find that Mr Bell did not hold himself out as having ostensible authority to bind SBPL and that SBPL was not bound by any agreement reached at the meeting on 18 August 2005 or any representation which he made.

Q. Board Approval

343. If the board of directors of WRDE approved the 6 December Fax at the meeting on 18 August 1996, then it does not matter how the words “subject to WRDE approval” are to be interpreted. If the parties entered into a conditional contract, then that condition was satisfied on 18 December 1996 and if Mr Bell and Mr Goodwill told Mr Chambers that they had no authority to enter into a contract but assured him that its terms would be treated by the company as binding, it was always open to the board of WRDE to ratify the agreement. Likewise, it was always open to the board of SPBL to ratify any assurance which Mr Bell gave on 18 August 2005.

(1) 18 December 1996

344. Mr Goodwill did not refer to the board meeting in his witness statement or produce a copy of the report which he put before the board of directors of WRDE. Mr Bell could not recall the meeting or the report. But he gave evidence that he expected the report to have made any agreement with Mr Chambers subject to the extensive conditions which such an agreement would normally contain. He also gave evidence that he would have expected those terms to be submitted to WRDE’s lawyers to prepare a detailed draft. Mr Blaker put this evidence to Mr Bell and I have set out the relevant passage in full at [70].
345. Mr Chambers gave evidence in his witness statement that on 20 December 1996 he telephoned Mr Goodwill who confirmed to him that the board had approved the 6 December Fax (which he defined as the “Agreement”). However, in cross-examination he did not come up to proof on this point:

“Q. So if I 'm right and that is just a staging post, the board was simply approving a staging post in negotiations? A. No. My understanding, and I believe Geoff and the board, was that there would be a binding agreement, because obviously the 4 December terms are not subject to contract; they're

subject to board approval. Once that board approval is given on the 18th, the contract is binding. Q. That's your understanding of what the board decided? A. That's my understanding. Q. Based on what? A. Based on what Geoff said would happen, ie we will take it to the board, subject to that approval. We have a binding agreement. That was both parties' understanding."

346. I find on a balance of probabilities that in the report Mr Goodwill set out or summarised the terms in the 6 December Fax, asked the board to approve its terms in principle and asked for authority to instruct solicitors to agree a formal contract with Mr Chambers' solicitors. I make this finding for the following reasons:

- (1) I accept Mr Bell's evidence. There was no need for WRDE to enter into a contract that day and no urgency. Moreover, Mr Chambers had already instructed solicitors himself and it is clear from his own letter dated 9 December 1996 that he expected the parties "to formally instruct our solicitors to prepare a draft agreement" once the board had met to consider his role and remuneration.
- (2) The minutes record that the terms set out in the report be approved. If the board members had approved what they understood to be a binding contract, I would have expected the minutes to say so and to refer to the document itself. As Mr Bell suggested in evidence, it is likely that the report referred to other terms which WRDE would require apart from those set out in the 6 December Fax.
- (3) If the board of directors had approved the 6 December Fax as a contract which was to take effect immediately, I would have expected either Mr Goodwill or, more likely, the company secretary, to write to Mr Chambers formally confirming this fact and the terms. There is no suggestion that such a letter was sent. I consider it wholly improbable that the board of WRDE would have approved a contract with Mr Chambers without telling him.
- (4) Perhaps sensing this lacuna in the evidence, Mr Chambers gave evidence in his witness statement that Mr Goodwill told him orally on 20 December 1996. But he could not remember this conversation in cross-examination and I am not satisfied that it took place or that Mr Goodwill told him orally that the board had approved the terms of the "Agreement". If Mr Chambers had thought this, he would have undoubtedly asked for confirmation in writing. But he did not. On 30 January 1997

he wrote to say that: “I know that we both now wish to agree final heads of terms prior to instructing solicitors”.

(2) *18 August 2005*

347. The Defendant denied in the Amended Defence that Mr Bell had actual or ostensible authority to reach agreement with Mr Chambers on 18 August 2005. Mr Chambers did not plead in the Reply that the board of SBPL ratified the agreement and Mr Blaker and Mr Kelly did not advance such a case at trial. Indeed, Mr Chambers did not refer to the meeting at all in correspondence until 11 February 2016.

(3) *Conclusions*

348. I have held that Mr Bell and Mr Goodwill had no actual authority to enter into a binding contract with Mr Chambers on 29 November 1996 or 6 December 1996. Mr Chambers accepted that any agreement made was subject to the approval of the board of WRDE and I have held that as a result Mr Bell and Mr Goodwill did not have ostensible authority to bind the company. But even if, viewed objectively, Mr Bell and Mr Goodwill entered into a binding contract, Mr Chambers accepted that this contract was conditional upon the approval of the board of WRDE. I find on a balance of probabilities that the board of WRDE did not approve an immediate contract on the terms of the 6 December Fax but only authorised Mr Goodwill to instruct solicitors to draw up and negotiate a formal contract.

349. Finally, I have held that Mr Bell had no actual authority to enter into a binding contract or make representations on behalf of SBPL at the meeting on 18 August 2005 and did not hold himself out as having that authority because he made it clear that any agreement had to be approved by SBPL’s board. If, however, he agreed with Mr Chambers that the terms in the 6 December 2005 were binding on SBPL or made representations to that effect, there is no evidence that SBPL’s board of directors ratified that agreement and I find that any agreement or representations made by Mr Bell at the meeting on 18 August 2005 are not binding on the Defendant.

IX. Disposal

350. I dismiss Mr Chambers’ claims for a declaration that he is entitled to a profit share of

10% from the Skelton Site and also for a declaration that the Defendant is estopped from denying that entitlement. I also dismiss his claims for an account and for damages for breach of contract. Subject to the question of limitation, I would be prepared to grant relief on his claim for a reasonable fee for the work which he carried out on the Skelton Site project and would order an inquiry to establish the amount of that fee by reference to the number of hours which he worked, a reasonable fee for those hours and any out of pocket expenses.

351. On the hand down of this judgment (or any adjourned hearing) I will hear argument on costs and permission to appeal. I will also hear argument on whether the limitation period for the unjust enrichment claim has expired and, in particular, on the correct application to the facts of the appropriate test for a claim based on a “failure of basis” where that basis is an anticipated contract which does not materialise. Alternatively, if the parties prefer, I will give directions for a further hearing of that issue. Finally, the parties did not ask me in their closing submissions to provide answers to the Agreed List of Issues and in the light of the detailed reasons which I have given in this judgment, it seems to me to be unnecessary to do so. However, if the parties do wish me to answer them, they should raise this at the hearing on consequential matters.

X. Postscript

352. On 9 February 2026 I handed down judgment in draft and both parties submitted a number of typographical corrections which I have incorporated into the final approved version of this judgment. Mr Blaker and Mr Kelly also objected to [311] in its original form because I appeared to have gone further than the parties had intended and made findings about the duration and value of the work which Mr Chambers had performed. I have now made it clear that this was never my intention which was to use a worked example to come up with a figure against which to test my earlier findings. I make it clear again that (if the issue remains live) it is open to Mr Chambers to prove by direct and expert evidence precisely what work he did, how much time he spent and what value the Court should attribute to that time.
353. Mr Blaker and Mr Kelly also challenged [326](1) and (2) which I have not amended. They did so on the basis that it was never the intention of the parties to call expert evidence until a quantum trial. Whether or not this is the case, the issues for this trial

included the basis on which Mr Chambers should be remunerated: see Question 19 of the Agreed List of Issues. Further, Mr Blaker and Mr Kelly invited me to follow *Mate v Mate* (above) and to award Mr Chambers a profit share on his unjust enrichment claim on the basis that he was a land promoter. In *Mate v Mate*, however, Julie called expert evidence to prove both that she was a land promoter and also that a land promoter would have been paid a profit share.

354. In my judgment, this was a good reason for distinguishing *Mate v Mate* from the present case and if Mr Chambers had wanted to claim remuneration on the same basis, I do not see why he could not have called expert evidence at this trial to establish what a land promoter does and how a land promoter would be remunerated. However, I give permission to Mr Chambers to raise this issue at the consequential hearing and if the conclusion which I have reached involves some procedural unfairness, then I will be prepared to reconsider whether to reopen this issue (always assuming that Mr Chambers succeeds on limitation).