Neutral Citation Number: [2025] EWHC 1090 (Comm)

Case No: LM-2021-000020

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 07/05/2025

Before :

Nigel Cooper KC sitting as a Judge of the High Court

- -

Between :

MALHOTRA LEISURE LIMITED	**Claimant**
- and -	
AVIVA INSURANCE LIMITED	**Defendant**

- -
- -

RICHARD WALLER KC and MICHAEL RYAN (instructed by **Clarke Mairs LLP**) for the **Claimant**
BEN ELKINGTON KC and NICHOLAS BROOMFIELD (instructed by **Clyde & Co**) for the **Defendant**

Hearing dates: 28 November to 01 December, 04 December to 06 December, 14 and 15 December 2023

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Approved Judgment

This judgment was handed down remotely at 11.00am on 7 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Nigel Cooper KC:

Introduction

1. On 11 July 2020, water escaping from a cold-water storage tank ("the EOW") caused property damage at the New Northumbria Hotel in Newcastle ("the Hotel"). The Claimant is the owner of the Hotel and held cover against property damage and associated business interruption under a policy of insurance with the Defendant ("the Policy"). The Claimant has claimed under the Policy for the damage but the Defendant has refused to indemnify the Claimant alleging that the EOW was deliberately and dishonestly induced by the Claimant. The Defendant also alleges that there have been associated breaches by the Claimant of the fraud condition in the Policy ("the Fraud Condition").

2. The Claimant seeks a declaration that the Defendant is obliged to indemnify the Claimant with respect to its losses pursuant to the property damage and business interruption provisions of the Policy. The Defendant denies liability to the Claimant and counterclaims for:

    i) Damages:

a) Equivalent to any liability owed to the Claimant in respect of the EOW;

b) For the costs and expenses it has incurred in adjusting and investigating the Claimant's claim under the Policy.

ii) A declaration that it was entitled to and has validly cancelled the Policy with effect from 11 July or 22 July or 1 October or 08 October 2020.

The Parties

3. The Claimant is a company within the Malhotra group of companies ("the Malhotra Group") and a subsidiary of the holding company, Malhotra Group Plc, which trades in the northeast of England in three sectors: (1) construction and operation of care homes, (2) leisure/hospitality and (3) property. The Malhotra Group is ultimately owned by the Malhotra family. The chairman and controlling shareholder of Malhotra Group Plc is Mr. Jagmohan Malhotra ("Meenu"). The other directors and shareholders are Devinder Malhotra, Atul Malhotra ("Atul") (Meenu's son) and Varun Malhotra (also Meenu's son). Atul is the sole director of the Claimant. I should add that I use the names 'Meenu' and 'Atul' for convenience on the basis that these were names used by the Claimant for the relevant individuals in their submissions to the Court.

4. The Defendant is a well-known insurance company and provided cover to the Claimant under the Policy, a contract of insurance with policy number 100693781CCI dated 16 August 2019 in respect of property damage, money and assault, business interruption, employer's liability and public and products liability.

The Issues

5. It was common ground between the parties that:

i) The Defendant issued the Policy to the Claimant.

ii) The Policy was in effect on 11 July 2020 and covered premises including the Hotel.

iii) But for the Defendant's assertions of fraud and breach of policy conditions, the Policy is one which would respond to the damage to the Hotel caused by the EOW.

iv) The EOW occurred on or about 11 July 2020 from the loft area of the Hotel from or in the vicinity of a cold-water storage tank known as tank 18.

v) The Claimant had exclusive access to the loft space of the Hotel at all relevant times.

6. The issues between the parties were set out in the agreed Common Ground and List of Issues and subsequently narrowed as follows:

i) Was the EOW deliberate or accidental?

ii) Was the Defendant entitled to refuse to pay the Claimant's claim pursuant to the Fraud Condition in the Policy?

iii) Was the Claimant's claim supported by false statements or false evidence?

iv) What is the quantum of the Defendant's counterclaim, if any?

The Policy

7. The terms of the Policy are found in a Policy Schedule produced on 28 August 2019 ("the Schedule") and a Commercial Combined Policy set of wordings ("the Wordings"). Subject to the question of whether the EOW was caused deliberately or accidentally and whether there has been a breach of the Fraud Condition, there is no wider dispute as to whether the Claimant's claim is covered.

8. The Policy covered the period from 16 August 2019 to 15 August 2020 and in relation to the Fraud Condition provided as follows:

> "**Conditions The following conditions apply in addition to the conditions contained in each Section of the policy.**
>
> *…*
>
> *Fraud*
>
> *If a claim made by You or anyone acting on your behalf is fraudulent or fraudulently exaggerated or supported by a false statement or fraudulent means or fraudulent evidence is provided to support the claim, We may:*
>
> *(1) refuse to pay the claim,*
>
> *(2) recover from You any sums paid by Us to You in respect of the claim,*
>
> *(3) by notice to You cancel the policy with effect from the date of the fraudulent act without any return of premium.*
>
> *If We cancel the policy under (3) above, then We may refuse to provide cover after the time of the fraudulent act. This will not affect any liability We may have in respect of the provision of cover before the time of the fraudulent act.*
>
> *…"*

The Facts

The Hotel

9. The Hotel is situated within a residential suburb of Newcastle called Jesmond, approximately one and a half miles north-east of the city centre. The Hotel is made up of six, three-storey, interconnected terraced buildings. To the rear of the Hotel are several single two and three storey sections. There are (or have been) various elements to the building as follows:

i) At the left-hand end of the building is a restaurant space which extends to the first floor. The Claimant used to operate a restaurant known as "Scalini's" but this failed. The Claimant then spent approximately £550,000 refurbishing the

restaurant and re-launched it as "El-Paso". This venture was also unsuccessful and it was closed. In October 2019, the restaurant was leased to a third-party and traded as Rio's Steakhouse.

ii) To the right of the restaurant space is the entrance to the Hotel. The Hotel bedrooms are situated on the first and second floors.

iii) To the right of the Hotel's entrance is Osborne's bar ("Osbornes"), which is situated on the ground floor and comprises two rooms.

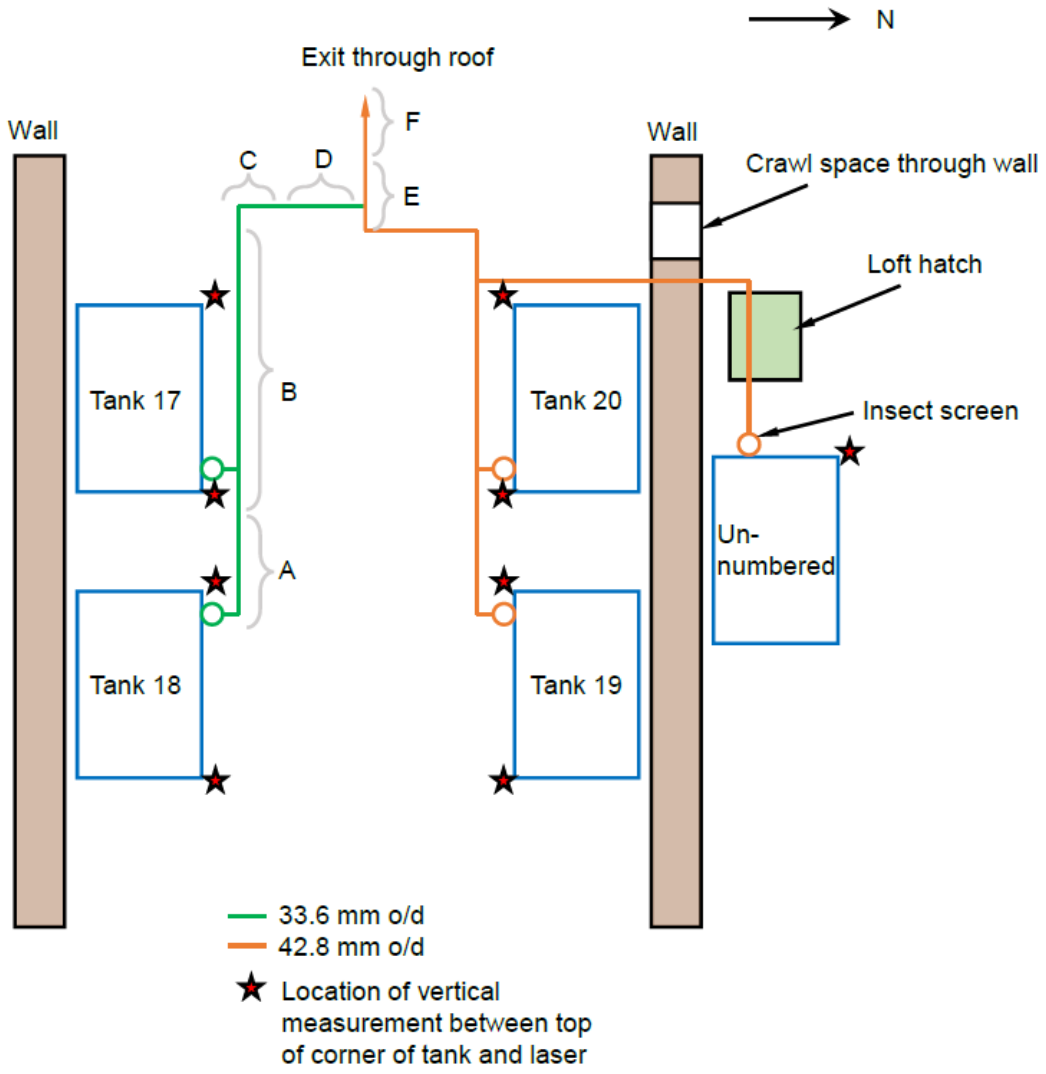
iv) To the right of Osbornes is a further building which used to operate as a restaurant called "Louis". The restaurant closed several years before the EOW and the building remained empty. In November 2019 this building was reported to be stripped back to the walls and floors to enable refurbishment.

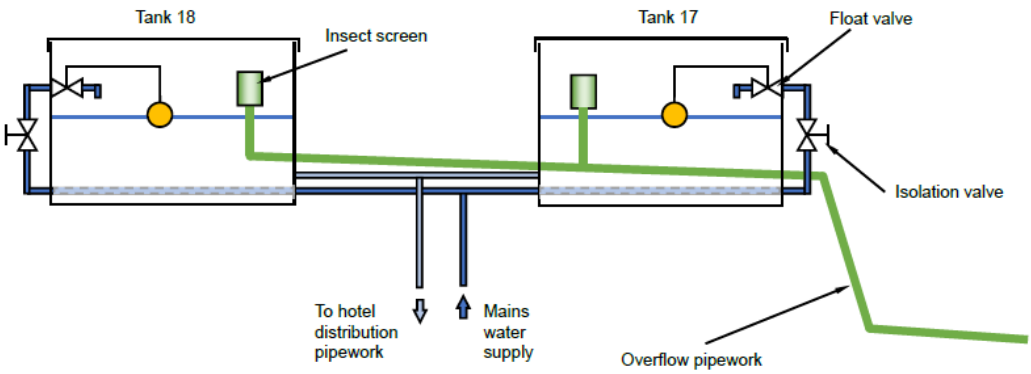
v) The Claimant had plans to knock through from Osbornes into Louis to create a sports bar, with the two upper floors of Louis being converted into eight suites or apartments.

vi) The potable water used by the Hotel was contained in water cisterns in the Hotel's roof voids. There were approximately four separate roof voids, each accessible with the assistance of a ladder via a loft hatch in the ceiling of the second floor. The loft in which the EOW occurred was accessible via a loft hatch in the ceiling between rooms 219 and 220.

The Water System and the location of EOW

10. The EOW occurred in the loft of the Hotel in the vicinity of tank 18. To better understand the evidence relating to whether the EOW was caused by the Claimant deliberately and dishonestly, it is helpful to include within this judgment two diagrams: (i) a diagram showing the location of tank 18 within the loft generally and (ii) a diagram explaining the tank and pipework arrangement relevant to the question of how the EOW occurred. Both diagrams are taken from the report of the Defendant's expert, Mr. Ron Knak.





11. In summary, in the roof void accessible via a hatch outside rooms 219 and 220 are four numbered and one unnumbered water tanks. The water tanks are situated throughout the roof void with tanks 17 and 18 being furthest from the loft hatch accessible through a narrow hole in a brick wall.

12. Tanks 17 and 18 are situated several feet from the floor of the loft above head height but are not at consistent heights, with tank 18 being higher than tank 17. The water tanks are fitted with lids. To remove either lid or access either tank, it would be necessary to use a ladder.

13. Mains-pressure cold water is piped to the water tanks. The cold water pipe is connected to the float valve (defined below) via a coupling and is secured by a single nut on the exterior of each water tank and a corresponding nut on the inside of each water tank.

14. Each water tank has a stopcock situated on the cold water pipe that feeds them, which is accessible without using a ladder. The flow of cold water into each tank can be stopped by turning the stopcock.

15. If the stopcock is left open, the flow of water into each water tank is controlled by a ball valve ("the float valve"). The float valve shares many common characteristics with the ball valve found in a domestic toilet cistern. When the float valve drops below a pre-set level the faucet opens and the water is allowed to enter the water tank, but when the water level reaches the pre-set level, the faucet closes and water ceases to enter the water tank.

16. Each water tank has an overflow system which carries water away from the water tanks if the water level is too high ("the Overflow"). The Overflow consists of several elements, which it is necessary to understand when considering the likely causes of the EOW.

    i) The Overflow is not a simple open, horizontal, aperture in the side of each water tank into which water flows when the water level becomes too high. Water enters the Overflow upwards through an open-ended right-angled piece of pipework ("the dip pipe").

    ii) Once water has passed up the dip pipe, it passes through a short horizontal pipe which passes through the water tank wall. The water then enters a chamber situated on the outside of the water tank. The chamber houses a wire mesh ("the insect screen"), which is there to prevent insects from entering the tank.

    iii) Once water passes through the insect screen it then passes into an external overflow pipe, which joins up with the overflow pipes of the four water tanks in this roof void and is carried away from the water tanks and out of the Hotel.

    iv) If the water level in a water tank rises then the water level in the dip pipe will also rise. However, there will be no flow of water out of the dip pipe unless and until the water level rises to reach the horizontal section of pipe which passes through the side of the water tank.

    v) The Overflow has sufficient capacity to carry excess water out of the water tanks and to prevent a water tank from overflowing even when partially blocked.

    vi) Tanks 17 and 18 are hydraulically connected by a horizontal pipe ("the Interconnecting Pipe"). There is a vertical downpipe which leads from the Interconnecting Pipe to the Hotel, through which water is drawn when a faucet is opened in the Hotel (for example, when a tap or shower is turned on or a toilet

is flushed) ("the Cold Water Down Service"). The Interconnecting Pipe connects only tanks 17 and 18 and is entirely separate from the Overflow which joins with the overflow pipes of the other water tanks in the roof void downstream before exiting the Hotel.

vii) The Interconnecting Pipe performs an important function. If the Overflow pipe to tank 18 becomes completely blocked, water will flow through the Interconnecting Pipe and into tank 17 and escape via the overflow pipe to tank 17. If that overflow pipe were also blocked, then water would flow over the top of tank 17 before tank 18 overflowed because tank 17 is situated below tank 18.

17. It is common ground between the experts that a failure of the float valve on tank 18 on its own would not have caused tank 18 to overspill. The experts are also agreed that a failure of the float valve would not have caused tank 18 to overspill unless there were blockages in both the Overflow and the Interconnecting Pipe.

Relevant events leading up to and after the EOW

18. DJM Plumbing Limited ("DJM") carried out an annual inspection of the water tanks between the 15 and 19 of August 2019. During that inspection, they checked the operation of the float valves in the cold water storage tanks, including tanks 17 and 18 and found them to be in working order.

19. On 15 January 2020, Northumbrian Water carried out a risk assessment survey of the plumbing system for the purposes of a legionella health check. However, Northumbrian Water's surveyors did not have access to the loft where tank 18 is located due to health and safety concerns about the possible presence of asbestos. Their inspection was therefore limited to the tanks in the loft area above Room 225. In the tanks which they did inspect, Northumbrian Water's surveyors observed a medium to high build up of scale and sediment in all of them. However, they recommended that all storage cisterns, including tanks 17 and 18, and secondary returns should be inspected.

20. On 12 February 2020, DJM carried out recommended remedial action following the Northumbrian Water risk assessment survey including work to the cold water storage systems. According to a letter from DJM dated 12 February 2020, that work included fitting tank breathers to the cistern lids for the cold water tanks including tank 18. It is possible that sediment and other debris found its way into the Cold Water Down Service during the cleaning in February 2020.

21. The Hotel and Osbornes closed in late March 2020 due to lockdown. There was an issue before me as to when the Claimant intended to re-open the Hotel following the easing of lockdown. As to this:

i) Atul's evidence was that Osbornes did not open on 04 July 2020 because other bars and restaurants in Jesmond were not opening at the time. On 07 July 2020, Mr. Shorter, the operations manager for the Malhotra Group, sent an internal e-mail with the planned opening dates for various sites belonging to the group. This included a scheduled opening for Osbornes on 16 July 2020.

ii) Atul's evidence was that the Hotel (as opposed to Osbornes) was not due to reopen on 16 July 2020 because people were working from home and not travelling for work.

iii) Internal e-mails among Malhotra staff record a meeting on 15 July 2020 at which a decision was made to reopen the Hotel on 13 August 2020.

iv) Atul e-mailed Mr. Weldon of the Malhotra Group on 21 July 2020 confirming that he was hoping to re-open the Hotel in mid-August.

22. On 22 April 2020, Northumbrian Water e-mailed the Malhotra Group outlining the steps to be taken to prevent the risk of a legionella outbreak, which included the opening of taps or flushing of toilets at least once a week.

23. I accept that during the period of lockdown, there were regular inspections of the Hotel including the periodic turning on and off of taps in the hotel rooms. This was done first by Ms. Anna Watson until she left the Hotel on 05 June 2020. Thereafter it was done by Atul and Mr. Vadhera. The Defendant challenged whether the inspection logs showing what checks were done at the Hotel are accurate and evidence what was actually done by way of inspections. However, I accept the Claimant's submissions that:

i) The Defendant did not serve a notice of challenge to the logs' authenticity at the time of their disclosure or at any time thereafter (as required by the paragraph E.4 of the Commercial Court Guide if the authenticity of a document is to be put in issue).

ii) There is no pleaded case that the logs are a fabrication or that there was any dishonesty in relation to the logs or the inspections of the Hotel.

iii) It was not put to Mr. Vadhera in cross-examination that he had fabricated the logs or that he was lying in his evidence about the inspections.

iv) Although it was put to Atul that the logs were not authentic, the documents on which this suggestion was made related to the fire alarm logs not the inspection logs.

v) The Claimant had provided the logs to Mr. Stokoe in hard and soft copy by 17 July 2020 after Mr. Coathup (the loss adjuster retained by the Malhotra Group) collected the logs from the Hotel on 16 July 2020.

vi) In the circumstances of lockdown, it was not unusual for Atul and Mr. Vadhera to be carrying out the inspections.

24. In light of the above, I treat the inspection logs as being an accurate record of what checks were done unless there is other evidence to contradict them.

25. It was common ground between the experts that the limited use of the Cold Water Down Service during lockdown meant that there would only be a negligible flow of water through tank 18 in the months leading up to 11 July 2020. It was also common ground that when a cold water system is subjected to a reduced usage and low flow rates, silt and debris that is in the water is much more likely to precipitate out of the water and

build up primarily on horizontal surfaces in the tanks and to a lesser degree the Cold Water Down Service pipework than if the system was used frequently.

26. Atul and Mr. Vadhera say that they attended the Hotel on 10 July 2020 to carry out an inspection and that they found everything in order.

27. The EOW occurred during the night of 10 July 2020. The experts are agreed that the EOW started about nine to ten hours before it was discovered because the alarm system was triggered during the night of 10 to 11 July 2020 at around midnight. Mr. Vadhera attended at the premises arriving at about 10.15 on 11 July. A fire alarm engineer from Advance Fire & Security Systems ("AFASS") also later attended. Mr. Vadhera says that he discovered water leaking into Osbornes and traced the leak to a water tank in the roof which he says was overspilling (tank 18). He says that he stopped the overspilling by turning off the mains supply to tank 18.

28. The water flowed through 3 storeys of the building causing damage to 6 guest bedrooms, corridor areas and Osbornes. The damage was in the central area of the Hotel. The report prepared by Woodgate & Clarke ("W & C") dated 03 August 2020 confirms that Osbornes had been refurbished in 2018 to a high specification and the affected rooms had been refurbished to a high standard. The water damage only affected refurbished rooms.

29. As set out further below, Mr. Vadhera gave an account of what he found when he attended on 11 July 2020 (i) to Mr. Knak on 28 July 2020 and (ii) in an interview with Mr. Bevan of W & C on 01 October 2020, which was then followed by a signed witness statement dated 08 October 2020. He also gave a witness statement for trial dated 14 February 2023.

30. Mr. Vadhera arrived at the Hotel during the morning of 11 July 2020. Mr. Vadhera initially thought he arrived at about 10.30 to 10.40 in the morning, but in his October 2020 statement it records by reference to a fire alarm log that he arrived at about 10.15.

31. When he arrived, Mr. Vadhera found the alarm sounding. This is corroborated by the alarm records which show that the alarm was triggered during the night. Mr. Vadhera called the alarm company, AFASS. AFASS have confirmed that they were called at c.10.40am on 11 July 2020. Mr. Vadhera also says that he muted the alarm which is also corroborated by the alarm log.

32. Mr. Vadhera went into Osbornes to carry out checks and discovered it was very wet with water leaking through the ceiling. The nature of the damage is corroborated by the photographs of water damage to Osbornes. He says he traced the leak to the loft. In order to access the loft, he had to go back down to the maintenance cupboard to collect a ladder and screwdriver to open the loft hatch.

33. Mr. Vadhera says he saw water overflowing the top of tank 18. I consider in further detail below whether Mr. Vadhera did in fact see water overspilling tank 18. But, a similar view was expressed in the report of the plumbers who first attended on 13 July 2020. There was also physical evidence that tank 18 had overspilled.

34. Mr. Vadhera turned off the mains valve which stopped the flow of water after a few minutes. The plumbers from DJM who first attended on 13 July 2020 confirmed that when they first arrived the water supply to tank 18 was turned off.

35. Mr. Vadhera says that he called a plumber Mark Webster of MW Plumbing and Heating Contractors Ltd ("MWP") who were unable to find anyone to attend. Mr. Vadhera's evidence to this effect was confirmed by Mr. Webster in a conversation with Mr. Smith of W & C on 4 November 2020.

36. Mr. Vadhera waited for the fire alarm engineer which took about 30 to 40 minutes. The invoice rendered by AFASS on 14 July 2020 records that the engineer arrived at about 11.30am. AFASS's responses to Mr. Knak's queries on 02 October 2020 also recorded that the engineer arrived at 11.30am.

37. Mr. Vadhera completed his checks at the Hotel and left.

38. There is a factual question as to whether Mr. Vadhera called Meenu at about 4:30pm on 11 July. This question arises because Mr. Stokoe suggested in his witness statement that there was such a call based on what he said he was told by Meenu and because he said Meenu showed him a call list on his phone. However, in cross-examination Mr. Stokoe accepted that he could not say whether Meenu did show him a call list or whether he was shown an e-mail. Further, there is no mention of such a call in the contemporaneous documents. I find that there was no call between Meenu and Mr. Vadhera at 4:30pm on 11 July 2020.

39. Later on the same day at 18:29, Mr. Vadhera e-mailed Meenu to advise him that there had been a significant leak of water at the Hotel. That e-mail was in the following terms:

Dear Mr. Malhotra,

Upon my routine inspection of the above building [the Hotel], please be advised there has been a significant water leak from Northumbria hotel top floor leading down to the main Osborne bar.

Please can you advise?

Regards

Rajiv Vadhera

Estate Manager …"

40. Meenu replied to this e-mail saying:

Rajiv

Thank You for notification of this unfortunate occurrence.

Both Patrick and Michael are copied, it is my 60th Milestone Birthday today …

I will inspect the site with you and the estates team on Monday.

Please issue instruction to execute interim repairs and mitigate.

Rgds

Meenu …

41. As is apparent from the quotation of the above e-mail exchange, Mr. Vadhera did not tell Meenu what he had done to stop the water leak and Meenu did not ask.

42. There was initially a dispute as to whether it was in fact Meenu's 60th birthday on 11 July 2020. However, that dispute fell away as the Defendant accepted that Meenu was celebrating his birthday on that day.

43. There was likewise a dispute as to when Meenu contacted DJM to arrange for them to attend on Monday, 13 July 2020, namely whether he contacted them on Sunday, 12 July or on Monday, 13 July 2020. There is, however, no dispute that DJM arrived at the Hotel on the morning of 13 July 2020. Mr. Cookson and Mr. Lowery of DJM attended the Hotel and entered the loft in which tank 18 is located. They carried out works on tank 18, which included replacing the float valve on the tank. Mr. Cookson e-mailed a report on the escape of water to Meenu on the same day at 13:12. In that report, Mr. Cookson reported that he could confirm:

"… that the flooding was caused by the 15mm float valve on tank 16, which was stuck in the fully open position and allowing water to enter the tank with an unrestricted flow at high pressure and caused the tank to overflow through the warning pipe and the lip of the tank simultaneously and into the rooms below.

The float valve was replaced with a new float valve, the water supply was reinstated and the water level was set to the required level."

44. The report included a picture of the old float valve. It is common ground that to the extent the report referred to the relevant tank as being tank 16, this was an error and Mr. Cookson was in fact referring to tank 18.

45. Mr. Cookson handed the defective float valve to Atul in a plastic bag but it appears that it is likely that the float had been removed from the valve. Atul put the bag in a skip and it was subsequently disposed of before the valve could be inspected by either W & C or Burgoyne & Partners LLP ("Burgoynes").

46. Mr. Hilder of Tasker Insurance notified the Defendant of the EOW by an e-mail dated 13 July 2020 attaching the report from DJM and informing the Defendant of the asbestos issue. The Defendant appointed W & C as loss adjusters on 14 July 2020.

47. An in-house contractor called A2M initially cleared the water and debris. The debris was taken to a skip on a different site, which was emptied on 15 July 2020. It is likely that the valve removed by DJM had been taken to that skip along with the debris caused by the EOW.

48. Mr. Stokoe of W & C attended the Hotel on 16 July 2020 together with Meenu, Atul, Mr. Vadhera and Mr. Patrick Coathup. Mr. Stokoe did not have protective gear with him and was not allowed access to the loft. This did not apparently cause Mr. Stokoe any concern and he accepted in cross-examination that it was reasonable for the Claimant to seal off the loft in circumstances where they had been advised to do so by Mr. Stewart Mackenzie, the health, safety, environment and quality manager for the Malhotra Group and previously a consultant to the group.

49. Mr. Stokoe made notes at the time of his attendance, which recorded inter alia:

    i) That the water tank ball cock had seized, the Overflow was blocked and the tank overflowed. In other words, it appears to have been assumed at this meeting that the cause of the EOW was the failed valve although this view may have been based on information provided to Mr. Stokoe by Meenu.

    ii) That the water had flowed through asbestos carrying areas and an asbestos inspection was planned for Monday 20 July 2020.

    iii) That prior to the EOW, the premises had been inspected by Atul at about 12.30pm on 10 July 2020.

    iv) That the EOW was discovered by Mr. Vadhera at about 4.30pm on 11 July 2020 (this must be an error because it is clear that Mr. Vadhera discovered the leak earlier in the day).

    v) That the cause of the EOW was the seized ball valve on a cold tank in the loft and water running for about 24 hours (Overflow blocked or inadequate).

    vi) That the initial measures involved bringing in A2M contractors to do initial water clearance and removal of debris as well as temporary repairs.

    vii) That a suggested reserve would be just over £2 million.

    viii) That the planned opening of Osbornes was 16 July 2020.

50. There was a discussion at the meeting about a payment on account of £250,000 but this may well have been a request made by Mr. Coathup. Mr. Stokoe's notes suggest that the discussion about figures happened at the end of the meeting, by which time Meenu had left.

51. Mr. Stokoe did not record any concerns about the claim following this first meeting. Further, it is not clear to what extent Atul was a party to any discussion about the float valve at this meeting, but in any event, Mr. Stokoe accepted in cross-examination that if he was, then Atul perhaps didn't take it as an important part of the conversation.

52. On 21 July 2020, Meenu received a report from Scopus, asbestos consultants, detailing their findings as to the presence of asbestos at the Hotel. On the same day, the Defendant appointed Burgoynes to investigate the claim.

53. On 22 July 2020, W & C issued their Immediate Advice Report recommending a preliminary reserve of over £2 million. On the same day, Mr. Knak and Mr. Czech of Burgoynes attended the Hotel and met with Mr. Toole of W & C, Meenu, Atul, Mr.

Coathup and Mr. David Cox. Mr. Knak and Mr. Czech entered the loft and took photographs. Burgoynes' visit to the Hotel was arranged the previous day when Mr. Knak spoke to Mr. Coathup and said he would attend the following day. Mr. Knak did not ask for Mr. Vadhera to attend.

54. During this meeting, Mr. Knak initiated a conversation with Meenu to obtain some background information about what happened. Meenu explained that he had not discovered the EOW but would do his best to assist. Meenu told Mr. Knak about Mr. Vadhera entering the loft and discovering the EOW. He also wrongly told Mr. Knak that Mr. Vadhera had found insulation in the Overflow of tank 18. In fact, this information came from Mr. McGough of DJM, as Meenu acknowledged in his oral evidence. Mr. Knak confirmed in cross-examination, however, that attribution of the information about the blockage in the Overflow to Mr. Vadhera rather than Mr. McGough would not have made any material difference to his investigation.

55. It appears that discussion of the valve was not a particularly important issue at the meeting:

    i) Prior to the meeting, Mr. Knak did not ask for the valve itself just photographs.

    ii) Mr. Knak found Meenu to be helpful during the meeting.

    iii) Mr. Knak spoke to Mr. McGough on the telephone during the meeting but Mr. McGough did not say that the plumbers had given the valve to Atul rather he said that he did not know and to ask Atul to see if he knew.

    iv) Mr. Knak accepted in cross-examination that Atul said to him that he thought Mr. Cookson had taken the valve.

56. Mr. Knak and Mr. Czech inspected the loft over the course of 2 – 4 hours on 22 July. A number of points arise from this inspection:

    i) During his inspection of tank 18, Mr. Knak found insulation fibres in the insect screen similar to the insulation in the jackets.

    ii) Mr. Knak did not look to see if any of the connections to tank 18 had been interfered with.

    iii) Mr. Knak did not look at the Cold Water Down Service connection.

    iv) Following this initial inspection, Mr. Knak thought the EOW was probably fortuitous involving a failed valve and a blocked overflow.

    v) Mr. Knak did not find any positive physical evidence to suggest that the EOW was deliberate.

    vi) Mr. Knak did not appreciate at the time of this inspection that the tanks were hydraulically connected.

57. Mr. Knak then spoke to Mr. Vadhera and Mr. Coathup on 28 July 2020. During that conversation, Mr. Vadhera informed Mr. Knak that he arrived at the Hotel between 10.30 and 10.40am. When he went into the reception, he noted that the fire alarm was

showing a fault so he rang the alarm company and requested an engineer. When he went into the loft he had found the water overflowing from the left-hand tank on the far side. He turned off the stop valve for the tank and water stopped overflowing. He did not know if the tank had a lid. When the water stopped, he didn't check any further but went back downstairs. There was still water coming through the ceiling of Osbornes. He called the contractor but there was no joy. However, the leak had stopped. Mr. Vadhera didn't know anything about loft insulation.

58. There was an internal e-mail exchange between Meenu, Mr. Vadhera and Mr. Coathup concerning Mr. Vadhera's recollections on 28 July 2020. On the same day, Mr. Coathup e-mailed Mr. Knak concerning evidence of debris in the overflow pipes to clarify what Meenu had said to Mr. Knak about the possibility of such debris being present in their conversation of 22 July. Mr. Coathup informed Mr. Knak that this was put forward as a possibility by Mr. McGough of DJM but there was no specific evidence that debris was present, and Mr. McGough had not been on the site so his comment was speculative.

59. W & C issued a preliminary report dated 03 August 2020 to the Defendant on the EOW with a reserve of £1.99 million. In that report, W & C describe the business of the Malhotra Group including assessments of the credit risk associated with the Malhotra Group and with the various companies in the group. Both the group and the Claimant are described as being low credit risks. The report does not identify any reason to consider that the EOW was deliberate or that the claim was fraudulent.

60. Burgoynes also issued their preliminary report on 03 August 2020. In that report, Mr. Knak set out his investigations so far including an account of his conversations with Meenu and Mr. Vadhera. Mr. Knak explained that when he spoke with Meenu he said that Mr. Vadhera had discovered fibrous loft insulation in the overflow pipe of the tank which he removed but when he spoke with Mr. Vadhera, he told Mr. Knak that he did not examine the overflow pipe and that he did not discover any material in it. In his report, Mr. Knak confirmed that he considered that the physical evidence was consistent with Mr. Vadhera's account that he had discovered water overflowing the top of tank 18. The explanation for water escaping in this way required the uncontrolled flow of water into the tank through the float valve and the Overflow being unable to convey sufficient excess water away from the filling tank. Mr. Knak was unable to reach a conclusion as to cause of any failure of the float valve as he had not been able to examine it. He accepted that if there was sufficient insulation material in the Overflow which became trapped at the insect screen, then it could sufficiently impede the outflow of water through the pipe so as to prevent the Overflow allowing any excess water in the tank to flow away. Mr. Knak regarded the partial or complete blockage of the insect screen as being the simplest explanation for the inability of the Overflow system to safely convey excess water away from the tank.

61. During August 2020, Mr. Knak was trying to speak to Mr. Cookson, but without success. On 31 August, he reported to Mr. Smith of W & C that he had been in correspondence with Mr. McGough of DJM. Mr. McGough told Mr. Knak that:

    i) It was not possible to speak with Mr. Cookson who would not be available for the foreseeable future.

ii) The float valve had jammed open owing to a build-up of limescale deposits and Mr. Lowery, a plumber, had replaced it.

iii) The float valve was given to Atul (who thought that Mr. Cookson had retained it).

iv) Mr. Lowery said that the lid was on the tank and the insect screen for the Overflow was blocked with insulation.

62. During September 2020, the Claimant received a report from Scopus on the remedial works required for the removal of asbestos contaminated materials from the Hotel as well as a quotation from Thompsons of Prudhoe for the removal of asbestos contaminated materials.

63. On 04 September 2020, Mr. Knak informed Mr. Smith by e-mail that he believed that he had no further enquiries to undertake and that he had addressed each of the queries posed by insurers. It appears that by this date, the Defendant had also received results of the financial screening of the Malhotra Group which confirmed that it was not under any financial stress or pressure. The Defendant still wanted to continue its investigations.

64. During September 2020, the Defendant wanted Burgoynes to speak to Mr. Cookson and Mr. Lowery. It is clear from the correspondence that DJM were not keen to speak to Burgoynes or W & C, believing that their competence was being questioned or possibly that they were a target of the Defendant. The Claimant took steps to persuade DJM to co-operate with Burgoynes' requests for interviews and to provide a maintenance report which the Defendant had requested.

65. On 30 September 2020, Mr. Knak was able to interview Mr. Cookson and Mr. Lowery separately. Mr. Knak's meeting notes and the signed statements made subsequently by Mr. Cookson and Lowery dated 06 October 2020 were in evidence.

66. Burgoynes' typed note of Mr. Knak's conversation with Mr. Cookson records Mr. Cookson saying that he and Mr. Lowery opened the insect screen and found debris partially blocking it. The debris consisted of some fibres like loft insulation but mostly sediment partially blocking it. Mr. Cookson also stated that the water level in the tank was very high but no water was flowing because the isolation valve had been closed. He also said that the float valve had jammed open although he did not know the reason why.

67. Burgoynes' typed note of Mr. Knak's conversation with Mr. Lowery recorded that the insect screen did not really have anything blocking the mesh. There was some nondescript debris on the mesh but it was essentially clean. He wiped his finger around the filter and then put it back. The arm of the float valve was down but the float was not submerged.

68. Mr. Lowery's signed statement was in line with Burgoynes' typed note recording that he arrived first at the Hotel and the only person there was a gardener until Atul and Mr. Cookson arrived. He and Mr. Cookson went into the loft and found a lot of water damage around the tank. He saw the valve in the open position but the float was not submerged in the water. He fitted a new float valve and turned on the water supply

again. He gave the old valve to Atul. He does not know why the valve failed. When Mr. Lowery was at the tank he lifted the lid of the insect screen and took out the mesh filter. He considered that there was nothing really blocking the mesh. There was some nondescript debris on the mesh but it was effectively clean. Mr. Lowery described the overflow pipe as being just for warning. He said that it was not meant to carry the full flow of water from the valve and if the valve was stuck open, then water would eventually flow over the top of the tank.

69. Mr. Cookson's signed statement records that he was called on the morning of 13 July 2020 in connection with a water leak and arrived mid-morning. He met Atul at the Hotel. He could see water damage in the bar on the ground floor and water damage to the rooms above. He went into the loft and could see evidence of water damage around one of the tanks. The water level in the tank was very high but no water was flowing because the isolation valve had been closed. He and Mr. Lowery opened the insect screen. The screen is a fine mesh filter and he saw some fibres like loft insulation and some sediment but the Overflow was not blocked. Mr Cookson also believes that the Overflow is just meant to give a warning and would not have been able to carry the full flow from the valve. As will be apparent, Mr. Cookson's account of what he had seen in the insect screen had changed from what was recorded in Burgoynes' meeting note because he no longer refers to the insect screen being partially blocked.

70. Mr. Cookson also stated that the float valve had jammed in the open position but he didn't know why. Mr. Cookson said that he gave the valve to Atul.

71. On 30 September 2020, W & C produced their first interim report, which raised various concerns about the claim. It was not suggested at this time that the EOW may have been deliberate but the report did identify the following concerns:

    i) Company searches had identified a company insolvency, which had not been disclosed to the Defendant.

    ii) A business interruption claim had been rejected by the Defendant.

    iii) Whether the Unoccupied Premises condition had been complied with.

    iv) Discrepancies relating to the reported background and the circumstances of the loss.

72. W & C recommended that the Defendant continue to maintain a reserve of £1,978,200 and confirmed that inquiries were continuing in conjunction with Burgoynes.

73. Mr. Bevan of W & C interviewed Mr. Vadhera on 01 October 2020. The correspondence leading up to the interview does not suggest any reluctance on the part of the Claimant to make Mr. Vadhera available for interview. Again, the transcript of that meeting together with a signed statement made by Mr. Vadhera on 08 October 2020 are in evidence. It is clear from the transcript of the meeting between Mr. Vadhera and Mr. Bevan that there was frustration on both sides. Mr. Bevan wanted answers to his questions. Mr. Vadhera, and Mr. Coathup who was also present, felt that many of the questions were repetitive and ignored the conversation, which Mr. Vadhera had already had with Mr. Knak. They also considered that the relevance of many of the questions was unclear.

74. In the course of his interview and then in his statement, Mr. Vadhera describes finding the leak, entering the loft and going to the tank. He describes turning off the stopcock to the tank and also the tank ceasing to overflow after a couple of minutes. He also described waiting for a plumbing contractor to turn up, who didn't. Mr. Vadhera says that he was at the property for 2 – 3 hours but then went home as he and his wife had adopted a child who was only a few days old. Later that day he sent an e-mail to Meenu apologising for disturbing his birthday but telling Meenu what happened.

75. Mr. Vadhera clarified that he did not find fibrous loft insulation in the water tank on the day of EOW and did not look inside the tank.

76. W & C issued their second interim report to the Defendant on 16 October 2020 summarising their investigations to date and the investigations of Burgoynes. They continued to express concerns over the reported circumstances of the loss.

77. Mr. Czech and Mr. Green of Burgoynes attended the Hotel on 30 October 2020. Their findings included:

    i) The Overflow was able to accommodate all of the water flowing into the tank and overflowing.

    ii) The same was also true for tank 17 and its overflow.

78. On 03 November 2020, Mr. Smith of W & C spoke to Mr. Webster of MWP concerning events on 11 July 2020.

79. Mr. Knak and Mr. Czech attended the Hotel on 04 December 2020 to extract valves and Overflow pipework from the Hotel and install a data logger. Mr. Knak examined the pipework he took from the Hotel on 07 December 2020.

80. On 08 December 2020, the Claimant's solicitors sent the Defendant a letter before action.

81. On 11 December 2020, Mr. Knak attended the Hotel to collect the data logger and replace the insect screens on tanks 17 and 18.

82. The Claimant took steps during the second half of 2020 to resolve the asbestos issues at a cost of about £85,000. After the asbestos issue was resolved, the Claimant undertook the remedial works to the Hotel in 2021.

The Applicable Legal Principles for assessment of the Evidence

The Factual Evidence

83. Inevitably in a case of fraud, it is necessary for me to assess the credibility and truthfulness of the factual evidence before me. The authorities are clear that the best guides for the Court in assessing the witness evidence are the inherent probabilities and the facts which can be objectively verified independently of witness testimony, for example, through the contemporaneous documents; see Natwest Markets Plc v Bilta (UK) Ltd [2021] EWCA Civ 680 at [49] and The Ocean Frost [1985] 1 Lloyd's Rep. 1 at 57.

84. In Gestmin SA v Credit Suisse (UK) Ltd [2013] EWHC 3560, Leggatt J made some important observations concerning the fallibility of human memory and how the process of civil litigation itself subjects the memories of witnesses to powerful biases: [16] – [20] concluding at [22]:

> *"the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts."*

85. In Blue v Ashley at [69], Leggatt J warned against the benefit of hindsight on recollections in the following terms: *"there is a powerful tendency for people to remember past events concerning themselves in a self-enhancing light*".

86. Bearing in mind the criticisms made particularly by the Defendant of the evidence of Mr. Vadhera, Atul and Meenu, the guidance in The Ocean Frost and from Legatt J. assumes particular importance. I have therefore sought where possible to base my conclusions on the physical evidence and contemporaneous documents and have considered any controversial witness testimony critically.

The Expert Evidence

87. Given the importance of the expert evidence to the question of whether the EOW was caused deliberately or accidentally and given the criticisms made of each expert's evidence, I should set out the principles which have guided my assessment of their evidence and whether it is admissible.

    i) The experts must have the necessary knowledge and experience;

    ii) The experts must demonstrate that they have the relevant knowledge and experience; see Kennedy v Cordia (Services) LLP [2016] 1 WLR 597 at [44] and [50]

    iii) Experts are instructed on the basis that they are a genuine expert in the relevant field; Sycurio v PCI-Pal [2023] [EWHC 2361 at [12].

88. The Claimant also urged on me the guidance in *Phipson*, 20th ed. at 33-78 to the effect that having studied a subject academically does not necessarily mean that a person is sufficiently qualified to give expert evidence.

89. As set out in more detail below, I consider that both Mr. Topp and Mr. Knak had the necessary knowledge and experience to provide expert testimony in this case albeit they approached the questions for them from different backgrounds.

The Applicable Legal Principles to the Claim

Determining whether the EOW was accidental or caused deliberately

90. It was common ground that:

    i) The Claimant bears the evidential burden of proving any positive case that it relies on for the purposes of proving that the EOW occurred fortuitously; Regina

Fur Co Ltd v Bossom [1958] 2 Lloyd's Rep 425. However, an insured is not required to prove precisely how a casualty occurs; see *MacGillivray on Insurance Law*, 15th ed at §19-008.

ii) The Defendant bears the burden of proof to show that the EOW was the result of an intentional act carried out by or at the direction of one of the Claimant's servants or agents.

91. So far as the standard of proof is concerned, the Defendant has to prove its case on the balance of probabilities; see Jones v Birmingham City Council [2023] UKSC 27.

92. In the context of an allegation that an insured has deliberately and dishonestly destroyed or damaged its own property and then presented it as a fortuitous loss, a number of legal principles are in play.

i) In assessing the balance of probabilities, the court must weigh the fact that the owners of property do not generally resort to destroying their property and the allegation that an owner has done so is a grave charge to make; see The Atlantik Confidence [2016] 2 Lloyd's Rep. 525 per Teare J. at [9].

ii) As a consequence, *"The burden of proof is not discharged, in our judgment, if the evidence fails to exclude a substantial, as opposed, to a fanciful or remote possibility that the loss was accidental"*; see The Ikarian Reefer [1995] 1 Lloyd's Rep 455 per Stuart Smith LJ at 459 rhc as well as The Atlantik Confidence at [9] citing the same passage and The Brillante Virtuoso at [62] – [64].

iii) In The Brillante Virtuoso at [64], Teare J. put the position this way:

"The cogency of the evidence must eliminate any other plausible explanation based on the innocence of the person alleged to have been fraudulent so that the only conclusion or inference remaining is one of guilt. By contrast, if there is a plausible explanation, which indicates the innocence of the person impugned of fraudulent or criminal conduct, no finding of such misconduct can or should be made."

iv) Similarly in The Milasan [2000] 2 Lloyd's Rep 458 at 468, Aikens J. said that *"ultimately the issue for the Court is whether the facts proved against the Owners are sufficiently unambiguous to conclude that they were complicit in the casting away of the vessel".* A similar statement applies where the property is a commercial building not a vessel.

v) *"Even strong suspicion of the plaintiff's guilt is insufficient"* such that a finding of guilt can only be made where this is the only probable conclusion; McGregor v Prudential Insurance Co. Ltd [1998] 1 Lloyd's Rep. 112 at 114 – 115.

vi) *"An inference of the owner's guilt can properly be drawn if the probabilities point clearly and irresistibly towards complicity"* The Captain Panagos DP [1989] 1 Lloyd's Rep 33 at 43lhc per Neill LJ.

vii) It is nevertheless not necessary for the Defendant to show that the EOW was incapable of innocent explanation; see Bank St. Petersburg PJSC v Arkhangelsky [2020] EWCA Civ 408 at [39] – [57]. In the same case, Males LJ dealt with the standard of proof in the following terms and I keep in mind that this this is the standard which I must apply:

"In general it is legitimate and conventional, and a fair starting point, that fraud and dishonesty are inherently improbable, such that cogent evidence is required for their proof. But that is because, other things being equal, people do not usually act dishonestly, and it can be no more than a starting point. Ultimately, the only question is whether it has been proved that the occurrence of the fact in issue, in this case dishonesty in the realisation of the assets, was more probable than not."

93. More recently in Birmingham City Council v Jones [2023] 3 WLR 343, the Supreme Court dealt with the standard of proof in the following terms (at [51] per Lord Lloyd-Jones JSC):

"I pause at this point to take stock of these developments.

(1) It is now established that there is only one civil standard of proof at common law and that is proof on the balance of probabilities.

(2) Nevertheless, the inherent improbability of an event having occurred will, as a matter of common sense, be a relevant factor when deciding whether it did in fact occur. As a result, proof of an improbable event may require more cogent evidence than might otherwise be required.

(3) However, the seriousness of an allegation, or of the consequences which would follow for a defendant if an allegation is proved, does not necessarily affect the likelihood of it being true. As a result, there cannot be a general rule that the seriousness of an allegation or of the consequences of upholding an allegation justifies a requirement of more cogent evidence where the civil standard is applied …"

94. As discussed further below, one of the key issues in this case is whether there was motive for the Claimant to deliberately damage its own property. In this regard:

i) Evidence of a motive to engage in the alleged fraudulent conduct is a crucial probative tool for the Court, albeit not a legal requirement. Mann J. put the position in the following terms in MASNOL v. Cripps Harries LLP [2016] EWHC 2483 (Ch) at [88]:

"Of particular relevance to a case of fraud such as the present is a question of motive. By and large dishonest people are dishonest for a reason. They tend not to be dishonest wilfully or just for fun. Establishing a motive for deceit or conspiracy, is not a legal requirement, but if a motive cannot be detected or plausibly suggested then wrongful intention (to tell a deliberate lie in order to deceive) is less likely. The less likely the motive, the less likely the intention to deceive, or to conspire unlawfully."

ii) More generally in the insurance context, the courts have similarly placed important weight on the presence of a motive for an insured deliberately to destroy their own property. So in The Arnus (1922) 13 Lloyd's Rep 298 (CA) and 19 Lloyds Rep. 95 (HL), the Court found the vessel had been scuttled laying emphasis on an abundant pecuniary motive for scuttling in circumstances where the vessel had been bought at the top of the market but had collapsed in value. Lord Sumner observed at 99 that *"Ships are not cast away out of lightness of heart or sheer animal spirits. There must be some strong motive at work; and this is usually the hope of gain."*

iii) In The Brillante Virtuoso, Teare J. stated at [458] *"Similarly, the absence of a motive may cause a court to decline to infer scuttling. But where the facts of the case are sufficiently unambiguous a motive need not be established (per Aikens J in The Milasan). Thus the question of motive is one of the relevant circumstances to be considered and weighed. But the starting point must be the "the evidence relating to the loss itself" (per Branson J in The Gloria). …".*

95. It is right to observe that a dishonest motive may be easier to discern in the case of a scuttling where a vessel is a total loss such that insurers are being asked to reimburse the insured for the agreed value of the ship which has been lost. This situation contrasts with a situation where an insured is prima facie seeking an indemnity in respect of costs to be incurred to clean up and repair damage.

96. Finally, the insured's history of past convictions may be relevant but instances of lesser wrongdoing are not probative of an allegation that an insured has deliberately destroyed its property to defraud its insurer because the criminal magnitude of such conduct is so great. Thus: *"It is a long way from deceiving the Danish tax authorities, however deplorable such conduct may be, to conniving at the destruction of one's ship by one's own servant"*; The Michael [1979] 2 Lloyd's Rep 1 at 21; *"it is a long step from deceiving the bank to scuttling a ship"*: Issaias v Marine Insurance Co Ltd (1923) 15 Lloyd's Rep 186 at 187.

97. In his oral closing submissions, Mr. Elkington KC for the Defendant put the task before me in the following terms:

".. We are just in that territory here. We are looking at two alternative causes and you can look at them, discount one and if you discount the other, then consider the remaining one and it may have become more likely than not but you always have to step back and satisfy yourself whether or not you think it is more probable than not and I don't think it is more complicated than that, however many authorities your lordship has. …"

98. This submission was common ground and made on the basis of the guidance from Waller LJ in Kiani v Land Rover Ltd [2006] EWCA Civ 880 at [30] to the effect:

> *"… Third, I do not myself think that it is false logic to reason that where only two possibilities are under consideration both of which seem unlikely, if one seems much less likely than the other, the less likely can be discounted thus making the first likely to have happened on the balance of probabilities. …"*

99. This is a neat summary of my task in relation to the question of whether the EOW was deliberately caused or not. Nevertheless, I have kept in mind the guidance from the authorities discussed above and in particular the following principles:

    i) The standard of proof which I have to apply is the civil standard of balance of probabilities. In applying that standard, there is no general requirement that the Defendant establish its case on fraud by reliance on evidence of particular cogency.

    ii) However if fraud is to be made out, the evidence must exclude any substantial plausible explanation for how the EOW happened accidentally.

    iii) When assessing the evidence, I should take into account as probative tools the following factors:

        a) Whether there is evidence of a plausible financial motive for the Claimant to damage its own property.

        b) The fact that owners of property do not generally destroy their own property and an allegation that they have done so is a serious charge to make.

        c) Instances of lesser wrong-doing may not be probative of an allegation that an insured has deliberately destroyed its own property to defraud insurers.

100. More generally, when I am considering where the balance of probabilities lies, it is important to consider the evidence as a whole putting the available evidence as to the physical cause of the EOW into the context of the surrounding circumstances and commercial background.

Pleading dishonesty

101. Various matters were raised in cross-examination by the Defendant, which the Claimant says were un-pleaded. Examples given include the authenticity or otherwise of the inspection logs and the gates related to the Easteye litigation. The Claimant accepts if a matter goes purely to credibility then it does not need to be pleaded. However, the Claimant objected to these matters being used by the Defendant to support its case that the Claimant had deliberately and dishonestly caused the EOW on the basis that the primary facts underlying these allegations had not been pleaded.

102. In this regard, the authorities are clear that if a party intends to allege dishonesty, then the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent must be pleaded; see Three Rivers District Council v. Bank of England [2003] 2 AC 1 at [184] to [186] and Grove Park v RBS [2018] EWHC 3521 (Comm) at [24] – [26].

103. The inevitable difficulty in a case such as the present where (i) there is both a challenge to a witness' credibility and (ii) it is also said that the same individual was party to a dishonest scheme to defraud insurers is to draw the line between what are matters which go purely to credibility and matters from which it is said an inference can be drawn that

there was a dishonest scheme. In this regard, I consider it appropriate to follow the guidance of Carr J. (as she then was) in Baturina v Chistyakov [2017] EWHCV 1049 at [126]:

"I accept the submission on behalf of Ms Baturina that there is an extent to which it is permissible to pursue unpleaded challenges to credibility. But where it is intended to advance specific matters of dishonesty based on a particular set of facts, such matters should, as a matter of fairness, be pleaded. …"

104. Accordingly, I accept the submission from the Claimant that it is not open to the Defendant to build a fraud case based on matters which were not pleaded but are said to justify an inference that the EOW was deliberate. While it has not always been straight-forward to keep separate the distinction between matters which go to credibility and matters on which the Defendant can legitimately rely for the purposes of its case on fraud, I have endeavoured to keep this distinction in mind when considering the evidence.

The proper approach to construction of fraud conditions

105. Before the decision of the Supreme Court in Versloot Dredging BV v HDI Gerling Industrie Versicherung [2017] 1 AC 1, it was generally considered that fraud conditions replicated the common law; see Nsubaga v Royal Insurance Co. [1988] 2 Lloyd's Rep. 682 at 686, Sharon Bakery (Europe) Ltd v Axa [2011] EWHC 210 at [75] and Aviva v Brown [2012] Lloyd's Rep. IR 211 at [76] and [118].

106. The Supreme Court's decision in Versloot changed the common law such that 'fraudulent devices', renamed 'collateral lies', no longer have the same consequence as fraudulent claims. A collateral lie will not prevent an insured from recovering. After Versloot, fraud conditions covering fraudulent devices go further than the common law in that an insurer can reject a claim pursuant to a fraud condition for collateral lies, which do not entitle rejection at common law.

107. Before the decision in Versloot, it was not any fraudulent device or collateral lie which would prevent recovery. Rather, the lie had to (i) directly relate to the claim, (ii) be intended to improve the assured's prospects of obtaining a settlement or winning the case; and (iii) if believed be objectively capable of yielding a not insignificant improvement in the insured's prospects of obtaining a settlement or better settlement; see *Colinvaux & Merkin* at §4-0414 and The Aegeon [2003] QB 556 at [45].

108. In Versloot, Lord Mance (giving a dissenting judgment) indicated that the only alteration he might make to the test he proposed in The Aegeon was to heighten the threshold of materiality from a requirement for 'a not insignificant improvement' of the insured's prospects to a requirement of a significant improvement of the insured's prospects before the claim is barred.

109. There was an issue before me as to whether fraud conditions covering fraudulent devices or collateral lies are generally to be read as being subject to the limitations stated by Mance LJ in The Aegeon as modified by Lord Mance in Versloot. In this regard, I accept the Claimant's submission that for a fraud condition to have the effect of depriving the insured of an indemnity in the event of any false statement being told to insurers regardless of its significance for the insured's claim would require very clear

words. In Versloot, the Supreme Court held that the fraudulent claims rule does not apply to collateral lies in part because it is *'disproportionately harsh to the insured and goes further than any legitimate commercial interest of the insurer can justify'* [36]. To construe a fraud condition as being free of the conditions proposed by Mance LJ in The Aegeon in the absence of clear words would mean that it is even harsher than the common law rule prior to Versloot and as such even harsher than a rule which was rejected by the Supreme Court for being too harsh.

The Factual Witnesses

The Claimant's witnesses

110. For the Claimant, I heard oral testimony from Mr. Vadhera, Atul, Meenu, Mr. Stewart Mackenzie, Mr. Elliott, the Chief Financial Officer of the Malhotra Group since May 2021 and Mr. Patrick Coathup.

111. For the Defendants, I heard oral testimony from Mr. Michael Stokoe, a loss adjuster with W & C, Mr. Patrick Smith, a loss adjuster with W & C, Mr. Jacek Czech, an associate with Burgoynes and Mr. Darren Green, also an associate with Burgoynes. Mr. Knak also gave factual evidence in relation to his investigations of the EOW. The evidence of Mr. Vagn Bevan, a loss adjuster with W & C was admitted via his witness statement.

112. I had witness statements from Mr. Lowery and Mr. Cookson, the plumbers who attended at the Hotel on 13 July 2020 but did not hear oral testimony from them.

113. So far as the factual witnesses are concerned, Mr. Vadhera was not a satisfactory witness even if I make allowance for English not being his first language.

114. In this regard, the Defendant submitted that I should find that Mr. Vadhera was not an honest witness and had good reasons to be willing to lie in order to support the Claimant's insurance claim. In this respect, they relied on the following matters:

    i) Mr. Vadhera had been the estates manager for the Malhotra Group since 2019 overseeing as many as 20 members of staff including in-house electricians and an in-house plumber and responsible for 20 – 30 properties.

    ii) There was, and I accept, an undoubtedly close personal relationship between Meenu and Mr. Vadhera dating back nearly three decades.

    iii) Mr. Vadhera is personally and financially indebted to the Malhotra Group and to Meenu in particular, with various loans, including one for £54,000 taken in 2019/2020 which is yet to be repaid. He was reticent to answer questions about the loans and the answers which were given were evasive. Further, the loans were unusually large in comparison to loans given to other individuals within the Malhotra Group companies.

    iv) Mr. Vadhera is the sole director of a construction company called A2M owned by Meenu. Yet, he was both evasive as to his role with A2M and his knowledge of what the company in fact did.

v) Mr. Vadhera was evasive about events in his own life and in particular about when his son came to live with him. He was unwilling and unable to answer questions about when he worked during July 2020 without first having sight of the Hotel's inspection log.

vi) Mr. Vadhera was unable to give a consistent version of events concerning the EOW. The Defendant suggested that a particular unexplained anomaly was the version of events he gave Mr. Coathup on 28 July 2020 when he suggested that on 11 July he had waited for the plumbers who had attended that day, removed and replaced the float valve and disposed of the old one. The Defendant further pointed to various occasions in his cross-examination where Mr. Vadhera changed his evidence to meet what he thought were the criticisms of his evidence only to have to retract his answer in light of contemporaneous documents or the evidence of other witnesses, examples include his evidence as to when he called the plumber on 11 July 2020 and whether he called Atul on 11 July 2020.

115. So far as the above criticisms are concerned, I accept that Mr. Vadhera was an evasive witness who has given conflicting accounts about what occurred on 11 July 2020. I also accept that he has a very close connection to Meenu both personally and as an employee of the Malhotra Group. He is someone who was prepared to change his testimony if he thought it would assist the Claimant. I do therefore accept that I must approach his evidence with a considerable degree of caution and that it is necessary to test whether his evidence, particularly in relation to the events of 11 July 2020, is corroborated by the contemporaneous documents and the physical evidence before I accept it. However, I keep in mind that there is a distinction between whether Mr. Vadhera is a credible witness and the question of whether he is someone who is sufficiently dishonest that he would be prepared to deliberately cause the EOW and thereafter lie about his involvement both during the investigation and then throughout this litigation through to trial.

116. As for Atul, the principal challenges to his testimony related to his evidence regarding the inspection logs and evidence to suggest that he was responsible for breaches by the Claimant of the furlough regime.

117. The suggestion that Atul was making up his evidence about the filling in of the logs was made by reference to a series of WhatsApp exchanges from August 2020 regarding records of fire alarm tests. It was on this basis that it was suggested to Atul that he was making up his evidence about filling in the logs. However, these messages were referring to a different set of logs, namely the fire alarm test logs, rather than the inspection logs. In this regard, I accept that his evidence was corroborated by the fact that the completed inspection logs relating to the relevant period in July 2020 were sent by Mr. Coathup to Mr. Stokoe on 17 July 2020.

118. The Defendant further suggested that the logs were not all they seemed because they commence in March 2020 but the genesis for their production was an exchange of e-mails in late April 2020 and the only available template for the logs is an electronic document that was created on 28 May 2020. The difficulty for the Defendant however is that prior to the hearing it has never formally challenged the authenticity of the logs. I am not prepared therefore to find that the logs are not genuine documents recording the inspections done at the Hotel. The Defendant also suggested that it was not credible

that Atul and Mr. Vadhera were spending up to one to two hours a day carrying out inspections at the Hotel from early June onwards especially given that Mr. Vadhera's adopted baby arrived on 02 July 2020 (when he claimed to have carried out an inspection) and Atul's daughter had her first birthday on 06 July 2020. I do not, however, accept this submission as a basis for concluding that either Atul or Mr. Vadhera were lying about when they carried out their inspections.

119. As for the issue of potential breaches of the furlough regime, I did not have the evidence before me or the necessary guidance as to the legislative provisions governing the furlough regime to reach any conclusion as to whether in fact that there had been a breach of the furlough regime or how serious those breaches were. But, Atul did not in his evidence seek to hide what had been done in relation to who was working at the Hotel and when.

120. I accept that Atul is a witness where I should be careful to test his evidence against the relevant contemporaneous documents and other evidence given the inconsistencies in his testimony. However, I do not find that he was a dishonest witness nor I do find that the criticisms of his evidence made by the Defendant sufficiently establish that he is a man prepared to be involved in a scheme to dishonestly cause the EOW and thereafter lie about that involvement both to the Defendant and to the Court.

121. Meenu was subject to extensive cross-examination in relation to a range of matters where it was suggested that he had been dishonest or given misleading evidence. I will address the particular issues in more detail below but in summary, I find that Meenu is someone who has been prepared to behave commercially in ways which can only sensibly be described as misleading, for example in relation to the placing of terrorism cover required by the Co-Op Bank. However, I also consider that the evidence shows that he is a commercially astute businessman, who would be alive to the very real risks to his business and his reputation if he had been party to a dishonest scheme to cause an EOW at the Hotel given the likelihood of an investigation by insurers into that loss. I also form the view that he would in July 2020 have understood that if there was damage to the Hotel and the Claimant put in an insurance claim, there would be no certainty of the Defendant agreeing an interim payment either at all or at least within a short space of time.

122. So far as the placing of terrorism cover over 73A Osborne Road as required by the Co-Op Bank is concerned, Meenu did not dispute that he gave instructions in January 2019 that if necessary the Malhotra Group should place the cover and then cancel it once confirmation of cover had been received. He accepted in cross-examination that he had been prepared to mislead Co-Op Bank for the sake of £1,000. He can rightly be criticised for being willing to mislead the Co-Op Bank if necessary and this is conduct which properly goes to his credit as a witness.

123. The Defendant also criticised Meenu's evidence in relation to the date when the Hotel would re-open and in relation to the occupancy and inspection of the Hotel during lockdown. In respect to both topics, the Defendant submitted that Meenu had given instructions for information to be provided to the Defendant which he knew was false or was at least reckless as to whether it was true. However, the information which Meenu asked Mr. Coathup to pass on relating to the occupancy and inspection of the Hotel was not passed on to the Defendant, possibly because it was checked internally and found to be inaccurate. As to the opening date for the Hotel, Meenu confirmed in

his oral evidence that this was what he thought at the time was the position although he did not check the information. In other words, he was careless.

124. A further criticism was made that in an exchange of WhatsApp messages, Meenu had instructed Mr. McColl, the Malhotra Group CFO, to present the worst-case scenario to the Defendant. I do not, however, consider that this exchange establishes a tendency to dishonesty on the part of Meenu as opposed to being someone who wanted to maximise the Claimant's potential insurance claim in anticipation that it would be knocked down.

125. The Defendant relied on information provided by Meenu to the Malhotra Group's legal team in the Easteye litigation to the effect that the group was cash poor. That information was the basis for costs submissions made by counsel to the court in that litigation. Meenu's evidence however was that he did not see the skeleton argument in question before it was served and only saw it shortly before the trial in this action. He nevertheless accepted that the Claimant was not cash poor in July 2020 and his instructions had therefore led to the court being misled. Again, Meenu should be criticised for providing information to his legal team which was incorrect and which he should have known was incorrect. In this regard, I accept that his behaviour is something I should properly take into account when assessing the credibility of his evidence. I also accept that it is relevant to the question of whether the EOW was deliberate or not. However, this is an instance of behaviour where I accept that there is a significant difference to providing incorrect information to the Group legal advisers for the purposes of obtaining an extended period to pay a costs order and engaging in a dishonest conspiracy to cause an EOW for the purposes of defrauding insurers and eventually misleading this court.

126. Finally, the Defendant criticised Meenu for seeking to keep Mr. Coathup's involvement in the claim a secret and his oversight of information provided by AFASS to insurers as well as the witness statements of both Mr. Lowery and Mr. Cookson. I regard these matters as suggesting that Meenu was keeping a tight control of the claim, including the provision of information to the Defendant, and was concerned to ensure that the Claimant achieved a good recovery from insurers. I do not consider, however, that this behaviour justifies any finding of a propensity to dishonesty on the part of Meenu.

127. As already noted, Meenu can rightly be criticised for his actions in relation to the placing of terrorism cover as required by the Co-Op Bank. It is also clear that he was at least careless in relation to information he asked Mr. Coathup to pass on to the Defendant. Again, the criticisms made by the Defendant are ones which support a conclusion that Meenu's testimony should be treated with caution and tested against the contemporaneous documents and other available evidence before being accepted. However, I do not consider that any of the above matters would justify me concluding, without more, that Meenu was someone who was prepared to engage in a dishonest scheme to deliberately cause the EOW and lie about it both to the Defendant and then to this court.

128. So far as Mr. Coathup, Mr. Elliott and Mr. Mackenzie are concerned, it was not suggested that they were not giving truthful evidence and I accept that they were. So far as Mr. Elliott is concerned, the Defendant suggested that he had been put forward to deal with the group's financial position. However, Mr. Elliott joined the Malhotra Group in 2021 after the relevant events. He gave evidence, which was not challenged,

that the Claimant had repaid its loan facility with the Co-Op Bank following a successful group re-financing.

129. It was put to each of Meenu, Atul and Mr. Vadhera that they had deliberately induced the EOW but none of the deliberate mechanisms put forward by the Defendant were specifically put to these witnesses. It is the Defendant's position, and I accept, that the Defendant does not have to prove the specific mechanism by which a deliberate loss is caused. But to the extent the Defendant advances a positive case as to that mechanism, it is then incumbent on the Defendant not only to plead that positive case but also to put that case to any individual alleged to be responsible for causing the deliberate EOW; see The Grecia Express [2002] 2 Lloyd's Rep. 88 at p.138 and Haringey v Hines [2010] EWCA Civ 111 at 38. I do therefore take into account when assessing the credibility of their evidence and whether they were likely to have caused a deliberate EOW by any of the mechanisms identified in the first expert report of Mr. Knak that none of Atul, Meenu or Mr. Vadhera were asked about the particular mechanisms by which it is said that the EOW was caused and whether they were responsible for the EOW being caused by one or other of those mechanisms.

The Defendant's witnesses

130. As to the Defendant's witnesses, the Claimant did not submit that any of them lied in their evidence. The Claimant did submit that there were elements of their evidence which were unsatisfactory. In this regard:

    i) Mr. Stokoe had an apparently clear recollection in his witness statement that Meenu told him about a telephone call with Mr. Vadhera and of his showing Mr. Stokoe his telephone in support of this. In cross-examination, Mr. Stokoe acknowledged that he had no firm recollection of this and was unable to say whether he was shown a call list or an e-mail.

    ii) Mr Smith accepted in cross-examination that contrary to the position stated in his witness statement, Meenu was not trying to restrict the nature or scope of the Defendant's enquiries.

    iii) Mr. Green stated in his witness statement that when he examined tank 18 in October 2020 there was no fibrous material present within that tank or the overflow pipe associated with it. However, in cross-examination, he accepted that there may have been insulation fibres in the tank in October 2020 but he had not examined the tank for such fibres.

131. It is also significant that in cross-examination both Mr. Stokoe and Mr. Knak were prepared to accept that there was in fact no suspicion of the Malhotras in July and August 2020. It was only later that certain matters, for example, the whereabouts of the failed valve and the existence of the Interconnecting Pipe assumed greater significance.

The expert witnesses

132. Each party sought to persuade me that I should disregard the evidence of the other party's expert on the basis that they were not suitably qualified or experienced. It is true that the experts came from very different backgrounds. Mr. Topp is a plumber with many years of experience in his trade. Mr. Knak is an experienced investigator with

academic qualifications and practical experience in fluid dynamics. As set out in more detail below, I am not persuaded by either party's submissions that I should give greater weight generally to the views of their expert over those of the other merely as a consequence of the experts' differing backgrounds. Nor am I persuaded that I should treat either expert as not being qualified to provide expert opinion to this court on the issues, which they were asked to address. As is often the case, both experts were doing their best to assist the court and doing so with a background of considerable experience, albeit from different perspectives. In fact, given the questions raised in relation to how the EOW occurred, it was very helpful to me to have evidence from Mr. Topp as an experienced plumber and from Mr. Knak as an experienced investigator with a background in fluid mechanics and accident investigation more generally.

Mr. Topp

133. I accept that Mr. Topp is an expert in plumbing with extensive experience and knowledge of the workings of water tanks and their plumbing systems, blockages and how escapes of water may occur. Mr. Topp clearly has extensive practical experience as a plumber. His CV also evidences that he has been responsible for the design of plumbing and heating systems for projects including schools, health care buildings and large housing developments. His expert report confirms that he does not have a record of how many escapes of water from cold water storage cistern he has investigated over 40 years but it is likely to be more than 400.

134. The Defendant criticised the conclusions reached by Mr. Topp on the basis that they submit that his mechanisms for how the loss might have been caused accidentally are not sustainable on the facts and are inconsistent, they say, with how any silt or sediment and fibres in the tank would have behaved in water. They also criticised Mr. Topp's evidence on the basis that he proceeded from the assumption that Mr. Vadhera's evidence that tank 18 overspilled was correct rather than approaching the question of whether the EOW was accidental or deliberate without any such assumption. Rightly, they did not, however, suggest that Mr. Topp's evidence was not independent or that he was otherwise advancing a case as to how the EOW occurred which he knew not to be correct. So far as the specific criticism of Mr. Topp's evidence is concerned, I do not consider that this is a fair criticism. It is correct that his reasoning as to the cause of the EOW was based in part on Mr. Vadhera's evidence. But, this was because he considered that on the available evidence, including Mr. Vadhera's evidence but also the evidence as to the pattern and extent of the water damage, that tank 18 did overspill.

135. Bearing in mind that the Claimant's case as to how the EOW was caused accidentally placed considerable weight on the evidence of Mr. Topp, I take some comfort from the fact that my assessment of his qualities as an expert witness reflects a previous assessment of him as an expert witness; see West v Ian Finlay & Associates [2013] EWHC 868 (TCC) at [85] – [86] per Edward-Stuart J:

> *"Mr. Topp struck me as a man who knew exactly what he was talking about, and his evidence was given with authority. His evidence was not shaken in spite of a lengthy cross-examination. I was impressed by his evidence and I accept it without reservation."*

Mr. Knak

136. The Claimant submits that Mr. Knak is not an appropriately qualified expert and did not have the necessary expertise or experience to opine in this case. I do not accept this submission.

137. Mr. Knak is a mechanical engineer and not a plumber. He is, however, an experienced investigator with some expertise in fluid dynamics. He has investigated a significant number of incidents, of which about 12 were overspilling events. Both his accident investigation background and his experience of fluid dynamics are matters, which I consider provide him with appropriate expertise to assist the Court.

138. Again, I accept that Mr. Knak was doing his best to assist the court in both his reports and in his oral testimony. In this regard, he was prepared to accept that the main development which confirmed his view that the EOW was caused deliberately was his discovery that the two tanks were hydraulically connected and that having done some tests with insulation and the insect screen, he didn't previously appreciate how porous the insulation fibres were and how much water they allowed to pass. It is, however, in my view relevant that Mr. Knak's initial reaction in July and August 2020 was to accept that the EOW could have occurred accidentally in circumstances where the ball valve had failed and the Overflow was blocked. In other words, despite the criticisms made by the Defendant during the hearing of the Claimant's case as to how a blockage in the Overflow could have been caused, Mr. Knak was prepared to consider following his initial investigations in July and August 2020 that the EOW was accidental and that there was a blockage in the Overflow.

Was it impossible that the EOW was accidental?

139. It is common ground that a large volume of water escaped from the vicinity of tank 18 in the early hours of 11 July 2020. It is also common ground that no one can prove precisely what caused the EOW.

140. It is also common ground that the EOW could have occurred accidentally as reported by Mr. Vadhera with tank 18 overspilling provided three things occurred:

    i) The float valve for tank 18 failed resulting in the valve not closing fully or at all;

    ii) The Overflow had some form of blockage; and

    iii) The Cold Water Down Service also had some form of blockage.

141. Unsurprisingly, the Defendant submits that it is improbable that all three circumstances combined at one point in time to cause the EOW and submits that this very improbability makes it less probable that the EOW was accidental; cf The Atlantik Confidence [2016] EWHC 2412 (Admlty) at [296] – [297] and [299]. I agree that in determining whether the EOW was accidental or deliberate, it is important for me to keep in mind the question of whether it is likely that all three circumstances combined at one point. Equally, however, it is important when answering that question to look at the wider circumstances and ask whether the evidence supporting the possibility that

the EOW was deliberate makes that possibility more probable than the EOW being accidental.

142. The Defendant submitted that Mr. Vadhera's evidence that he saw tank 18 overspilling is not credible because (i) had the valve failed open, Mr. Vadhera would have seen other tanks overspilling which he did not, (ii) tank 18 would not have continued overspilling after the mains supply was turned off and (iii) there is no physical evidence that tank 18 overspilled.

143. The Defendant also submitted that it was unlikely that the float valve failed based on the available evidence. In support of this, the Defendant pointed to the fact that the float valve was never examined and also submitted that the evidence of Mr. Lowery and Mr. Cookson about the condition of the float valve was contradictory.

144. The Defendant's case was also that it was unlikely, to say the least, that there was an appreciable blockage within the Overflow pipework. In this regard, they submitted:

i) A 75% blockage in the insect screen of the Overflow would not cause the tank to overspill even if the Cold Water Down Service was blocked.

ii) There would need to have been a substantial amount of insulation densely packed into either the insect screen or dip pipe or both to cause the required blockage.

iii) There is no good evidence that large volumes of loft insulation made its way into the tank.

iv) The likelihood of substantial amounts of material accumulating in the Overflow is extremely limited because clusters of fibrous material will sink to the bottom and individual fibres float on the surface so that they will not be drawn into the Overflow.

v) The existence of a substantial blockage in the insect screen or elsewhere in the Overflow is inconsistent with:

a) the plumbers' evidence as to what they found in the insect screen on 13 July 2020.

b) Mr. Knak's evidence that he only observed minute traces of fibrous material in the insect screen on 22 July 2020.

c) Mr. Green and Mr. Czech's evidence that they saw no evidence of the Overflow pipework having been blocked in any of its sections on 30 October 2020.

d) Mr. Knak's evidence that he found no evidence of blockages to the Overflow or witness marks indicating historic blockages when he examined the pipework in December 2020.

145. The Defendant also submitted that it was unlikely that there was an appreciable blockage within the Cold Water Down Service:

i) Debris in tanks either floats or sinks to the bottom so that as a matter of fluid dynamics it is inherently unlikely that material could have entered the Cold Water Down Service.

ii) The Claimant has not identified a credible feature of the Cold Water Down Service that would cause fibrous material or debris to accumulate in the Cold Water Down Service.

iii) If debris did find its way in the Cold Water Down Service, it would have been flushed away when the services were used.

iv) Mr. Topp's suggestion that material may have entered the Cold Water Down Service during or as a result of the cleaning work carried out by DJM in February 2020 is unrealistic because DJM did not carry out work on tank 18 and in any event material that had entered the Cold Water Down Service must have cleared by the time that DJM had finished conducting their repairs on 13 July 2020. (I have already indicated above that in fact DJM did carry out work to tank 18 in February 2020.)

v) Mr. Knak's evidence that he found no evidence of blockages to the Cold Water Down Service.

146. Generally, the Defendant submitted that the Claimant's case is highly unlikely to be correct because it required at least three points of failure to have been coincidentally and fortuitously present at the same time.

Did tank 18 overspill?

147. In his first expert report, Mr. Knak suggested that Mr. Vadhera could not have seen tank 18 overspilling because had the valve failed open, Mr. Vadhera would have seen other tanks overspilling, which he did not. Mr. Knak accepted in his oral evidence, however, that if the Cold Water Down Service had been blocked, then he would not have seen other tanks overspilling.

148. In his witness statement and in cross-examination, Mr. Vadhera confirmed that when he turned off the mains supply to tank 18, the overflow of water slowed down and stopped. Mr. Vadhera was challenged about this evidence on the basis that the water would have stopped overspilling as soon as the stopcock was closed. However, Mr. Knak does not address this issue in his expert report and when he was asked about it during his oral evidence, his evidence was that he could not give a definitive answer to how long the tank would overspill but he would expect it to be about 20 seconds. This estimate was, however, based on the misconception that any air trapped between the water and lid would escape through the breather in the lid. The breather is, however, intended to let air in rather than out.

149. In contrast, Mr. Topp's evidence was that the lid to tank 18 measures about 25 mm in height and therefore a full overspill would only occur once there was a gap caused by the lid lifting up such that there was about 30mm of water above the lid. Accordingly, once the supply is turned off, the lid will gradually drop its height and this could take a few minutes.

150. I do not consider it possible to form any concrete view as to how long water was overspilling from the tank after Mr. Vadhera turned off the stopcock to the tank. However, I accept that it is not the case that once the stopcock is turned off any overflowing water would cease immediately and that it may take a period of time in excess of a minute or so to stop; that period of time being such that Mr. Vadhera could see water continuing to overspill the tank once he had turned off the stopcock.

151. I also accept that there is physical evidence to show that tank 18 overspilled or which is consistent with overspilling.

i) Mr. Lowery of DJM found a lot of water damage around tank 18, which Mr. Knak accepted was consistent with overspilling.

ii) DJM's report of 13 July 2020 confirmed that in the view of both Mr. Lowery and Mr. Cookson, tank 18 had overflowed over the lip of the tank.

iii) If the plumbers had found a single focussed wet patch, it is unlikely that they would have concluded that the tank had overspilled.

iv) Mr. Topp's evidence was that the debris and silt found on top of the insect screen housing after the incident indicates that tank 18 is very likely to have overspilled. This part of Mr. Topp's evidence was not challenged.

v) Mr. Topp explains that if tank 18 overspilled, it is likely that water flowed onto the tank base and the pipework below which would have also wetted surrounding areas including areas adjacent to and below tank 17.

vi) In this regard, Mr. Knak found evidence of water damage around tank 18 including wet loft insulation beneath the tank as well as evidence of mould growth on the underside of loose timber boards in the vicinity of the tank.

vii) Bourgoynes' conclusion in their preliminary report dated 03 August 2020 was that the patterns of water damage found were consistent with an appreciable escape of water that originated in the loft at the north end of the Hotel. The report went on to say that the pattern of water damage was consistent with Mr. Vadhera's account of discovering the tank overflowing. This conclusion is, in my view, significant both because Mr. Knak accepted that the pattern of water damage was consistent with an overflowing tank and because he did not at that time suggest that Mr. Vadhera could not have seen the tank overspilling because any overspill would have ceased at the time when Mr. Vadhera turned off the stopcock.

viii) The experts were agreed that the extent of the water damage through the floors below the roof space was consistent with the escape of a relatively large volume of water from the roof space in the area of tank 18.

ix) Mr. Knak found evidence of mould growth beneath tank 17, which again he accepted was consistent with Mr. Vadhera's account that he saw water overflow the top of tank 18 or at least could plausibly have been caused by such an overspill. Mr. Knak also accepted that the presence of mould growth under tank

17 was not consistent with the EOW being caused by the deliberate loosening of the coupling on the mains supply connection.

152. Taking into account Mr. Vadhera's evidence, the possibility that water would continue to overspill for a very short period of time after the stopcock to the tank was closed and the physical evidence found during the investigation of the EOW including the pattern of the water damage, I am satisfied on the balance of probabilities that there was overspilling of water from tank 18 and that this is what Mr Vadhera saw when he entered the loft.

Is it likely that the float valve failed?

153. Following the visit of Mr. Lowery and Mr. Cookson of DJM, DJM confirmed in their report that the float valve had failed in the open position. They also invoiced for replacing a defective float valve. The Defendant submitted that both Mr. Lowery and Mr. Cookson only assumed that the float valve failed and that they could not know for certain because they did not strip the valve down. But, their evidence that the valve failed as a consequence of being jammed open by limescale is consistent with the available photographic evidence and was accepted by both experts as consistent with their own experience and, in the case of Mr. Knak, his observation of the valve in another tank.

154. The photographic evidence of the float valve showed that it was old, encrusted with limescale and corroded. Both experts agreed that the photographs showed what appeared to be deposits similar to limescale on the exterior of the valve.

155. Mr. McGough confirmed to Mr. Knak that the float valve had jammed open due to limescale deposits on 31 August 2020 and Mr. Cookson repeated this view to Mr. Knak on 30 September 2020.

156. The Defendant submitted that Mr. Lowery's evidence that he found the valve arm down and the float not submerged was inconsistent with the valve jamming in an open position. This was on the basis that this was the float's natural position. However, Mr. Knak accepted that the position of the float was neutral as to whether the valve was open or jammed open. He also accepted that the DJM report, what he was told by Mr. McGough on 31 August 2020 and by Mr. Cookson on 30 September 2020 all supported the view that the valve was jammed open.

157. Mr. Topp's view was that the evidence of Mr. Lowery that the float was not submerged could mean that the water was above the level of the bottom of the float and therefore consistent with the float valve being jammed open. He also opined that an experienced plumber would know by looking at a valve and in particular its hinged part whether a valve is in poor condition.

158. The condition of the float valve in tank 18 was consistent with the condition of the float valve in tank 17. Mr. Knak found the float valve of tank 17 to be old and affected by limescale and corrosion when he inspected the tank on 22 July 2020. When he later dismantled the valve, he found a degree of limescale deposition within the valve.

159. Mr. Czech considered that the valve in tank 17 was failing when he visited in October 2020.

160. As to the time of failure of the valve for tank 18, it was common ground between the experts that float valves of the type in the tank very rarely fail suddenly and most commonly deteriorate over time with the float valve not closing fully and the amount of water letting by gradually increasing until the valve fails completely.

161. Mr. Topp's view was that given the amount of limescale build up shown in the photograph, it was likely that the condition of the valve had deteriorated over a number of months rather than days or weeks and could have been failing for years.

162. The Defendant submitted that if this was the case and the valve had been letting by for a considerable period, it would have been discovered earlier, not least because water would have been coming out of the Overflow where it exited the roof of the Hotel and ran down to the gutter. However, I accept the submissions made by the Claimant, namely that:

    i) A valve letting by over time will not necessarily cause water to overflow given the interconnection between all the tanks. This is because there will only be an overflow if the level of water in all the 5 connected tanks reached a state of overflow.

    ii) Further once the water reaches the Overflow, the location of the outlet of the overflow pipe on the outside of the roof and the fact that it is just above a gutter, this could have gone unnoticed.

    iii) Mr. Knak accepted that it was entirely plausible that people would not have noticed water escaping through the Overflow system and that he didn't know whether one would notice such an escape.

163. Generally in relation to the question of whether the float valve failed, Mr. Knak's evidence was to the effect that it was plausible that the valve had failed. So:

    i) In his August 2020 report, Mr. Knak was unable to establish the precise mechanism for the failure of the valve but he was willing to proceed on the basis that the valve had failed open given the available evidence. His expert report expressed a similar view.

    ii) In his oral evidence, Mr. Knak accepted that:

        a) The tank 18 valve was probably coated with limescale.

        b) Where limescale is found to have built up on the outside of a valve, it is very often the case that the internal parts, principally on the dry side, are affected by limescale as well as the hinge part.

        c) Limescale can stop a valve working properly by stopping the inner parts shutting off or impeding the valve arm.

        d) It is entirely plausible that the float valve failed.

        e) DJM's evidence that the float valve had failed is consistent with Mr. Knak's observation of the tank 17 valve.

f) There is nothing inherently unlikely in a valve gradually failing over time by way of its inner components.

g) There is nothing inherently unlikely, on the available evidence, in the float valve in tank 18 failing gradually over time.

h) He was not surprised that the valve in tank 18 had failed due to a build-up of limescale given the poor condition of tank 17.

i) Given the weight of the available evidence it is a very real possibility that the valve jammed open.

j) There is nothing inherently unlikely about the occurrence of a failed float valve.

164. The Defendant submitted that the evidence is that the float valve was not letting by in August 2019 because the tank was the subject of an annual inspection in August 2019 and DJM recorded in their report that the float valve was in working order. They further submitted that the float valve would have been inspected in February 2020 and DJM's report from that visit records that they removed sediment, cleaned and disinfected the tank so that again if the float valve was letting by at that time, one would have expected DJM to have informed the Claimant.

165. However the Claimant submits, and I accept, that there is a distinction between the deterioration of the valve and the failure of the valve. The valve could have been deteriorating over a significantly longer period of time than the period from the moment when it failed. In turn, the failure may also have been gradual beginning with a drip and becoming greater over time. It is not possible to reach any firm conclusion as to when the valve failed but I accept that the fact that the valve would have been seen during the work done in August 2019 and February 2020 is not good evidence that the valve was not deteriorating at those times or could not have failed at some later point in time prior to the EOW. Further the photographs do show sediment and debris in tank 18 in July 2020.

166. Considering the evidence overall, I am satisfied that it is possible that the float valve in tank 18 had failed open causing an uncontrolled flow of water to enter the tank in the early hours on 11 July 2020. I do not consider that it is possible to reach any definitive conclusion as to the time period over which the valve failed but I accept the evidence which points to the float valve being likely to have failed gradually.

Likelihood that a sufficient blockage occurred within the Overflow, based on the available evidence

167. Mr. Topp's views can be summarised as follows:

i) It is unlikely that there would have been a single significant blockage. Instead, it is more likely that there were a number of restrictions and partial blockages that compromised the capacity of the Overflow system. However, a partial blockage of the insect screen or the dip pipe by a combination of silt and fibres together with a partial blockage of the Cold Water Down Service would cause tank 18 to overspill.

ii) The evidence of limescale, silt and insulation fibres in tank 18 suggests that there was likely a blockage somewhere in the Overflow system.

iii) Silt and limescale will be in suspension because in a working tank the material at the bottom of the tank is disturbed or stirred up particularly as the tank empties. They can therefore enter the Overflow system via the dip pipe.

iv) Fibres move around a tank and snag on rough surfaces caused by limescale. They will move around and come to rest where there is an intrusion most commonly at an overflow with a dip pipe.

168. In his August 2020 report, Mr. Knak referred to the possibility that loose insulation entered the tank and therefore flowed into the Overflow. The Claimant makes the point that at this stage Mr. Knak appeared to have no difficulty in accepting that not only could an appreciable quantity of insulation have entered the tank, (for example from the lid insulation or from fibres from the insulation on the floor of the roof space) but also could have made its way into the Overflow and caused a blockage.

169. Mr. Knak explained that he originally thought that:

i) Loft insulation in larger quantities or small clumps of insulation would float and thus enter the Overflow to create a big wad of insulation.

ii) That small clumps of insulation could have floated and if a few of them had been sucked into the Overflow, they could form a large quantity in the insect screen. This view is similar to Mr. Topp's theory as to what happened.

iii) However, he changed his mind when he carried out his July 2023 tests.

170. The Defendant further points to the fact that when the dip pipe was examined on 22 July 2020, it was found to be clear and that when Mr. Czech looked into the dip pipe after disassembling in October 2020, he also found it to be clear. They also point to the fact that Mr. Topp has never examined the dip pipe and submit that his theory that blockages could form on the moulding ridges on the interior of the dip pipe is conjecture. In this regard, I acknowledge that Mr. Topp's view is not based on an inspection of the dip pipe and is to this extent conjecture. Nevertheless, I take into account that it is informed conjecture based on his experience and knowledge.

171. The Claimant criticises Mr. Knak's July 2023 tests on the basis that they were artificial and he did not begin to replicate the true position.

i) He used a new and clean tank, which did not replicate the actual condition of tank 18. In particular, there was no limescale on the inner walls of the tank.

ii) He used new interconnecting pipework and clean water.

iii) His interconnecting pipe did not connect to a Cold Water Down Service. In particular:

a) Mr. Knak agreed that when a ground floor tap is turned on, the water flow into the interconnecting pipe would be much faster than would be the case where the Cold Water Down Service is not in use.

b) The flow of water out of the tank through the Cold Water Down Service is much greater than the inflow and therefore the water level in the tank drops. Once the tap is turned off, the tank will refill. So in the real world water goes up and down in the tank and water. The rate of flow through the cold water system will also depend on which floor the relevant tap is located.

c) Mr. Knak accepted that the flow of water through a cold water down service will vary depending on the water level in the tank which rises and falls as the water in the tank is used.

d) Mr. Knak accepted that, unlike his test, the water pressure and flows through a working tank would vary.

e) Mr. Knak accepted that when a tank is in use, water in the tank will move from side to side and there will be a current moving towards the Interconnecting Pipe and cause certain solids to move.

iv) He used clean pieces of insulation rather than insulation fibres mixed with silt. In other words, he never tested the blocking properties of insulation fibres mixed with sediment or silt.

v) He packed the insect screen with pieces of insulation. Water continued to flow through the insect screen percolating through the insulation. When he packed insulation into the dip pipe, the water did not flow through and the tank would have overspilled. He concluded on the basis of the test that there would need to be a very substantial quantity of insulation compacted into either the insect screen or the dip pipe or both to achieve a blockage. With the water supply to the float valve isolated, he then opened the valve in the interconnecting pipework to allow water to drain from the tank and soil pipe. The loft insulation that he had wedged into the dip pipe and insect screen remained in place and did not flow back into the tank.

172. However, he agreed with Mr. Topp's opinion that insulation fibres mixed with silt behaves very differently in a working tank to new clean insulation in laboratory conditions and that he never tested what happens to a clump of insulation fibres and silt.

173. Mr. Topp challenged the value of Mr. Knak's test given the use of clean insulation. Mr. Topp's view is that it is much more likely that the blockages were caused by small fibres with silt getting caught which is difficult to replicate in a test. Further, the fibres are not carried into the Overflow in one go. Fibres start to gather together and are carried around the water. A clump of loose fibres can have a tail of loose fibre at the end and they will gradually push into a pipe as the water level rises.

174. Mr. Knak believed that that silt-impregnated insulation would have less buoyancy than clean insulation. The Claimant submits that whether he is right or wrong about this is academic: fibres and sediment do enter the outflow and get trapped in either the insect screen or dip pipe. This is borne out by the evidence that insulation and silt were found in the insect screen.

175. Mr. Knak accepted that he had not tested Mr. Topp's suggested scenario that silt and fibres entered the Overflow and Cold Water Down Service. Having considered both Mr. Knak's explanation of his tests and Mr. Topp's criticisms of them, I accept that the tests do raise questions as to how a blockage of the Overflow could have occurred, but I do not accept that the tests prove that a blockage cannot have occurred. I accept that a combination of fibres intermingled with silt and sediment will behave differently to clean insulation.

The physical evidence

176. The physical evidence shows that tank 18 contained significant amounts of insulation fibres, sediment and other debris such as a piece of wood at the time of the EOW. The presence of these elements can be seen from the photographs which Mr. Knak took when he visited the Hotel on 22 July 2020 and 04 December 2020 including the clump of insulation and sediment that he removed from tank 18.

177. Mr. Knak agreed that insulation could have entered the tank from the lid insulation and from several sources including fibres from the insulation on the floor of the roof space. He also accepted that material – insulation fibres, sediment and other types of dirt – will find their way into the Overflow over time which he would expect to get caught in the insect screen. This is borne out by the physical evidence:

    i) DJM observed insulation or insulation fibres and debris in the Overflow when they attended on 13 July 2020.

    ii) There are photographs showing material being brought into the Overflow from the tank, which was either sediment or dust.

    iii) Mr. Knak observed fibres and other material in the insect screen on 22 July 2020 as evidenced by his photographs from that inspection.

    iv) There are photographs of sediment in what was described as section A of the Overflow once it was inspected in December 2020.

    v) Mr. Knak agreed that material in the insect screen could have built up over many years and remained undiscovered until the float valve failed as part of this incident.

178. The Defendant challenged whether sufficient insulation could get into the tank in the quantities which would be required to create blockages. They point to the height of the tank from the floor of the loft where there was both debris and insulation material. They also point to the fact that the lid of the tank was fitted with a close-fitting lid and the agreement between the experts that the amount of dust which would enter the tank was low. There was limited opportunity for fibrous material to be casually or accidentally introduced by passers-by.

179. Even if there were insulation and debris in the tank of the required quantities, the Defendant submitted that it could not move up into the dip pipe and then on to the insect screen because it would either sit on top of the water or sink.

180. One of the difficulties with the Defendant's case on whether there was sufficient material in the tank to block either the overflow system or the cold water down service is that until Mr. Knak appreciated the significance of the Cold Water Down Service, he was prepared to accept that the EOW was caused by a combination of the failure of the ball valve and the Overflow system being blocked. I, of course, accept that he re-evaluated this conclusion once he appreciated the significance of the Interconnecting Pipe but it is significant that when he first investigated the EOW he did not query the cause of the escape based on there being insufficient material within the tank to create the necessary blockage nor did he suggest at that time that it was not possible for material such as fibres and sediment to have come through to the insect screen via the dip pipe.

181. The Defendant submitted that no weight could be attached to the tests done by Mr. Topp to replicate whether partial blockages of both the insect screen and the Interconnecting Pipe could have caused tank 18 to overspill. The principal basis of that criticism was Mr. Topp's use of an isolation valve on the link pipe to simulate the blockage. The Defendant submitted that such a valve could only replicate a total blockage but not a partial blockage. While I accept that using an isolation valve may not replicate precisely the effect of a partial blockage caused by silt and insulation fibres because it does not naturally deteriorate, I do not accept that such a valve cannot replicate a partial blockage. The valve in question can be adjusted to close off the flow of water completely or can be left partially open to allow a reduced flow of water through.

182. So far as the evidence relating to the observations made by Mr. Lowery and Mr. Cookson on 13 July 2020 is concerned, it is right to observe that their evidence on this shifted as the Defendant's investigations went on. In his discussion with Mr. Knak on 13 July 2020, Mr. McGough explained that he had been told by Mr. Lowery that the insect screen was blocked with insulation. In their interviews on 30 September 2020, Mr. Lowery and Mr. Cookson's evidence had moved. Mr. Cookson described seeing the screen with some fibres but mostly sediment partially blocking it. Mr. Lowery described seeing some debris on the mesh but it was effectively clean. Mr. Cookson's evidence diluted further in signed witness statement following that interview.

183. It may be that Mr. Lowery and Mr. Cookson's evidence diluted over time because they were concerned as to whether the Defendant was going to blame the EOW on a lack of maintenance by DJM. However, I consider that one has to be cautious before accepting Mr. McGough's account of what he was told by Mr. Lowery as representing the actual state of the insect screen. I consider that taking the different accounts from Mr. Cookson and Mr. Lowery together, they did find the insect screen partially blocked with fibres and sediment but it is not possible to be certain of the extent of the blockage. This conclusion is also consistent with Mr. Knak's view that it was probable that the insect screen was partially blocked.

184. Mr. Topp's evidence in this regard was that it does not take much in the way of insulation or insulation fibres to block an insect screen. If there was a blockage of the Cold Water Down Service, his tests showed that a blockage of only about 25% in the Overflow system would be sufficient to cause the tank to flood. This conclusion, he said, was borne out by the tests he conducted. He also considered that whatever debris the plumbers saw on 13 July 2020 would be what was left after the event, with loose fibres and sediment being washed back into the tank after the supply was turned off. The Defendant disputed that any loose fibres or sediment could be washed back because

the insect screen is remote from the main tank and lies below the level of the horizontal section of the dip pip such that it would have to defy gravity to get back into the tank. The Defendant also submitted that any blockage which had been washed back would have been apparent in the tank on 13 and 22 July 2020. While I accept that there are difficulties, such as those identified by the Defendant, with the theory that sediment and fibre may have washed back into the tank as the water level dropped, I am not prepared to accept that it could not have happened in circumstances where it is not necessary for the fibres and sediment to have matted together in order to cause a blockage and where I have accepted that once the stopcock was turned off, water would flow back into the tank as the level dropped.

185. Mr. Topp's view was also that there were likely to be blockages elsewhere in the Overflow system such as in the dip pipe or downstream of the insect screen, which would restrict if not block the flow through the Overflow pipe.

186. So far as the dip pipe is concerned, Mr. Topp's view is that a common cause of blockage is loose material getting caught on the moulding inside the pipe. He suggested that the reason no blockage was found in the pipe when it was inspected on 30 October 2020 was because it was washed back with the retreating water. While I am prepared to accept that there may be a build up of loose material on the moulding and that some may have washed back, I consider it less likely that there was any significant build up in the dip pipe compared to the likelihood of the insect screen being partially blocked.

187. So far as downstream of the insect screen is concerned, Mr. Topp considered that there may have been a number of smaller obstructions or blockages throughout the system due to debris building up over a long period of time which would slow the flow. He described the build-up of debris as a process where fine silt and limescale will pass through with a small flow of water, dry out and cause a crusty finish on the bottom of pipe which promotes blockages. Mr. Topp suggested that the reason there was no evidence of such a build-up in the pipework when it was inspected in December 2020 proves nothing because the pipework had been flushed through by Burgoynes' overflow tests on 30 October 2020. The Defendant disputed that such build-ups could occur to an extent which would materially interfere with the flow of water through the Overflow and also pointed to the fact that no evidence of such build-ups were found when the Overflow was disassembled.

188. While I am prepared to accept that it is possible that there were build ups of limescale or sediment downstream of the insect screen caused by the process that Mr. Topp describes, I do not consider that the evidence goes so far as to suggest any that any such build-up would be sufficient to materially interfere with the flow of water through the Overflow system. Again, it seems more likely to me that any significant partial blockage was at the insect screen.

Conclusion on blockage of the Overflow

189. When one considers the physical evidence, the contemporaneous evidence from the plumbers' visit on 13 July 2020 and subsequent inspections by Burgoynes together with the expert evidence described above, I find that it is possible that at the time of the EOW, there was a partial blockage of the insect screen and possibly the dip pipe from insulation fibres and other material that would materially restrict the flow of water through the Overflow. I am also prepared to accept that some of the material which

comprised the original blockage did wash back into the tank when the water was turned off.

Likelihood that there was a sufficient blockage within the Cold Water Down Service

190. Mr. Topp explained that silt, especially when mixed with insulation fibres, can easily block a Cold Water Down Service particularly when there is a continual flow of water into a tank due to a failed float valve and little throughput.

191. Mr. Topp did not claim to know where the blockage was but says that the point which is most susceptible to block is at the Cold Water Down Service connection. He suggested that where the copper pipe fits into the compression joint, there is often a burr inside the pipe. Fibres would then easily get caught on any rough edge and once this happens the flow decreases and the obstruction builds up. A blockage at this point would be on the other side of the tank connection not at the flange and would not be visible by looking into the tank.

192. The Defendant challenged Mr. Topp's theory that the debris likely entered the Cold Water Down Service during cleaning works in February 2020 on the basis that it would have been flushed through before lock-down. However, Mr. Topp explained that the system is served by multiple tanks and therefore if the system from tank 18 was blocked or partially blocked, water would be drawn from other tanks. Further, the lockdown checks involved running taps or flushing toilets once a week, which was nowhere near the amount of water in normal use and rooms further away from tank 18 will tend to draw on other closer tanks.

193. Mr. Knak accepted in general terms that there is nothing inherently implausible about a blockage forming in a Cold Water Down Service including a mixture of silt and insulation fibres.

194. The Claimant also submitted that there was nothing the Defendant could point to which makes a blockage in the Cold Water Down Service implausible in practice:

i) The tank contained sediment, scales and fibres (and indeed a piece of wood) near the opening of the Cold Water Down Service which could easily have formed a blockage in the relevant section of the Cold Water Down Service.

ii) There was a burr on the inside of the connection between the Cold Water Down Service and the tank on which insulation fibres could have snagged and started to form a blockage.

iii) Cleaning works were carried out just before lockdown which if not done carefully could have caused debris to move into the relevant part of the Cold Water Down Service.

iv) The reduced usage that followed during lockdown could have allowed the blockage to develop.

v) The Cold Water Down Service was not checked to see whether it was blocked. In July 2020, Burgoynes did not appreciate the hydraulic connection between tanks 17 and 18.

vi) There is therefore no evidence to suggest that the Cold Water Down Service was not blocked at the time of the EOW; although it was free flowing by the time of the tests carried out on 30 October 2020.

195. The Claimant also pointed out that there was positive evidence that the Cold Water Down Service was partially blocked. Unless the blockage in the Cold Water Down Service created a watertight seal, which is highly unlikely, the tank would slowly drain through the service after the EOW. When Mr. Cookson looked into tank 18 on 13 July 2020 he observed that the water level was very high (see Mr. Knak's manuscript notes of his interview of Mr. Cookson on 30 September 2020). If this is correct, then it would suggest that the Cold Water Down Service remained partially blocked with water draining slowly through the blockage between 11 and 13 July 2020.

196. Taking the evidence overall, I am satisfied that it is possible the Cold Water Down Service was at least partially blocked at the time of the EOW.

Likelihood of each of the three elements failing in conjunction

197. In circumstances where an accidental EOW requires a coincidence of a failure of the float valve and the blockage of both the Overflow system and the Cold Water Down Service, it is critical to consider whether it is likely that each of the three elements required for the EOW to be accidental were in place during the early hours of 11 July 2020.

198. As to this, I accept that it is not necessary for all three elements to have failed coincidentally at precisely the same moment. Instead, it is possible if not likely that there was a failure of each element over time with:

i) The blockage or blockages in the Overflow building up over time.

ii) The float valve failing progressively over time resulting in a prolonged slow flow of water through tank 18 and the Cold Water Down Service.

iii) The Cold Water Down Service likely becoming partially obstructed as debris entered the tank, possibly during the time of cleaning in February 2020.

iv) A slow flow of water through the tank and the Cold Water Down Service as a consequence of the failures described above allowing further insulation material and silt to build up in the Cold Water Down Service worsening the problem.

199. It is fair to say that I approached the likelihood of such a combination of failures with a certain degree of scepticism as to whether they could occur together in a way which led to the extensive damage caused to the Hotel without leaving more physical evidence to explain how the blockages in the Overflow system and the Cold Water Down Service occurred. However:

i) Mr. Topp's evidence was that he regarded this sequence of events as being one which is *"a sequence of fairly common events rather than a very unusual coincidence"*.

ii) Mr. Knak accepted in his oral evidence that the Overflow and the Cold Water Down Service could have become blocked at different times.

iii) When Mr. Knak was asked whether he agreed with Mr. Topp that there was no unusual coincidence here, he accepted that: *"I mean, if you have material in a tank, then it could lead to – in certain circumstances, it could lead to a blockage. I suppose if you already have a blocked overflow pipe, then the failure of a valve could lead to overspilling of the tank".*

200. In other words, both experts were prepared to accept that the failure of the float valve could coincide with a sufficient blockage of both the Overflow and the Cold Water Down Service such that the tank would overspill. In other words, there is a plausible explanation for how the EOW occurred accidentally.

Was the EOW caused deliberately?

201. Having considered the mechanism by which the EOW could have occurred accidentally and concluded that it is possible that the EOW was caused accidentally, it is next necessary to consider the evidence relating to the question of whether the EOW was caused deliberately. When considering this question, I keep in mind that the Defendant does not have to establish the specific mechanism by which any deliberate EOW may have been caused but more generally whether on the balance of probabilities looking at the evidence overall I consider that the EOW was part of a fraudulent scheme. Nevertheless, as part of the exercise of determining whether the EOW was deliberate it is both helpful and necessary to consider whether there is evidence which supports any of the various mechanisms, which the Defendant put forward as being the possible method by which the EOW was caused deliberately.

If the escape was deliberate, who was responsible?

202. The Defendant submitted, and I accept, that it does not have to identify the individual who actually caused the EOW. However it is still relevant to consider whether there is any evidence to identify who may have been responsible for any deliberate escape and on whose instruction.

203. As for Mr. Vadhera, I accept that it is likely that he had the necessary knowledge to be able to cause the EOW. But, I accept the Claimant's submissions that Mr. Vadhera's account of what he did on finding the EOW is inconsistent with him having been involved in a conspiracy to cause the EOW:

i) There was only a very limited period of time between Mr. Vadhera arriving at the Hotel on 11 July 2020 and his call to the alarm company for an engineer to come out. During this time, if he had deliberately caused the EOW, then he would have needed to take steps to remove evidence of the deliberate mechanism inducing the EOW.

ii) Mr. Vadhera sought to have a plumber attend on 11 July 2020 increasing the opportunity for a plumber to identify evidence inconsistent with the EOW being accidental, such as, for example, the presence of tell marks in the way of the tank connections.

iii) At some point during his time in the loft, Mr. Vadhera would have had to take steps to remove the evidence of the deliberate mechanism. With respect to at least the disconnection of the mains water supply, this would have required at

least some specialist plumbing knowledge to ensure that the interference was not detected.

iv) There was no cross-examination as to how Mr. Vadhera is alleged to have induced the EOW. It would have required Mr. Vadhera (or someone else) to travel to the Hotel in the middle of the night. It would also have required Mr. Vadhera to know about how the connections to tank 18 worked. This was not explored in evidence.

v) The Defendant pointed to the presence of an old ladder in the loft space in the vicinity of tank 18, which the Defendant submitted would provide Mr. Vadhera or anyone intending to sabotage tank 18 with one of the tools necessary to do so. There are two difficulties, however, in this submission:

a) The picture of the ladder in the evidence shows clearly that the ladder has at least one broken step and possibly other damage.

b) If Mr. Vadhera or anyone else was engaged in a premeditated attempt to cause the EOW, it seems unlikely that they would leave the ladder behind having been careful to remove any other sign that a connection to the tank had been disconnected or water siphoned from the tank.

204. It is correct that the e-mail from Mr. Vadhera to Meenu at 18:29 is in terms which could be considered not just surprisingly formal but possibly suspicious because of that formality. In other words, that it was an e-mail sent to create a chain of correspondence seeking to show that the EOW was accidental. However, the e-mail was only sent to the Defendant on 13 November 2020 and at the Defendant's request. Further, the fact that its formality might be considered out of the ordinary in comparison to other correspondence between Meenu and Mr. Vadhera would suggest a clumsy attempt to create a false chain of correspondence in what is otherwise suggested to be a careful scheme to defraud the Defendant.

205. It was not suggested that Meenu or Atul had the necessary plumbing knowledge to cause the escape and do so without leaving evidence although Atul was cross-examined as to whether he had directly caused the EOW. However, the evidence did not establish when he might have caused the EOW It was not suggested that Meenu had the opportunity to cause the EOW himself or did so.

206. Finally, the Defendant submitted that either Meenu, Atul or Mr. Vadhera may have engaged a third party to cause the escape. There is no evidence to support a case that this is in fact what happened. The Defendant submitted nevertheless, that the Malhotra Group had a ready supply of tradespeople on hand, including plumbers who were paid in cash and that people during lockdown may have been desperate for money. But this is speculation and, unless I am otherwise persuaded on the available evidence that the EOW was deliberate, I do not consider it would be appropriate to infer that it is likely that the Claimant involved a third party to deliberately cause the EOW.

207. Having heard the evidence, I consider that if the EOW was caused deliberately, then it would have been done on the instructions of Meenu. It is clear that Mr. Vadhera would not have acted unilaterally in causing the EOW. Likewise, I do not consider that Atul would have acted unilaterally. Although he was the managing director of the Claimant,

overall control of the Malhotra Group including the Claimant rested firmly with Meenu. If there was a plan to cause the EOW deliberately and then make a fraudulent insurance claim, it would have been done on his instruction. As explained further below, I consider this is a factor to keep in mind when assessing the evidence as to whether it is likely that the Claimant would have staged the EOW deliberately in order to generate cashflow for the company.

208. I turn now to consider the different mechanisms, which were suggested to be the most likely by which any escape would have been caused.

Loosening of the coupling on the Cold Water Down Service

209. This is the method which Mr. Topp says is the one he would have used if he wanted to cause an escape of water from tank 18 and is the most obvious way of discharging water from the tank.

210. It is common ground between the experts that there is no evidence of interference with the coupling between the Cold Water Down Service and tank 18. In particular, Mr. Knak inspected the connection where the Cold Water Down Service joined the tank and there was no physical evidence of any interference.

i) There were no signs of damage to the foil-faced pipe insulation in the area of the connection.

ii) There were no signs of tool marks on the nuts which would have had to be loosened to cause an escape from the coupling.

iii) There were no signs of tell marks (disturbances in limescale deposits or staining around the edges of the joint and on the copper pipe), which are likely to be present if the joint is disturbed. Mr. Knak did not look for evidence of such marks in the connection. Mr. Topp did look for such marks and his evidence was that he could not find any marks suggesting that the joint had been interfered with.

iv) Mr. Knak made the point that using a spanner with narrow jaws and a cloth to pad the jaws of the spanner, one could loosen the nuts of the coupling without leaving tool marks and probably without damaging the insulation. However, while I accept this is a possibility, there is no supporting evidence to suggest that this is in fact what occurred and does not address the likelihood that there would still be tell marks around the relevant joint.

211. Mr. Topp's evidence, which I accept, is that further the pattern of wetness or water damage below the tank would be different, namely more localised in a relatively small area, than the pattern of wetness in fact found.

212. I accept that there is no evidence that the coupling to the Cold Water Down Service was deliberately loosened and that the pattern of water damage found makes it at least unlikely that loosening of this connection was a means by which a deliberate EOW was caused.

Loosening of coupling on the mains supply connection

213. Again, it is common ground between the experts that there is no evidence of any interference with this coupling.

214. Further, Mr. Topp's evidence was that if the coupling on the mains supply connection had been loosened, then there would be a sign of a large escape of water in a relatively small area, which is not the same patterning that results when a tank overspills. Mr. Knak did not look to see whether the pattern of water damage was only consistent with water coming from the outboard side of tank 18 but he did not recall seeing a lot of water damage in that part of the loft. He also accepted that if the mould under tank 17 was related to the incident, which I consider is probable, this would rule out this mechanism.

215. Mr. Topp also suggested that one would need to reconnect the supply using a spanner and probably jointing paste or tape as the washer for the joint would almost certainly break. This, he suggested, would have been noticed by DJM when they came to change the valve.

216. I accept that there is no evidence that the coupling to the mains supply connection was deliberately loosened and that the pattern of water damage found, including the mould under tank 17 makes it unlikely at least that loosening of the mains supply connection was a means by which a deliberate EOW was caused.

Loosening of the coupling on the Overflow connection

217. The Defendant submits that it would have been straight forward to cause the EOW by tampering with the Overflow pipework.

218. It is common ground between the experts that there is no evidence of any interference with either the coupling at the tank wall or at the joint below the insect trap. Mr. Knak did not look to see if there were any tell or tool marks around the connection. Mr. Topp also did not look to see if there were tell marks at the joint below the insect trap because by the time of his inspection, the Overflow system had been disassembled. It was his view, nevertheless, that there would likely be tell marks if the joint below the insect trap had been disconnected.

219. Mr. Knak also accepted that the float valve would have to have been interfered with to ensure a flow of water out of the Overflow.

220. Mr. Topp thought it would also be necessary to block the Cold Water Down Service otherwise it is unclear how much if any water would escape tank 18 through the disconnected Overflow as water would escape through the overflows of other tanks. He also opined that the pattern of water damage from a disconnected Overflow would be such that there would be a small or close pattern of water damage with evidence of a narrow watermark and that there would be tell marks present at the connection between the Overflow and the tank. Mr. Knak disagreed that it would be necessary to block the Cold Water Down Service because the tests carried out by Mr. Czech and Mr. Green suggested that tank 18 would overflow even if the Cold Water Down Service was not blocked. There was, however, no evidence as to the rate of flow from the Overflow on

tank 18 if the Cold Water Down Service was left unblocked so water could also flow through to the overflow of tank 17.

221. Again, I accept that there is no evidence which supports the loosening of the coupling on the Overflow connection or evidence of water damage consistent with the Overflow having been disconnected. Further, it seems to me that for someone to remove the ball valve and disconnect the Overflow either at the tank wall or by unscrewing the joint below the insect trap (as well then reassembling or reconnecting the Overflow system), they would need at least some plumbing knowledge. It was not suggested to Atul that he had the necessary knowledge or that he did in fact remove the ball valve, disconnect the Overflow system and then reconnect the system after the EOW. Mr. Vadhera probably does have the relevant knowledge but it was not suggested to him that he had in fact caused the EOW by disconnecting the Overflow system to tank 18 and then reconnecting it. In any event, there are the difficulties described at paragraph 203 above.

222. Taking the evidence as a whole, I accept that there is no evidence that the Overflow system was deliberately disconnected and that the pattern of water damage found again makes it at least unlikely that loosening of this connection was a means by which a deliberate EOW was caused.

Manual siphoning of water from the tanks using an external hose

223. Again, it is common ground between the experts that there is no evidence to support this theory. Further, Mr. Topp's evidence was that siphoning would have left a distinctive marking by way of water damage in the loft which is not present; namely a very narrow area of water damage that would have been apparent during a visual inspection. Mr. Knak confirmed that when he inspected the loft, he did not spot any focussed area of dampness that might be associated with such a mechanism.

224. There was a dispute between the experts as to whether the pressure created by a siphon would enable a sufficient flow of water to cause the damage found at the Hotel. However, it is not necessary for me to decide this question because Mr. Knak did accept that if the mould under tank 17 was related to this incident (which I have found it was) then this would rule out manual siphoning as a mechanism for the damage because it would not lead to wetting under tank 17.

225. I accept that the evidence makes it at least unlikely that a manual siphon was used to draw water from tank 18.

Financial Motive

226. In circumstances where there is no direct evidence as to how the EOW was caused, the evidence as to whether there was a financial motive for the Claimant to cause the EOW deliberately becomes correspondingly more significant. The Defendant submitted that there was a preponderance of evidence that the Claimant was suffering from considerable financial difficulties in the years prior to the EOW and that from March 2020 onwards the Claimant and the wider Malhotra Group were placed under significant financial pressure as a result of the pandemic.

227. The Claimant accepted that as a company operating in the hospitality and leisure industry, it was put under financial pressure by the pandemic and that the restrictive

measures introduced by the UK government in response had a major impact on the cash flow of the companies operating in the hospitality industry. The Claimant further accepted that the revenues of the Malhotra Group decreased significantly such that Meenu considered the situation worrying and took steps to safeguard cashflow. However, this was not an uncommon situation within the leisure and hospitality industries at the time.

Financial position of the Malhotra Group owing to the impact of the pandemic

228. The Defendant submitted that the effect of the pandemic on both the Claimant and the Malhotra Group as a whole was profound, relying inter alia on Meenu's acceptance that the pandemic was a perfect storm for the Malhotra Group causing massive problems for all three divisions.

229. Meenu accepted that the situation was worrying and that he took steps to safeguard cashflow. Atul separately accepted that the March 2020 lockdown was particularly bad for the Claimant not least because the Three Mile Inn site had completed construction and was ready to open.

230. Consistent with their concerns about the financial pressures on the business, both Atul and Meenu put in place tough measures to seek to maintain capital. This included reducing the workforce and making extensive use of the furlough scheme for employees of both the Claimant and the Malhotra Group more generally. Meenu also gave instructions that direct debits and standing orders for utilities should be cancelled and payments to suppliers stopped until cash flow was corrected.

231. The Defendant referred to the costs submissions made in the Easteye litigation, which described the Malhotra Group as being "cash poor". However, that submission was, I accept, made incorrectly and the subsequent interim costs orders made in that litigation were all paid even if the costs orders created temporary cashflow difficulties for the Claimant. I return to the impact of the Easteye litigation further below.

232. The evidence showed that, notwithstanding the effects of the pandemic, the Malhotra Group had extensive cash reserves. At the time of the EOW, the Malhotra Group had £7.5 million in cash while the Malhotra family had cash of £2.5 million available. In addition, the Malhotra Group accounts for the year ended 31 March 2020 established that the Group held about £150 million in tangible assets with a turnover of £38 million. In March 2020, the Group was responsible for about 1,500 people.

233. I accept the Claimant's submissions that the cash reserves and other assets available to the Malhotra Group represent a substantial hurdle to the Defendant's case that the Claimant, as well as Atul and Meenu specifically, had a motive to commit fraud to obtain a payment on account and a subsequent balancing payment in relation to the damage to the Hotel. In this regard, I also accept that it is relevant that if a payment on account were made, it would largely be used to cover immediate clear up costs incurred after the EOW and that going forward the Defendant would be paying to indemnify the costs of repair and refurbishment.

234. The Defendant submitted that the Claimant had run out of cash by July 2020. But, even if this were the case, I am not satisfied that this or any wider financial strain on the Malhotra Group is a sufficient motive for Meenu in collaboration with one or both of

Atul and Mr. Vadhera to deliberately cause the EOW. For the risks to the Malhotra Group's business and to the reputation of the individuals involved, any recovery under the Policy would not be sufficient to address the cashflow and wider financial issues which the Defendant submits the Claimant was facing.

The Request for an Interim Payment

235. It was suggested by the Defendant that the request for an interim payment made at the meeting on 16 July 2020 was evidence that the Claimant was cash poor and endeavouring to use the EOW to obtain a short-term cash injection.

236. I have already set out above why I do not accept that the Malhotra Group generally was cash poor. Further, I do not accept that I should ascribe an improper motive to the Claimant's request for an interim payment.

i) As at 16 July 2020, the Claimant was already incurring costs as a result of the EOW. A2M were on site carrying out clearing and drying works. Mr. Stokoe's notes from the meeting on that date record that initial drying steps would cost about £20,000.

ii) The Claimant was also incurring costs to deal with the clean up of the disturbed asbestos.

iii) Mr. Stokoe had estimated the total loss caused by the EOW at just over £2 million with the estimate for reinstatement of Osborne's alone as being £287,000.

iv) Mr. Stokoe accepted in cross-examination that the reason he was being asked for an interim payment, which was apparent to him on the day, was because costs in relation to this escape of water were already being incurred.

v) Mr. Stokoe did not note in his notes of the meeting that there had been any pressure to make an early payment.

237. Further, the request for an interim payment was not repeated after 16 July 2020.

Alleged poor performance of the Claimant before the pandemic and performance during the pandemic

238. The accounting evidence before me did not establish that the leisure sector of the Malhotra Group was loss-making generally although Meenu accepted that the Claimant was performing badly.

239. In this regard, the Defendant pointed to the fact that Louis had been closed since 2016. Further, Scalini's had failed and the Claimant had spent about £550,000 refurbishing the restaurant and re-launching it as El-Paso but El-Paso then failed. The restaurant space was leased to a third party and traded as Rio's Steakhouse from October 2019. The Defendant also highlighted that the Hotel was suffering from more centrally located hotels offering cheap rooms.

240. The profitability of the Claimant was such that for year end 2016 to 2019, the Claimant made losses rising from £442 to £701,744 at year end 2018 and £628,251 by year end

2019. Atul attributed the losses for year ends 2018 and 2019 to the failure of the El Paso venture. By the end of year end 2020, the operating loss was £79,362. The company's balance sheet overall was positive for both year ends 2019 and 2020 with net assets of £2,698,304 in 2019 and £2,343,367 in 2020.

241. The Defendant also relied on the Claimant's difficulties in financing its indebtedness with the Co-Op Bank between 2016 and 2019 and internal warnings given by Mr. Greenwood, the Group's Chief Financial Officer at the time concerning the Claimant's finances and whether the Claimant could comply with repayment covenants in the 2019 facility provided by the bank. The evidence does show that at the beginning of 2020 the Claimant was in breach of its repayment covenants under the 2016 facility and was essentially being supported by personal wealth and inter-company loans. The Defendant submitted that the Hotel was of low importance to the Malhotra Group given the impending opening of the Three Mile Inn.

242. The difficulty with the Defendant's case regarding the poor performance of the Claimant and its need for support from the wider Malhotra Group as a motive for the EOW being deliberate is two-fold:

    i) The evidence before me establishes that whatever the financial position of the Claimant, it remained part of the solvent Malhotra Group with its significant cash reserves and other assets.

    ii) The Defendant does not explain how an indemnity from the Defendant in respect of the damage caused by the EOW would assist the Claimant or the wider Malhotra Group in circumstances where any payment made would be to cover the costs of repairs and would be subject to scrutiny of the cost of repairs by the Defendant. As noted above, even if an interim payment was made, it would have only a limited, short-term effect on the Claimant's cash position.

Was the Claimant unable to service its debts such that an insurance payment would provide a financial lifeline without the need for a cash injection from the Malhotra Group?

243. For the period during lockdown, there were unpaid invoices in the bundle and Meenu acknowledged that he took steps to safeguard cashflow by lengthening the periods for paying suppliers. However, the evidence did not establish that the Claimant was unable to service its debts such that there was a motive for the Claimant to cause a deliberate EOW.

244. In relation to the Claimant's Co-Op loan facility, I accept that repayments were not made in mid-2019 as the Claimant attempted to negotiate a payment holiday. However, once the Co-Op rejected that proposal, the re-payments were brought up to date and continued to be paid.

245. Thereafter the issue with the Co-Op was not about failure to make payments but rather compliance with covenants in the loan. Specifically, the loan included an Interest Cover covenant and a Debt Service Covenant which required the EBITDA (earnings before interest, taxes, depreciation and amortization) for the Hotel to be kept at a certain level. While the Claimant did not maintain the EBITDA at the required level, it was nevertheless always positive.

246. I also accept the Claimant's wider submission that the Co-Op loan was affordable for the Claimant specifically and for the Malhotra Group more generally. The Co-Op did agree a payment holiday on the loan during the pandemic. Subsequently, the facility was redeemed as part of Group re-financing in 2021 to 2022.

247. I am satisfied that neither the dealings with the Co-Op nor any evidence of unpaid creditors establishes that the Claimant was under the kind of financial pressure which would provide a motive for insurance fraud in July 2020.

Was the Hotel performing poorly for a long time and in need of capital investment which the Claimant could not afford?

248. The Defendant submitted in Opening that even prior to lockdown in March 2020, the Hotel was performing poorly with sales in February 2020 of £29,559 against a budget of £54,345 and Osbornes having sales of £66,331 against a budget of £122,448.

249. However, the Claimant challenged these figures and the submission that the Hotel was performing poorly generally on the basis that they were based on incomplete evidence, namely figures taken from mid-February. In fact, when the figures for the whole month of February 2020 were considered, both the Hotel and Osbornes were trading above budgeted sales figures.

250. Both the Hotel and Osbornes were profitable with the management accounts and departmental analysis for 2020 showing a significant positive EBITDA for both sites.

251. The El Paso venture operating from the restaurant site in the Hotel was not successful. But by the summer of 2019, the Claimant had resolved this by renting the site to the operator of Rio's restaurant (Tomahawk) for an annual rent of £130,000.

252. In any event, a company known as LSH produced a valuation report for the Hotel on 07 November 2019 on behalf of the Co-Op. That report expressed the view that the fair maintainable trade for the site was a positive EBITDA in the sum of £849,000 and was generally positive about the prospects for the Hotel. LSH also valued the site at about £10.2 million with the view that there would be strong interest if the site came onto the market. Of course, one has to keep in mind that this report was produced before the pandemic and its effect on the hospitality industry including the value of properties such as hotels. However, the outstanding balance under the Co-Op loan was under £6 million. It does therefore seem probable that the Hotel could have been sold leaving a multi-million positive equity available to the Claimant.

253. So far as the need for capital investment generally is concerned, it is difficult to see on what basis an insurance payout would have generated funds for capital investment in the Hotel beyond reinstating the damage caused by the EOW to rooms which had been recently refurbished.

Removal of Asbestos

254. The Defendant submitted that prior to the EOW the Claimant was aware of the extent of the asbestos contamination in the Hotel and had been since 2014. However, the Claimant had taken no steps to address the issue and did not have the resources to fund the necessary work. The Defendant submitted that the need to do the work provided a

motive for the EOW because it would enable the work to be done as part of repairing the water damage caused by the EOW.

255. In this regard, the Defendant pointed to the fact that Meenu had identified the first 2020 lockdown as an excellent opportunity to get the asbestos removal work done and obtained in April 2020 a quotation in excess of £100,000 for the removal works. No works were done prior to the EOW.

256. Meenu gave evidence that the Claimant did not progress the removal works because he was told by the Group's construction operations team that it was a bad idea because the staff were not available and there were a lot of Covid restrictions. The Defendant challenged this evidence on the basis that the Claimant was able to get quotes for the work and that there was no internal correspondence about potential danger to staff or about concerns relating to breaching the restrictions in place due to Covid.

257. The Claimant objected to the Defendant running this case on the basis that it was not pleaded and should have been. I agree with the Claimant that in circumstances where the presence of asbestos was being relied on as providing the Claimant with a motive to cause a deliberate EOW, this is a case which should have been pleaded. I accept that if it had been pleaded, the Claimant would have been likely to adduce further evidence, for example by way of disclosure and with witness evidence from the senior quantity surveyor and senior project manager within the Malhotra Group, to explain in greater detail the reasons why the Claimant had not taken steps to address the asbestos prior to the EOW.

258. However, I am satisfied that I can deal with the issue on the evidence that was available to me in circumstances where I find that, even if the Claimant's reasons for not progressing the removal works sooner was the expense, the presence of the asbestos does not provide the motive for the Claimant to dishonestly cause the EOW.

    i) The evidence establishes that tank 18 was not located above rooms or areas identified as containing asbestos. The EOW exposed asbestos in a void in Osbornes but this was not known about prior to the EOW.

    ii) The asbestos in the roof voids ran across the building. So flooding one narrow column of the Hotel was not going to address the issue.

    iii) There is no evidence that the asbestos in the roof void did need to be removed. The asbestos management plan drawn up by Mr. Mackenzie and signed by Mr. Vadhera in July 2020 identified that the asbestos in the roof void was going to be monitored until removal.

    iv) Although work was done after the EOW which included some asbestos removal work, this was not concerned with addressing the known pre-existing asbestos issue but involved primarily removing asbestos materials that the EOW had moved into the affected bedrooms and corridors at the Hotel. Details of the works which were to be done were provided to W & C who confirmed in September 2020 that they had reviewed the proposals and were happy for the works to go forward.

v) There is no basis for suggesting that the Defendant would have paid for the removal of asbestos generally. The Policy is one of indemnity and the Defendant would only pay for losses caused by the EOW not to remedy a pre-existing issue. The costs which the Claimant has actually incurred to remedy the damage caused by the EOW include sums to remove the asbestos which was moved into the Hotel by the EOW but did not include any sum to address pre-existing asbestos issues.

Did the Claimant require capital investment to create a sports bar in order to improve the Hotel?

259. The Defendant submitted that throughout 2019 Meenu and Mr. Greenwood were operating on the basis that the Claimant would develop the sports bar at the Hotel and this was presented to the Co-Op Bank as a key deliverable when re-negotiating the 2016 facility. In particular, the Defendant submitted that the evidence showed that the intention was that work would begin in August and September 2019 with the profitability of Osbornes impacted during May to August 2020 as Osborne's and Louis was knocked through to create the sports bar. The Claimant disputed that there was any plan to structurally amalgamate Osbornes with the site formerly occupied by Louis. But, the expectation was that this work would be done at a cost of £1 million. In February 2020, Mr. McColl told the Co-Op Bank that the Malhotra Group had allocated its money and resources to other projects and the Claimant was unable to fund the project itself. There was no appetite to continue with the sports bar project.

260. The Defendant submitted that Meenu's attempts to downplay the importance of the sports bar should be rejected and I should find that the sports bar was not progressed because the Claimant did not have money to make this necessary improvement.

261. The Claimant complained, and I accept, that if the need for capital investment to create a sports bar was being put forward as a motive to explain why the EOW was deliberate, then the issue should have been pleaded but was not. The consequence of this was that the Court did not have full disclosure available against which to assess the evidence of both Atul and Meenu that the Claimant had moved away from the sports bar concept prior to July 2020.

262. In any event, I am not persuaded that even on the evidence advanced by the Defendant, the requirement for capital investment to create a sports bar provides a motive for the Claimant to have dishonestly caused the EOW.

i) There is evidence of capital investment in the Hotel by the Claimant prior to the EOW. A valuation report for the Hotel dated 07 November 2019 recorded that since acquisition the Hotel had been subject to an annual decorative and maintenance programme as well having extensive refurbishment work done including a new restaurant and 30 or so bedrooms being banded together with works to the restaurant and Osbornes.

ii) The evidence showed that the EOW did not affect the area in which the sports bar was originally intended to be developed.

iii) Further, W & C investigated this issue and concluded that the plans for development of a sports bar did not conflict with the damage arising from the claim.

iv) In addition, the Defendant has not satisfactorily explained how a recovery under the Policy in respect of damage caused by the EOW would release funds for the work required to create the sports bar, which would not otherwise have been available.

263. I am satisfied on the evidence that there was no requirement for capital investment to create a sports bar that was a motive for the Claimant to dishonestly cause the EOW.

The Easteye Litigation and adverse costs order

264. HHJ Kramer (sitting as a High Court Judge) handed down judgment on 01 July 2020 in the Easteye litigation in advance of which the barrister acting for the Malhotra companies who were defendants prepared and submitted a skeleton argument seeking time to pay in which it was represented that the Malhotra companies were cash poor; something which Meenu accepted was incorrect.

265. The Judge made an order following his judgment in which he ordered, inter alia, that the Malhotra companies pay costs orders totalling £627,000 by 28 July 2020 with the remaining costs to be the subject of a further hearing. The costs orders were subsequently paid. The Defendant nevertheless submits that the costs orders added significantly to the financial pressures on the Claimant and represent another reason why there was a financial motive on the Claimant to cause the EOW deliberately.

266. There is, of course, a certain temporal coincidence between the costs orders made by HHJ Kramer on the one hand and the EOW. However, the evidence did not establish how the EOW and a subsequent claim under the Policy would release cash to the Claimant in sufficient quantity or time to ease any cash flow problem. Further, Meenu would certainly have been alive to the fact that there was no certainty attached to the possibility of an interim payment and that it was very likely that the Defendant would both investigate the claim and also scrutinise the work done for which any recovery was claimed. It follows that I do not accept that the Easteye litigation provides a good motive to explain why the Claimant (which was not itself a party to the Easteye litigation) would cause the EOW deliberately.

267. It is telling in this regard that when I asked Mr. Elkington KC during his oral closing submissions whether his essential submission on motive was that the Claimant was a cash poor enterprise faced with an adverse costs order needing immediate cash and that in terms of motive a key fact was the adverse costs order in the Easteye litigation, he replied ‘yes’. In other words, if, as I have found, the Easteye litigation does not have the financial impact which the Defendant alleges, their case on motive is critically weakened.

Allegation of spontaneous dishonest conduct

268. The Defendant also submitted in Opening that sometimes people do stupid and dishonest things particularly in times of crisis. I accept this as a broad submission but it does not seem to me that this is a sufficient basis to conclude that on the balance of

probabilities the EOW was deliberate if the evidence does not otherwise support such a conclusion. In this regard, I accept the Claimant's submission that on the Defendant's case more generally the EOW was said to have been carefully planned and carried into effect and an extensive deception practised on the Defendant afterwards. This is not spontaneous action but rather serious, premeditated criminal conduct, which is unlikely in the absence of a compelling motive especially for individuals who do not have a history of such conduct.

269. I have under this heading also considered whether notwithstanding the actual difficulties with the Defendant's case on motive, Meenu would have nevertheless failed to appreciate those difficulties and arranged the EOW in any event. As already indicated, I do not consider this probable. Meenu is a successful businessman. He would have appreciated both the basis on which any recovery under the Policy would be made and that it was at least possible if not likely that the Defendant would investigate the circumstances of the loss thoroughly.

Further issues relating to the Defendant's case on dishonesty

270. I have explained above why I do not consider that the Claimant's request for an interim payment provides a motive justifying the conclusion that the EOW was deliberate.

271. I further accept that the allegation that the EOW was staged to procure an insurance payout is inconsistent with the steps taken by the Malhotra Group after the EOW to mitigate their losses, namely carrying out initial and clearing works to Osbornes, clearing the asbestos contamination, and continuing trading from Osbornes (albeit via the kitchen bar rather than the main bar).

272. In circumstances where the evidence suggests that both the Hotel and Osbornes were profitable and that Osbornes in particular generated cashflow, it would be surprising if the Claimant had decided to damage Osbornes and thereby prevent the bar from re-opening on 16 July 2020.

273. The Defendant pleaded two breaches of the furlough regime in support of motive, namely:

i) Asking an employee, Mr. Chris Shorter, to record fire bell tests while furloughed; and

ii) Being willing to employ individuals who it understood to be furloughed and therefore should not have been working.

274. The Defendant did not seek to establish the precise breaches of the furlough regime alleged by reference to the relevant regulations. It appears on the evidence that Mr. Shorter was not on furlough when he was asked to sign the fire bell test records, namely on 25 August 2020 but Atul accepted in cross-examination that there were examples of him instructing individuals to work while on furlough. Nevertheless, I accept the Claimant's wider submission that a possible propensity to breach the requirements of the furlough regime does not evidence a motive to commit a criminally dishonest act such as deliberately staging the EOW and thereafter conspiring to commit fraud on the Defendant.

Are there suspicious circumstances which justify an inference of fraud?

275. The Defendant submitted that it was suspicious that on 11 July 2020, Mr. Vadhera failed to secure the attendance of a plumber, took no steps to ensure that no further EOW occurred and did not contact DJM. The Defendant also challenges Mr. Vadhera' failure to call a plumber immediately

276. The Defendant further submitted that it was suspicious that Mr. Vadhera failed to contact other officers or employees of the Claimant until his e-mail to Meenu at 18.29. As set out above, the Defendant also questioned the tone of that e-mail, which it criticised as being unduly formal in comparison to other messages from Mr. Vadhera to Meenu.

277. In circumstances, where he had turned off the water supply to tank 18 and seen it stop overflowing, I do not find it suspicious that Mr. Vadhera did not ensure that a plumber attended on 11 July 2020. I am also prepared to accept that having been let down by the plumber he did call, he decided it was not essential to have a plumber attend on that day. It is perhaps surprising that Mr. Vadhera was not in contact with either Atul or Meenu more swiftly after he discovered the EOW. But I do not find that this failure justifies an inference that the EOW was deliberately caused.

278. Likewise, I agree that the form and tone of Mr. Vadhera's message on 11 July 2020 to Meenu as well as Meenu's response appear curiously formal and might therefore generate a suspicion that Mr. Vadhera and Meenu were creating a trail of correspondence for the purposes of a subsequent insurance claim. However, on balance, I do not consider that this criticism of the correspondence is one I should accept, not least because it is seems to me that if Meenu and Mr. Vadhera were creating a trail of correspondence intended to divert attention from a deliberate escape then (i) it is likely they would have been more careful in the terms of that correspondence and (ii) they would have provided it to the Defendant sooner than they did.

279. The Defendant further suggested that the failure of Meenu, Atul or Mr. Vadhera to take any steps to investigate the cause of the EOW on 12 July 2020 in circumstances where the Hotel and Osborne's bar was due to re-open and the EOW was said to be a shock is a further indication that the EOW was deliberate and the EOW was no surprise. They submit that if the EOW was genuinely accidental then one or more of Atul, Meenu or Mr. Vadhera would have attended the Hotel on 12 July to assess the cause of the EOW and the extent of the damage.

280. However, the Defendant also criticises Meenu for arranging for DJM to attend despite having instructed Mr. Vadhera to do so. This they submit is Meenu micromanaging the response to the EOW which suggests something unusual about the particular event that warranted Meenu's involvement.

281. I do not find either the failure of Meenu, Atul or Mr. Vadhera to attend on 12 July 2020 or the fact that it was Meenu who contacted DJM to attend to be sufficiently suspicious to justify an inference of dishonesty. It may well be that with hindsight their response to the incident could have been managed differently or more efficiently but that does not justify the inferences which the Defendant asks me to draw.

282. There was some confusion as to whether Meenu contacted DJM on 12 July or during the morning of 13 July 2020. But I do not consider that this confusion materially assists the Defendant. Whether Meenu arranged DJM's attendance on 12 July 2020 or in the morning of 13 July 2020, the fact remains that DJM did attend and carry out repairs on 13 July 2020.

283. A number of other matters were put to either or both of Atul and Meenu in cross-examination. I have considered whether any of them advance the Defendant's case that the EOW was caused deliberately and conclude that they do not. In this regard:

i) I am satisfied that there was nothing suspicious about the inspection logs for the Hotel.

ii) Likewise, I do not regard Meenu's wish not to tell the Defendant about Mr. Coathup's involvement in the claim an indication of dishonesty. It may well be that he hoped that by not disclosing Mr. Coathup's involvement, it would lead to a more low-key response from the Defendant in its investigation but this does not suggest that he was acting dishonestly. If anything, the early involvement of his own internal loss adjuster speaks against an inference of dishonesty particularly in circumstances where no allegation of dishonesty is made against Mr. Coathup.

iii) Mr. Coathup acknowledged that he and Meenu did ask Mr. Mackenzie to remove the word 'unoccupied' from the report he produced following his attendance at the Hotel on 13 July 2020. Mr. Coathup accepted that he and Meenu requested this amendment because they were concerned that this might suggest breach of Policy requirements regarding occupancy. Mr. Elkington suggested to Mr. Coathup in cross-examination that his true concern was not whether or not the Hotel was in fact unoccupied but was only to avoid difficulties with the insurance claim. Mr. Coathup responded that this was not correct and his concern was that the Hotel was occupied and Mr. Mackenzie's original draft might confuse matters. Again, I reject the suggestion that the changes to Mr. Mackenzie's report reflect Meenu and Mr. Coathup trying to manage the insurance claim in a way which indicated dishonesty on the part of Meenu.

iv) Questions were put to Meenu about his meeting with Mr. Stokoe on 16 July 2020 and the discussion on that day about the Overflow being blocked. Meenu suggested in cross-examination that he had spoken to Mr. McGough who had told him about the Overflow being blocked with insulation. Meenu was not right about this because he had not spoken to Mr. McGough by then but I accept that he had confused his meeting with Mr. Stokoe on the 16th and his subsequent meeting with Mr. Knak on 22 July 2020.

v) In relation to the Easteye litigation, Meenu was cross-examined about a police complaint concerning the discovery of gates on Malhotra Group property. I accept Meenu's evidence that he was questioned by the police about this matter and nothing further was done.

vi) I do not consider it suspicious that Meenu at an early stage of the investigation wrongly told Mr. Coathup that Atul had stayed at the Hotel on the night of 09

July 2020. This information was not passed on to the Defendant in any event possibly because the information was checked and found to be inaccurate.

vii) I do not consider that any confusion in Atul's evidence as to whether he was at the Hotel on 10 July 2020 is a ground on which to conclude that he was trying to distance himself from being at the Hotel on 10 July 2020. If he was trying to do so, then I accept the Claimant's submission that one has to ask why he volunteered the information to Mr. Stokoe in the first place.

viii) The Defendant is clearly suspicious of the contact between Meenu on the one hand and AFASS and Mr. Webster regarding responding to W & C's and Mr. Knak's queries to AFASS and Mr. Webster. There is no doubt that Meenu was trying to manage the information provided to W & C and Mr. Knak by third parties but the evidence does not suggest that he was asking them to provide information which was deliberately false or that they did in fact provide false information. I do not find it surprising that faced with a significant insurance claim, Meenu would want to know what third parties such as AFASS and Mr. Webster were saying to the Defendant.

ix) I do not consider that any delay in the opening dates of either the Hotel or Osbornes gives rise to any suspicious circumstances which justify an inference that the EOW was deliberate and dishonest.

Conclusion on whether the EOW was accidental or deliberate

284. Having considered whether it was possible that the EOW was accidental and whether it was possible that the EOW was caused deliberately as well as the evidence on financial motive, I now turn to consider which is more likely as a matter of the balance of probabilities. In undertaking this exercise, I keep in mind the guidance from the authorities set out in paragraphs 91 to 100 above including the guidance of the Supreme Court in Jones v Birmingham City Council as to the standard of proof. Although I address below the particular mechanisms which each party suggests was responsible for the EOW, I also keep in mind when assessing whether the EOW was accidental or deliberate that neither party can identify the particular mechanism by which the EOW occurred and therefore I have to consider more generally whether the evidence supports a conclusion that the EOW was accidental or a conclusion that it was deliberate.

285. Although no one is able to say for certain how the overspill of tank 18 occurred, I find that it was most likely caused by the gradual failure of the float valve combined with the total or partial blockages of the Overflow pipe, most likely in the dip pipe or of the insect screen, and of the Cold Water Down Service most likely at the connection of the Cold Water Down Service to tank 18.

286. I accept that this combination of events occurring as a fortuity during the night of 10 July 2020 may seem highly coincidental and I also accept that the Claimant's factual and expert case as to how the escape occurred accidentally is not straight forward (discussed in the sections of this judgment dealing with each element of how the EOW could have occurred accidentally). Nevertheless, the Claimant's case is supported by the evidence of Mr. Topp, a very experienced plumbing expert, and is more consistent with the physical evidence than the Defendant's case. Further, Mr. Knak, the Defendant's expert was prepared to accept that blockages of the type required could

occur. In other words, there is a plausible explanation for how the EOW occurred accidentally.

287. Further, while the Defendant does not bear a burden to show precisely how a deliberate escape was caused, I do consider that when it comes to considering whether the EOW was accidental or deliberate it is helpful to consider the plausibility of an accidental escape with the plausibility of the particular mechanisms considered by the Defendant's expert to be the ones most likely to be used to cause a deliberate escape.

288. In this regard, I accept that there is evidence of water damage and patterns below tanks 18 and 17 which are consistent with tank 18 overspilling and are inconsistent with any of the mechanisms suggested by Mr. Knak for how the EOW could have been caused deliberately. In particular, there is no evidence of a focussed pattern of water damage which would have been caused if a tube had been used to siphon off the tank or if the connection with the Cold Water Down Service had been loosened or disconnected.

289. The physical evidence of tank 18 overspilling is also supported by (i) the evidence of Mr. Vadhera that he saw the tank overspilling when he entered the loft and looked at tank 18 and (ii) the evidence of Mr. Lowry and Mr. Cookson that they considered the damage they found on 13 July 2020 consistent with the tank overspilling.

290. There is also evidence that the float valve to tank 18 failed. The conclusion of both Mr. Cookson and Mr. Lowery when they attended on 13 July 2020 was that the float valve had failed. Both Mr. Topp and Mr. Knak point to factors which are consistent with the float valve having failed.

291. In contrast, there is no physical evidence of deliberate interference with tank 18. Further, no good explanation has been provided for why if the EOW was deliberate, tank 18 was chosen as the relevant tank in circumstances where it was a tank which was difficult to access and sited above rooms which been recently refurbished and above Osbornes.

292. Further, I accept the Claimant's submissions that its cooperation with the Defendant after the EOW is inconsistent with the EOW having been deliberately induced. In this regard:

    i) On 16 July 2020, Mr. Stokoe did not find anything unusual or suspicious.

    ii) On 22 July 2020, Meenu answered Mr. Knak's questions. Mr. Knak was able to enter the loft and allowed to inspect the water system without interference or supervision.

    iii) On 28 July 2020, Mr. Vadhera was made available for a telephone interview. He gave a subsequent further interview on 01 October 2020 with Mr. Bevan. Meenu was not present at either interview.

    iv) Mr. Coathup responded to all the Defendant's queries.

293. I also accept that the Claimant's actions after the discovery of the EOW are consistent with the escape being accidental, namely the attempt to get MWP to attend the scene on 11 July 2020 and the involvement of DJM on 13 July 2020. It is of weight in this

regard that DJM were left to carry out their inspection unattended, which would have been a risk if the EOW had been staged because there would have been nothing left to repair (if the valve had not failed) and the possibility of tell or tool mark signs being discovered if the flood had been deliberately induced.

294. Turning to the wider picture and whether the circumstances surrounding the loss support a conclusion that the EOW was deliberate rather than accidental. For the reasons explained above, there is no good evidence of a financial motive sufficient to explain why Meenu or anyone else would engage in serious criminal misconduct both in causing a deliberate EOW and thereafter lying both to the Defendant and to this court. Unlike the position with scuttling cases, there is no obvious profit in the EOW or realistic possibility of a payout from the Defendant for the EOW which would release significant funds to the Claimant not required to remedy the damage caused by the EOW. So far as the Defendant suggested that a payment in respect of the EOW would solve a short term cashflow crisis, I find that the evidence does not support this submission.

295. I further accept the Claimant's submission that an attempt to defraud the Defendant would pose an enormous risk for Meenu (as well as Atul). The scale of any payout from the Defendant would be relatively small compared to the scale of the risk to Meenu's businesses and his reputation if he were to be found to have deliberately caused the EOW. Further, if the EOW was fraudulently induced, it would require at the very least a criminal conspiracy between Meenu and Mr. Vadhera and possibly also Atul and/or a third party such as a plumber. The evidence does not support a conclusion that there was such a conspiracy.

296. Accordingly, and looking at the evidence overall, I find that the Defendant's allegation of fraud fails and I find that on the balance of probabilities, the EOW was a fortuitous event.

Was the Claimant's claim supported by false statements?

297. The Fraud Condition provides as follows:

> *"If a claim made by You or anyone acting on Your behalf is fraudulent or fraudulently exaggerated or supported by a false statement or fraudulent means or fraudulent evidence is provided to support the claim, We may: (1) refuse to pay the claim …"*

298. In other words, it disentitles an insured to an indemnity where that insured or someone acting on their behalf makes a fraudulent claim or fraudulently exaggerates a claim or uses fraudulent means or fraudulent evidence to support the claim as well as when an insured or someone acting on their behalf makes a false statement. I have considered whether by referring to a 'false statement' as opposed to a 'fraudulent' or 'dishonest' statement, the parties were intending that any false statement, including a careless or unknowing false statement, should be enough to entitle the Defendant to reject a claim. However, I find that this was not the parties' intention. The language of the clause makes clear generally that it is dealing with fraudulent claims and fraudulent devices or collateral lies. In other words, it is intending to address a situation where there is dishonesty by an insured in pursuing its claim. In this context, there is no room to construe the reference to 'false statements' as applying to statements which are made

carelessly or innocently. There must be dishonesty on the part of an insured or the person acting on their behalf. This was, in any event, common ground.

299. I have likewise considered whether the Fraud Condition is drafted in terms which are sufficiently clear to disapply any requirement that a false statement must significantly improve the prospects of success of recovery in respect of the claim. The Defendant submits that the language of the clause does not require either expressly or impliedly any false statement to be material to the prospects of recovery. As to this, I do not agree. The Fraud Condition requires that any false statement support the insured's claim. In other words, it is not any false statement which entitles the Defendant to refuse a claim; the statement must be one which is made to assist in persuading the Defendant to pay the claim. This is language which is consistent with a requirement that any statement significantly improves the insured's prospects of recovery and does not exclude this component of the common law test regarding collateral lies or fraudulent devices. In this context, such a construction of the clause is consistent with the common law test both before and post-Versloot. There is no indication in the language of the clause that the Defendant is intending to impose a condition in respect of false statements that is materially harsher than the common law test for what constitutes a collateral lie or fraudulent device. If that was the intention, then the position should have been more clearly spelt out.

Alleged lies by Atul

300. The Defendant's pleaded case is that on 22 July 2022, Atul told Mr. Knak and Mr. Czech of Burgoynes that Mr. Cookson of DJM had taken the failed valve after its removal from Tank 18. I accept, however, that the evidence establishes that what Atul in fact said was that he thought that Mr. Cookson had taken the valve; see in this regard paragraph 22 of Mr. Knak's witness statement. Further, I accept that when Atul made this statement, this was his understanding.

    i) Nothing in the evidence suggests that when Atul told Mr. Knak and Mr. Czech what he thought had happened to the failed valve, he was doing so dishonestly.

    ii) I also accept that Atul's evidence that he did not appreciate what the plumbers from DJM had handed him on 13 July 2020 is credible. I accept that the significance of keeping the valve did not occur to him on 13 July 2020 and the discussion of the valve on 16 July 2020 did not indicate that the failed valve or its location was of particular importance.

    iii) The evidence establishes that at the meeting on 22 July 2020, the valve was again discussed in an informal manner.

    iv) The failed valve was probably in a disassembled state and missing its float as well as being in a plastic bag.

    v) On 13 July 2020, Atul was supervising the cleaning works at the Hotel with contractors on site. There was no particular reason for him to pay attention to what he was being handed by the plumbers.

301. Further, the only reason why Atul would lie about the location of the float valve is if the valve had not in fact fortuitously failed and he wanted to conceal evidence of this fact. This theory is not, however, supported by the evidence.

    i) The evidence generally does support the conclusion that the valve failed fortuitously.

    ii) At the meeting on 22 July 2020 when Mr. Knak raised the whereabouts of the valve, Meenu put Mr. Knak in contact with DJM so he could clarify with them the location of the valve; actions which are inconsistent with an intention to conceal the location of the valve.

    iii) By 22 July 2020, the valve had already been disposed of by being sent to the skips at the Three Mile Inn site which were emptied on 15 July 2020.

    iv) It would in these circumstances have been very foolish for Atul to have lied by telling Mr. Knak on 22 July 2020 that he thought Mr. Cookson had the valve, when it was obvious that Mr. Knak would check with Mr. Cookson whether this was the case.

    v) When Atul was told that DJM was saying that he was given the valve, he accepted that they were probably right. He corrected the position on 14 September 2020.

302. The Defendant points to Meenu's e-mail of 17 September 2020 in which Meenu recounts Atul confirming that he had been handed the valve and had left it on the bar counter in Osbornes where it was then taken to the skip. In the same e-mail, Meenu also suggested that no one had previously asked Atul about the valve and what happened to it. This was clearly wrong. Nevertheless, I do not consider that this e-mail is sufficient to establish that Atul was lying when he spoke to Mr. Knak on 22 July 2020 about the valve. So far as the e-mail provides positive recollection from Atul as to what had happened to the valve which is different from what he told Mr. Knak originally, I am prepared to accept that the information provided by Atul which was relayed in the e-mail from Meenu on 17 September 2020 reflects his further recollection after he had been told that Mr. Cookson recalled handing the valve to him.

303. I have separately considered whether Atul's statement was made in support of the Claimant's claim in the sense that it significantly improved the Claimant's claim. At the time when Atul was asked about the location of the valve, he had not been told that finding the valve was necessary for cover to be confirmed. His conversation with Mr. Knak was essentially an informal discussion and Mr. Knak subsequently felt able to opine on the cause of the EOW without having seen the valve, which had by then been disposed of. Against, this background I accept that Atul's statement that he thought Mr. Cookson had taken the valve is not one which did significantly improve the claim.

Alleged lies by Mr. Vadhera

304. The allegation of dishonesty made against Mr. Vadhera in the Claimant's opening and put to him in cross-examination was that he lied in his October 2020 statement when he said that he saw tank 18 overspill. As set out above, I have concluded that tank 18

did overspill. Accordingly, I reject the allegation that Mr. Vadhera was lying when he said that he saw tank 18 overspilling.

305. The Defendant also alleged that Mr. Vadhera lied in October 2020 when he told Mr. Bevan that he apologised to Meenu on 11 July 2020 for disturbing his birthday. Mr. Vadhera was said to be lying because it was not Meenu's birthday and Mr. Vadhera did not believe that it was. In circumstances, where the Defendant now accepts that Meenu was celebrating his birthday on 11 July 2020 and the evidence establishes that Mr. Vadhera knew Meenu was celebrating his birthday, this allegation of dishonesty falls away.

Alleged lies by Meenu

306. The Defendant alleges that Meenu lied on 22 July 2020 when he told Mr. Knak what Mr. Vadhera found in tank 18. The Claimant acknowledges that if Meenu told Mr. Knak that Mr. Vadhera had found insulation in the Overflow, this was incorrect because Mr. Vadhera did not inspect the Overflow. However, I accept that any such statement was not dishonest.

    i) As Mr. Knak accepted in cross-examination, Meenu was seeking to impart information in circumstances where Mr. Vadhera was not present.

    ii) It is likely that Meenu had been told about insulation in the Overflow by Mr. McGough. Any error by Meenu was therefore limited to the source of the information.

    iii) There was no advantage to the Claimant by Meenu telling Mr. Knak that it was Mr. Vadhera who found the insulation. On the contrary, it was better for the claim if the information came from the plumbers.

    iv) There was in any event insulation in the Overflow.

    v) If the statement was intended dishonestly, it is unlikely that Mr. Vadhera would have corrected the information on the first occasion that it was suggested to him that he had found insulation in the Overflow on 11 July 2020. This is particularly true in circumstances where on the Defendant's case, if Mr. Vadhera was involved in a dishonest scheme it was together with Meenu.

307. In any event, Meenu's attribution of the information about the insulation in the Overflow to Mr. Vadhera was immaterial. It did not affect the course of Mr. Knak's investigation as he confirmed in cross-examination.

308. The Defendant also alleges that Meenu lied to Mr. Knak and Mr. Czech about the date on which Mr. Vadhera provided him with information about what he saw in the loft saying that it was the 12th of July, when it must have been 11 July 2020. Even if Meenu was in error as to the date when Mr. Vadhera provided him with information about the flood, this was immaterial. Further, there is no evidence to establish that if Meenu did give Mr. Knak and Mr. Czech the wrong date for when he spoke to Mr. Vadhera, he did so dishonestly.

309. Finally, the Defendant alleges that Meenu lied about when he contacted DJM to attend the Hotel. Again, if Meenu gave Mr. Knak the wrong information, there is no evidence to establish that he did so dishonestly or to demonstrate that the error was material in any way.

Conclusion on whether the Claimant was in breach of the Fraud Condition

310. For the reasons discussed above, I reject the Defendant's case that the Claimant was in breach of the Fraud Condition and therefore not entitled to be indemnified in respect of the claim. It follows that I find that the Claimant is entitled to be indemnified in respect of the loss and damage caused to the Hotel by the EOW.

The Counterclaim

311. It follows from my conclusions that the EOW was fortuitous and that the Claimant was not in breach of the Fraud Condition, that the counterclaim must fail.

Conclusion

312. For the reasons set out above, I conclude that the EOW was a fortuitous event and that the Claimant is not in breach of the Fraud Condition. Accordingly, the Claimant is entitled to a declaration that the Defendant is obliged to indemnify the Claimant with respect to the EOW pursuant to the property damage and business interruption provisions of the Policy. The Defendant's counterclaim is dismissed.

313. I would like to thank the parties and their legal teams for all the work done in preparation for and presentation of their respective cases at trial.

314. I would be grateful if the parties could liaise to agree a final order reflecting the terms of this judgment and dealing so far as possible with any consequential matters arising.