Neutral Citation Number: [2023] EWHC 1428 (Ch)

Case No: PT-2021-000393

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

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 12 June 2023

Before:

RICHARD FARNHILL
(sitting as a Deputy Judge of the Chancery Division)

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Between:

(1) MRS NURAY HOUSSEIN
(2) HOUSSEIN ALI HOUSSEIN
(as executor of the estate of Ali Houssein dcsd)
(3) CEK INVESTMENTS LIMITED

Claimants

- and -

(1) LONDON CREDIT LIMITED
(2) VICTORIA LIDDELL AND ANNIKA KISBY
(as joint Fixed Charge Receivers)

Defendants

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Mr Christopher Maynard and Mr Edward Blakeney (instructed by **Hugh Cartwright & Amin**) for the **Claimants**
Mr Simon Whitfield (instructed by **Gunnercooke LLP**) for the **Defendants**

Hearing dates: 29-31 March, 3-4 April and 10 May 2023

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JUDGMENT

Richard Farnhill (sitting as a Deputy Judge of the Chancery Division):

Introduction

1. This is a claim that turns heavily on its facts, and I address them in detail below. It is helpful, however, in framing this judgment to give an overview of the position at the outset.

2. Ali Houssein (**Mr Houssein**) had, over a number of years, built up a portfolio of residential properties, some of which were held in his name, some in the name of his wife, Nuray Houssein (**Mrs Houssein**) and some in their joint names. The properties held as investments were subject to mortgages to secure loans used to acquire or refinance them. There was no mortgage on the family home at 71 Hamilton Road.

3. By June 2020 one of the secured loans (the **Bridge Loan**) to Bridge Invest Ltd (**Bridge**) fell to be refinanced. The timing was difficult. Mr Houssein was in poor health and the Covid-19 pandemic meant that he was shielding, presenting practical issues. The precise state of Mr Houssein's health was the subject of some disagreement, but he was certainly classed as clinically extremely vulnerable during the pandemic and he sadly died in January 2021, soon after the events central to this dispute.

4. In late June 2020, Mr Houssein and his son, Houssein Houssein, asked Mrs Houssein's cousin, Mustafa Ali (**Mr Ali**), if he could recommend someone to assist them in securing the necessary refinancing. Mr Ali recommended Andreas Liondaris (**Mr Liondaris**) of Premier Finance Ltd (**Premier**).

5. Houssein Houssein contacted Mr Liondaris and they arranged to meet at Premier's offices on 30 June. That is an important meeting and I deal with it in detail below. For the purposes of introduction it suffices to note that at that meeting Mr Liondaris introduced Mr and Mrs Houssein and Houssein Houssein to Chris Stylianides (**Mr Stylianides**), a Business Development Manager of the First Defendant (**LCL**). Either at that meeting or very soon thereafter, Mr Liondaris advised Mr and Mrs Houssein to instruct Spector Constant & Williams (**SCW**) as their solicitors, which they did on 1 July 2020.

6. There is no dispute that Mr Liondaris did not put forward any alternative lenders to LCL; whether he should have done so is more controversial. In any event, the Claimants elected after that initial meeting to proceed with LCL in securing refinancing. It is also clear that Mr and Mrs Houssein did so through the third Claimant, CEK Investments Ltd (**CEK**), rather than as individuals. Mr and Mrs Houssein were the shareholders in and directors of CEK.

7. LCL is an unregulated moneylender and as such is not authorised to make loans to individuals secured by way of a mortgage over residential property in which those individuals reside. It was not disputed that the terms of the loan specified that the Borrower was not to reside at any of the properties over which security was taken, nor was it disputed that 71 Hamilton Road was expressed to be one of the secured properties. There was a dispute as to whether the reference to the Borrower not residing at 71 Hamilton Road was limited to CEK or could extend to Mr and Mrs Houssein or Houssein Houssein.

8. Before drawdown of the loan LCL carried out an inspection of 71 Hamilton Road to establish that it was vacant. That inspection took place on 29 July 2020 and was attended by Mr Stylianides and Mr Liondaris. Mr Houssein and Houssein Houssein were present, as was Yazmin Huseyin, the granddaughter of Mr and Mrs Houssein. Mr Stylianides did not accept that Mrs Houssein or any of the Housseins' other grandchildren were present, although his evidence at least in respect of Mrs Houssein was at odds with that of all the other witnesses. Again, the inspection was a significant event and is addressed in more detail below. LCL was sufficiently comfortable with Mr Stylianides' report that it proceeded with the transaction.

9. Prior to their execution of the various transaction documents SCW arranged for Mr and Mrs Houssein to receive what they described as "independent advice" from a different solicitor, Mr Ozan Fahri of Fahri LLP. That advice was given in Turkish, specifically for the benefit of Mrs Houssein.

10. Drawdown of the loan (**the LCL Loan**) was effected on 7 August 2020. However, the Housseins had not, in fact, moved out of 71 Hamilton Road. LCL became aware of that fact by no later than 21 August 2020 and commissioned an inspection, which took place on 6 September 2020. That inspection confirmed that the Housseins remained in residence, following which LCL's solicitors wrote to the Housseins requiring them to vacate the property. The Housseins refused to do so, and so LCL took steps to appoint the Second Defendants as receivers. Those steps culminated in these proceedings.

The Evidence

11. As both parties made clear, much in this case turned on the credibility of the witnesses. Both sides were equally clear that they alleged at least some of the witnesses were lying at the time of the events in question and in their evidence to me.

12. In considering the allegations of dishonesty I keep in mind, of course, cases such as *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) and *Blue v Ashley* [2017] EWHC 1928 (Comm), and the way in which the memory can, over time, honestly adapt itself.

13. Ultimately, however, I do not think that was the case here. The events took place over a quite compressed period and the dispute commenced almost as soon as the transaction completed. The claim form was issued a little under nine months after the LCL Loan was drawn down, and at least some of the witnesses who appeared before me must have been interviewed well before that step was taken. While I accept that points of detail may have been innocently mis-stated or mis-remembered, it seems to me unlikely that witnesses would have forgotten key points in so short a period. That, coupled with the way in which some of the witnesses gave their evidence, led me to agree that in some cases the allegations of dishonesty were made out.

Mrs Houssein

14. Mrs Houssein's native language is Turkish and she gave her evidence through an interpreter. Her witness statement, which was also given in Turkish, made clear that her level of English is limited to social pleasantries, reflected by the fact that Mr Fahri gave his advice in Turkish for her benefit. In my view Mrs Houssein's understanding

of English was slightly better than simple pleasantries. At times she was able to understand questions put to her without the need for translation. I do accept, though, that she would have needed any commercial detail translated for her.

15. Some of her answers were vague, and I accept that she had not always followed the detail of the transaction, which she left to Mr Houssein and Houssein Houssein. In saying that I think it is important to record that Mrs Houssein was clearly capable and intelligent. It was obvious from her evidence that she understood key benefits to this transaction around the release of security over the investment properties. In response to a question from me regarding her willingness to mortgage 71 Hamilton Road if asked to do so by her husband she was very clear that she would not have agreed, again demonstrating her understanding of the risks associated with such a step.

16. Some time was spent on the inspection of 71 Hamilton Road on 29 July 2020. I accept Mrs Houssein's description of what happened that day as being honest and accurate. As she noted, items were left in the house like electrical equipment, a television, telephones and her prayer book that I simply do not believe would have been left if the property was being vacated for any prolonged period. That necessarily means that I reject the version (or more accurately, as I address in due course, versions) of events advanced by Mr Liondaris and Mr Stylianides. I would have done that in any event.

17. I found her to be a truthful witness, doing her best to assist the Court. Where she gave a narrative recollection of events I found her evidence to be clear and largely I accepted it. At times Mrs Houssein strayed into comment or opinion. Those aspects of her evidence were still given honestly, but were more conclusory and less well considered, and I accordingly attached less weight to them.

Houssein Houssein

18. Houssein Houssein is a party to these proceedings in his capacity as executor of his father's will. He was, however, centrally involved in all of the events in question. It is accepted by the Claimants that he was the agent of his parents both in their personal capacities and as directors of CEK at least up to the point when the LCL Loan was drawn down. As such, his knowledge and statements are imputed to Mr and Mrs Houssein. Even before the refinancing with LCL he was playing an increasingly prominent role in running the property portfolio, especially as his father's health declined. He was the main point of contact for Mr Liondaris and SCW.

19. Houssein Houssein plainly found the process of giving evidence to be a stressful and difficult one. While some of his answers were clear and considered, at times his evidence was punctuated by long pauses and apparently significant emotional strain. A number of his answers on key points were evasive or otherwise unsatisfactory and I was unable to accept them. Specifically, his evidence regarding the grant of security over 71 Hamilton Road was essentially to deny that he read or paid attention to any relevant document. That denial extended to any relevant advice from SCW, even though in his witness statement he claimed to rely heavily on his professional advisors. It amounted to an assertion that he caused his parents to enter into a loan of almost £1.9 million without ever reading anything other than the loan amount. I found his evidence on this to be entirely implausible.

20. I do accept that he may not initially have appreciated there was a prohibition on his family residing at 71 Hamilton Road, but it seems to me very clear that he did know of that prohibition by 29 July 2020. It is the most sensible explanation for the way that aspects of the inspection visit played out. While I accept his narrative of the events on that day other than his knowledge, his evidence in that regard added little to that of Mrs Houssein and Ms Huseyin.

21. His immediate reaction to the 6 September inspection visit by LCL, only a few weeks after drawdown of the loan, was one of recognising a problem of which he was aware rather than any confusion. His explanation of his exchange with Mr Liondaris that day was, again, simply not believable.

22. Those three sets of events are key in this dispute. I do not believe Houssein Houssein's evidence in respect of any of them was complete; in key regards I do not believe it was given honestly.

Yazmin Huseyin

23. Ms Huseyin's evidence concerned the inspection visit on 29 July 2020. At the time of that visit she was 11; at the time of trial she was 14.

24. Ms Huseyin gave her evidence clearly and truthfully. Plainly, some allowance has to be made for her age, the passage of time and the stress that any 14-year-old would feel in giving evidence, but in all key respects I accept her evidence as an accurate reflection of what happened during the inspection.

Mr Çelikli

25. Mr Çelikli was the Housseins' lawyer in Northern Cyprus. He had acted for them there for a number of years but in 2019 refused to act for Mr Houssein on a property purchase due to his concerns over his client's health. Mr Çelikli accepted that he was not medically qualified but he is, of course, familiar with his professional obligations and in that regard the proper person to determine whether his client was able to give instructions. He completed a similar transaction on the instructions of Mrs Houssein shortly thereafter.

26. While Mr Çelikli's evidence was not long I found it to be valuable. He was a professional and straightforward witness. I had no hesitation in accepting what he said.

Mr Liondaris

27. Mr Liondaris sees himself, I think with some justification, as a local fixer among the Greek and Cypriot communities of north London when it comes to mortgage matters. He has been involved in the sector for a long time and clearly has a good network of contacts.

28. As I have noted in the introduction to this judgment, Mr Liondaris was the intermediary between the Housseins and LCL in arranging the loan. One issue that I have to decide is whether Mr Liondaris was the agent of LCL or of the Housseins.

The answer to that question is more complex than it should be, but for reasons I go on to address I find that he was the agent of Mr and Mrs Houssein.

29. It is important to stress that neither Mr Liondaris nor his company, Premier, are parties to these proceedings. At the same time Premier and, in particular, Mr Liondaris were central to the events in dispute. He is a if not the key player and was a critical witness. Some comment on him, in particular, is therefore unavoidable.

30. Mr Liondaris was an extremely poor witness. He had a protean manner in giving his evidence, at times defiant, at times friendly, at other times withdrawn and defensive. What was constant was that he gave his evidence in what he perceived to be his own self-interest, with scant (if any) regard for the truth. On key points I am firmly of the view that he either lied or he was recklessly indifferent to the facts. Even in the course of a cross-examination that lasted less than a day, and under no real pressure, he changed his version of events on key points. He professed himself to be "*100% certain*" on his evidence in his witness statement, only to retract central aspects of that same evidence a matter of minutes later.

31. To the extent that his evidence is at odds with the contemporaneous documents or the evidence of Mrs Houssein or Ms Huseyin, I reject it. Specifically, I do not accept that he ever told Mrs Houssein that she would need to vacate 71 Hamilton Road, less still do I believe she agreed. The suggestion in Mr Liondaris' witness statement that the Housseins proposed, at the meeting on 30 June, that they would move in with Mr Ali was simply nonsense, contradicted by all the documentary evidence and, indeed, by Mr Liondaris himself when cross-examined. His evidence regarding the 29 July inspection was equally false and plainly belied by the photographs taken by Mr Stylianides on that visit.

32. In one limited respect I do accept Mr Liondaris' unsupported evidence. I think he was genuinely surprised that LCL would carry out an inspection visit so soon after drawdown. His answer on that point was spontaneous and convincing.

Mr Stylianides

33. Mr Stylianides was the main sales contact for LCL. His answers were often short and to the point, but finance is an area where precise distinctions have to be drawn, and it is no criticism of Mr Stylianides to say that his answers were limited to the question put.

34. I accept significant parts of what he said as regards the initial meeting with the Housseins on 30 June, in particular that the use of 71 Hamilton Road as a security address was discussed. My principal reservations regard his evidence that it was explained to Mrs Houssein in Turkish, and she accepted, that she would have to vacate 71 Hamilton Road and that the Housseins were to move into 61 Hamilton Road, the home of Mr Ali. It seemed to me that the latter point was an honest mistake over timing by Mr Stylianides, who was told that the Housseins would move to 61 Hamilton Road very soon after the meeting. To give him credit he accepted, when the emails were put to him, that he was wrong on that point. There was support in the documents for the understanding that Mrs Houssein had agreed to vacate 71 Hamilton Road and there would have been no reason for Mr Stylianides to doubt those

documents at the time he would have seen them. Again, this seemed to me an honest mistake.

35. The position was quite different when it came to the 29 July inspection, in respect of which I believe that Mr Stylianides gave dishonest evidence. The thrust of his evidence, and of LCL's case, was that he went to 71 Hamilton Road, took some photographs and left and throughout the whole time nothing was touched or changed. Yet the photographs he took show that to be untrue, and in a way that he could not have failed to perceive at the time. I can only conclude that he lied in sending his report to LCL on 29 July 2020 confirming that the Housseins had left and he lied to me.

36. That inevitably influences the view I take of other aspects of his evidence about that visit. Mr Stylianides insisted that he did not see Mrs Houssein during the inspection, but everyone else agrees that she was present throughout and I find that she was. Similarly, he denied being aware that Ms Huseyin was present, even though she features on one of his own photographs. Again, I viewed that evidence as implausible and given dishonestly.

37. In my view the Housseins were still in residence on 29 July with no intention of leaving and that would have been apparent to Mr Stylianides at the time. The photographs were staged to create the impression that the Housseins had moved out, possibly because Mr Stylianides thought that they would do so before drawdown or, at least, that the loan on 71 Hamilton Road would be redeemed before any further inspection needed to be carried out. I attach almost no weight to his version of events.

Mr Theophanous

38. Mr Theophanous is LCL's Credit Manager and approved the LCL Loan. He was involved in setting the interest rate on the LCL Loan but not the default rate. He was also central to events after 21 August 2020, when LCL became aware that the Housseins were residing at 71 Hamilton Road.

39. In closing the Claimants, it seemed to me, accepted that Mr Theophanous was an impressive witness, and certainly that was my view. Mr Theophanous' native language is Greek, but his witness statement was given in English and he was cross-examined without the need for a translator. I found him to be intelligent and highly capable. He gave clear, precise answers to questions; where he felt he needed to supplement what he had previously said to correct any risk of misunderstanding he did so. He came across as someone who was robust in asserting his rights but not unfairly so. His evidence was honest and helpful and I accept what he said.

Mr Griffiths

40. Mr Griffiths was the expert called by the Claimants. He has had extensive experience in property finance, working for both lenders and chartered surveyors. While the bulk of that experience was acquired some time in the past, and he had not been actively involved in lending during the Covid-19 pandemic, he had clearly kept himself up to date with market trends.

41. Mr Griffiths' evidence was careful and considered. He gave full answers but ones that were always on point and responsive to the question. I found his evidence to be very helpful.

Mr Kyriakou

42. Mr Kyriakou was the expert called by LCL. He is the principal in a commercial financial brokerage company. While he does not have the experience of Mr Griffiths, he has been involved in property finance for around 15 years and his active experience is more recent.

43. Mr Kyriakou's evidence was much more limited than that of Mr Griffiths, being focussed principally on the rates available in the bridging loan market in 2020. In that respect I found him to be a helpful witness and I accept his evidence, but it was constrained, I think unduly constrained, by his strict adherence to the scope of his instructions. In saying that I do not criticise Mr Kyriakou, who obviously was obliged to keep within the scope of his expertise. However, on broader issues I preferred the evidence of Mr Griffiths.

Evidence that was not before me

44. Having dealt with the witnesses that were before me it is important to note the evidence that was absent from the record.

45. For obvious reasons, I could not hear from Mr Houssein. He died before these proceedings started, such that there was not even a witness statement from him to give his version of events. Moreover, the relevant email communication from Mr Houssein was sent by Houssein Houssein who, as I have noted, acted as his father's agent.

46. I had only piecemeal evidence from the lawyers involved, SCW and Mr Fahri. Mr Maynard, for the Claimants, sought to make some virtue of this in his opening. He referenced HHJ Hodge KC's remark in *Ahuja Investments Ltd v Victorygame Ltd* [2021] EWHC 2382 (Ch) at [1] that this was "*... not so much a case of 'Hamlet without the Prince', as one of Hamlet without any of Polonius, Gertrude or Laertes (or [indeed] Rosencrantz and Guildenstern without Hamlet, Claudius or the Player).*" Here, though, Mr Maynard emphasised that the Claimants made no apology for not relying on the evidence of lawyers who had "*failed to advise properly or at all*".

47. That submission seemed to me circular. If the purported justification for not adducing the evidence is an assertion that that the lawyers failed to advise properly or at all, the only way to assess the assertion is to review the very evidence that is not being adduced.

48. Mr Maynard then highlighted that LCL, in its Directions Questionnaire, had indicated an intention to call Mr Demetriou of SCW and Mr Fahri. He stressed that LCL had not done so, such that neither party had put a full record of the legal advice before me.

49. Obviously, SCW and Mr Fahri owe duties of confidentiality to their clients, here the Claimants. Subsequent to the Directions Questionnaire LCL had asked the Claimants to waive those duties. The Claimants did not respond, meaning the lawyers remained

bound by their duties of confidence and they could not properly have discussed their advice to the Claimants with LCL. Mr Maynard suggested that the "*appropriate step*" was for LCL to issue a witness summons. However, as he accepted, a witness summons could not over-ride privilege, such that the lawyers still could not give evidence about the advice that they gave (or failed to give).

50. Subsequently, Mr Maynard advanced a further argument that privilege no longer applied because of an agreed Order to disclose the following documents:

> All correspondence and records of meetings between [claimants]/AH and SCW referring to the terms of SCW's retainer and advice pursuant to that retainer.
>
> Any correspondence between SCW and Ds in relation the Facility Letter.

51. As I understood Mr Maynard, his submission was that this represented a waiver of privilege, meaning that LCL could therefore have put in this material. I make four observations on that. First, since SCW acted for the Claimants and not LCL the correspondence between SCW and LCL was not privileged in the first place and so could be relied on regardless of the Order. Secondly, there is no reference in the Order to the advice of Mr Fahri, so any waiver is potentially incomplete. Thirdly, to the extent that this waives privilege in the documents it does not release SCW from their duties of confidence. Fourthly, and critically, it does not alter the burden of proof: to the extent that burden falls on the Claimants, LCL is entitled to sit back and leave them to prove their case. Should the Claimants fail to do so, it is no answer to say that LCL, equally, has proved nothing. It is only if the burden is on the Defendants that Mr Maynard's argument has traction.

52. Ultimately, it seemed to me that Mr Maynard had the wrong play; this was an instance of the Duke of Bedford's observation in Henry VI, Part 1 that "*unbidden guests are often welcomest when they are gone*". The Claimants elected not to have a full record of the lawyers' advice before me, and that is precisely what happened. As to *Ahuja Investments*, I derived most assistance, in considering the evidence and any inferences that I might draw, from the substantive observations of HHJ Hodge KC and the authorities to which he referred at paragraphs [23]-[25].

The terms of the LCL Loan

53. Before turning to the events that gave rise to the LCL Loan, it is helpful to set out what the Housseins ultimately agreed with LCL. The LCL Loan comprised three sets of agreements and a further document, the effect of which was disputed:

i) A facility letter signed by LCL on 20 July 2020, counter-signed by Mr and Mrs Houssein in their capacities as directors of CEK and amended by a deed of variation on 31 July 2020 (the **Facility Letter**);

ii) Personal guarantees of CEK's obligations under the Facility Letter given by Mr and Mrs Houssein in their personal capacities (the **Guarantees**); and

iii) Charges over each of the five Downhills Way properties I describe below and 71 Hamilton Road executed by Mr and Mrs Houssein in respect of their interests in each of those properties (the **Charges**);

iv) What were described as FCA declarations, essentially what appear on their face to be unilateral statements signed by Mr and Mrs Houssein saying that they (as opposed to simply CEK) and their family would not reside at any of the security addresses.

54. There was also a letter from Mr Fahri to LCL (the **Fahri Letter**) confirming that he had advised Mr and Mrs Houssein. There were different versions of the Fahri Letter, but all versions were limited to advice on the Guarantees. Similarly, there was a certificate from Mr Demetriou of SCW (the **Certificate**) to the effect that he had advised on the terms of the Facility Letter and the Charges. It is unclear, from the face of the Certificate, whether Mr Demetriou thought he advised Mr and Mrs Houssein in their personal capacities or in their capacities as directors of CEK (or both). He confirmed that he had advised them separately and that there was no evidence of undue influence. Those two documents were strenuously challenged by the Claimants as to their accuracy and effect.

55. The proper interpretation of the specific terms of the Guarantee and the Charges was not the subject of any discussion before me. There were disputes concerning them, but not as a matter of interpretation.

56. More time was spent on the Facility Letter, and it is worth setting out some of its key provisions:

i) The Borrower was CEK.

ii) The Property was defined as 71 Hamilton Road and the five properties on Downhills Way that I go on to describe below.

iii) The Repayment Date was 12 months after drawdown.

iv) The purpose of the facility was described as assisting CEK in granting loans to Mr and Mrs Houssein (described as residing at 61 Hamilton Road) for the refurbishment of the Property and refinancing of the existing loans with Aldermore, Birmingham Midshires and Bridge.

v) Interest was 1% per month; default interest was an additional 3% per month. Default interest was payable on an event of default or late payment.

vi) An arrangement fee of 2% and an additional introducing intermediary fee of 2% were payable, ultimately, to Premier.

vii) Early repayment was permitted.

viii) It was a condition precedent to drawdown that, among other things, the Guarantees and the Charges were executed by Mr and Mrs Houssein.

ix) There were both representations and covenants to the effect that the Borrower:

a) owned and would continue to own the Property;

b) did not and would not reside at the Property; and

c) had not and would not grant any tenancy or licence other than those approved by LCL.

Breach of any of those provisions was an event of default, allowing LCL to charge default interest and require immediate repayment of the Loan. However, some of those provisions made no sense as drafted. It was known by all parties that CEK did not own the properties; indeed that is apparent from the face of the Facility Letter, since if CEK were the owner it would have granted the Charges, not Mr and Mrs Houssein. Nor did or could CEK "reside" at the property; it was not even CEK's registered address. The definition of "Related Persons" did not help to resolve any of the issues – it referred to spouses, civil partners, parents, grandparents, siblings, children and grandchildren of the Borrower. Blatantly, a corporate entity has none of those relationships.

x) The Borrower agreed to take independent legal advice in respect of the Facility Letter.

The sequence of events

The position in early-mid June 2020

57. In early June 2000 Mr and Mrs Houssein owned the following properties:

i) The family home at 71 Hamilton Road, purchased in 2017 and owned jointly by Mr and Mrs Houssein.

ii) 199 Downhills Way, purchased in 2012 and also owned jointly by Mr and Mrs Houssein.

iii) 201 Downhills Way, purchased in 2013 and again owned jointly by Mr and Mrs Houssein.

iv) 203 Downhills Way, purchased in 1980 and owned by Mrs Houssein.

v) 205 Downhills Way, purchased in 1972 and owned by Mr Houssein. This had been the family home until 2017.

vi) 207 Downhills Way, purchased in 2007 and owned by Mr Houssein.

58. There was no mortgage over 71 Hamilton Road. The property at 199 Downhills Way was subject to a mortgage in favour of Aldemore Bank to secure a loan of £217,073 on which the interest was 5.23% pa. That loan was to mature in 2024. The property at 203 Downhills Way was mortgaged to Birmingham Midshires to secure a loan of £213,312.28 at an interest rate of 2.7% pa due to expire in 2026. The remaining Downhills Way properties were mortgaged to secure the Bridge Loan of £1,019,616, which was due to expire on 20 July 2020. The interest on the Bridge Loan was 0.95% per month.

59. Mrs Houssein, while a registered owner of several of the properties, had never been active in the purchase or management of them. The running of the portfolio had historically been carried out by, and only by, Mr Houssein. However, by June 2020

Mr Houssein was in failing health. He had suffered from a build-up of fluid on the brain, which required two operations to drain, was diabetic, had needed a pacemaker to be fitted and had a brain tumour.

60. In his witness statement Houssein Houssein emphasised his father's declining health and the impact it had. He stressed that "*These conditions and treatments he received changed my Father's personality, in that he became slower at doing things and found it hard to make decisions or understand things as clearly as he had done in the past.*" As a consequence, while Mr Houssein "*stayed involved the business … he left me in charge of the day to day management and operation of the business and dealing with the associated administration even though none of the assets belonged to me.*" That is reflected in the case of the refinancing at issue here. As I have noted, the Claimants accept that Houssein Houssein acted as agent for his parents. Although they emphasise that ultimate decision-making remained with Mr Houssein, the evidence supporting that assertion is thin. The overwhelming majority of communications were routed via Houssein Houssein. He, not his father, was the principal contact for Mr Liondaris and Premier, for SCW and for LCL. He did not even show key documents such as the first indicative terms to his father, simply informing him that an offer had been received. Obviously, Houssein Houssein could not execute any of the necessary legal documents; as he noted, the assets were not in his name. However, in my view it was Houssein Houssein, not Mr Houssein, who was principally managing the transaction for the Claimants.

61. Mr Çelikli gave evidence as to his own concerns about Mr Houssein's ability to complete a straightforward property purchase in Northern Cyprus. A number of points in his evidence seemed to me important. First, Mr Çelikli had known Mr Houssein for around 10 years, and so could speak directly to the decline of Mr Houssein's health by 2019. As Mr Çelikli acknowledged, he was not and is not medically qualified. He does, however, owe professional duties to his client not to proceed with a transaction if his client is not able properly to understand it. Mr Çelikli was fully able to address that question and I accept his evidence that he had sufficient concerns based on his dealings with Mr Houssein to refuse, as a matter of professional conduct, to accept his instructions.

62. Secondly, Mr Çelikli felt able to take a similar purchase forward with Mrs Houssein two months later. He was comfortable that she did understand the transaction and was able to give instructions in respect of it. Mr Çelikli explained, and the Claimants placed some stress on, the fact that property transactions in Northern Cyprus are significantly less complex than the transaction at the heart of this case. Of course, the fact that the transaction was relatively straightforward does not mean that Mrs Houssein was unable to handle a more complex transaction; she simply was not called upon to do so on that occasion. By contrast, it does highlight the degree to which Mr Çelikli was concerned over Mr Houssein's health if he thought that even a simple transaction was no longer something that his client could properly understand.

63. Moreover, Mrs Houssein was not so intimidated by her background, education or past relationship with her husband that she felt unable to take the lead on that transaction. Her evidence was that she was the one who first proposed the purchase of the Cyprus property. She saw, and was told, that her husband was not in a position to deal with the matter and so she did so instead. Given Mr Çelikli's evidence, which I accept, that he felt professionally unable to accept instructions from Mr Houssein, I cannot

imagine that he would have taken instructions from Mrs Houssein if he thought she was simply a cipher for her husband. She must therefore have acted without his substantive involvement in the transaction. However, it was never suggested that Mr Houssein was unaware of what Mrs Houssein was doing. The only sensible conclusion is that he must have accepted her handling the purchase.

64. The third point is that she was assisted by her daughter. That is reflected in the current transaction, but in this case instead of relying on her daughter she relied on her son.

65. Finally, Mrs Houssein herself gave evidence as to the relationship with her husband. In her witness statement she noted the decline in his health. She considered that it would have been apparent to anyone speaking to Mr Houssein that he was "*not a very well person*". He was slower to answer questions, struggled to understand matters clearly and found it difficult to make decisions, such that "*it appeared to me that, when he made decisions, he didn't really understand everything*". Her conclusion was that "*it is as though his brain felt numb*".

The 30 June meeting

66. On 19 June 2020, Houssein Houssein received an email from Bridge to say that the Bridge Loan was maturing the following month and would need to be repaid. The Housseins therefore needed to refinance a little over £1 million in around a month.

67. Mr Houssein and Houssein Houssein asked Mr Ali if he could suggest someone who would be able to assist. Mr Ali recommended Mr Liondaris. On 28 June Mr Ali contacted Mr Liondaris, who, on 29 June, called Houssein Houssein. In the course of that discussion, Houssein Houssein explained that his parents needed to repay Bridge and some smaller debts and to complete the renovations at 71 Hamilton Road. He said that the sum required was around £1.2 million.

68. Mr Liondaris stated that they discussed using 71 Hamilton Road as security and that he explained to Houssein Houssein that if this were the case the family could not live at that address while the loan was outstanding. That seems to me unlikely. This was an introductory call, the main purpose of which was to brief Mr Liondaris on the Housseins' position. The borrowers and the registered owners of the properties were Mr and Mrs Houssein, and a meeting was to be held with them the following morning. Moreover, Mr Liondaris' evidence was that he spoke to Mr Stylianides after his call with Houssein Houssein. It would only be after that call with Mr Stylianides that he would have a sense of what security LCL would require.

69. For a similar reason I do not accept Houssein Houssein's evidence that Mr Stylianides was on the initial call; there is no suggestion that Mr Ali knew enough of the details of the Housseins' situation to brief Mr Liondaris, so he would not have been in a position to involve a specific lender at that early stage. I accept the evidence of Mr Liondaris and Mr Stylianides that the former spoke to the latter only after the call with Houssein Houssein and briefed him on the situation faced by the Housseins.

70. On 30 June 2020 a meeting took place at Premier's office. The meeting was attended by Mr and Mrs Houssein, Houssein Houssein, Mr Liondaris, Mr Stylianides and at least one of Mr Liondaris' brokers, Mr Akkaya, who spoke Turkish and was there to

translate for the benefit of Mr and Mrs Houssein. In broad terms, this was the chance for Mr and Mrs Houssein, the borrowers and owners of the secured properties, to discuss the refinancing with Mr Stylianides of LCL, a potential lender.

71. There is a fundamental clash of evidence on what happened at this meeting. I therefore start with the contemporaneous documents.

72. No formal notes were taken, although Mr Liondaris subsequently filled in an LCL application form which he said served as his record of the meeting. That form appears to have been sent to him by email by Mr Stylianides at 9:13am on 1 July along with the first indicative terms. It must have been returned by Mr Liondaris by 12:40pm the same day, when Mr Stylianides circulated it to several of his colleagues within LCL. It is therefore not directly contemporaneous, but was prepared while events were still fresh in Mr Liondaris' mind.

73. That email exchange is an important one in establishing what was and was not discussed at the 30 June meeting.

    i) The loan amount had increased significantly from the £1.2 million discussed in the initial call between Houssein Houssein and Mr Liondaris: the application form gave the figure as £1.6 million, whereas the first indicative terms stated that the amount was to be £1.97 million. Ultimately, the figure moved and the Housseins were certainly aware of the amount they finally agreed to borrow. The discrepancy is important, however, in that it suggests that Mr Liondaris did not rely, or at least did not rely exclusively, on the first indicative terms in completing the application form. Put another way, the application has some probative value that is independent of the first indicative terms.

    ii) Both the form and the first indicative terms recorded that all of the Downhills Way properties were to form part of the security, as was 71 Hamilton Road. The latter address was also given in the form as the Houssein's residential address.

    iii) The first indicative terms recorded that security was to be by way of first charge and all the existing loans, not just the Bridge Loan, were to be discharged.

    iv) In the application form the lawyers were named as SCW and the borrower was specified as CEK. The first indicative terms recorded that the borrower was to be "*LTD Company (tbc)*".

    v) Premier's fee was specified in the first indicative terms as a total of 4% of the loan amount.

    vi) Importantly, it is apparent that Mr Stylianides believed that the Housseins would be moving to a different address, since he stated that in his 12:40pm email, but that email and his email to Mr Liondaris of 9:13am show he still did not know what the new address would be. It was only at 1:30pm that Mr Liondaris emailed to say that the Housseins would be moving to 61 Hamilton Road.

74. At 1pm on 1 July Mr Liondaris emailed the signature page of the application form, but not the form itself, to Houssein Houssein requesting that he have Mr and Mrs Houssein sign and return it. The signature page includes a statement that "*I/We confirm that for the period of the loan now being applied for I/we and/or family members do not intend to occupy the above property nor do we intend to do so at the end of the loan period.*" The reference to "*the above property*" included 71 Hamilton Road but that would only have been apparent to someone who had the complete form.

75. Houssein Houssein returned the signed page an hour later and Mr Liondaris sent it on to LCL. Mr Liondaris knew, or ought to have known, that no reliance could safely be placed on the apparent confirmation, by Mr and Mrs Houssein, that they did not intend to reside at 71 Hamilton Road because they had not seen the full form when they signed it. However, for reasons that I go on to address, Mr Liondaris was at all times the agent of the Housseins and not of LCL, such that LCL is not fixed with his knowledge. It would therefore have appeared to LCL when it received the signed form that the Housseins had been informed and had accepted that they could not reside at 71 Hamilton Road.

76. It is against that backdrop that the witness evidence must be assessed.

77. The first issue is how much of the meeting Mrs Houssein understood. In her evidence she said her understanding of English was limited to pleasantries. As I have noted, my sense when she gave evidence was that it went a little beyond that – certainly, at times she started to answer questions before they were translated for her – but that it did not go very far beyond. Mrs Houssein does have a very attentive manner, but I think that simply demonstrates that she endeavours to follow what is being said, not that she has understood it. The issue was one of language rather than aptitude. She seemed to me well able to understand the details of property matters. For example, she clearly understood some of the more nuanced aspects of the release of security in this transaction, had her own views on the charging of the family home at 71 Hamilton Road and had completed the transaction in Cyprus a year before. However, they would need to be explained to her in Turkish. If matters were not translated for her, I do not believe it could safely have been assumed that she understood them.

78. The second question is what was said about the Housseins moving out of 71 Hamilton Road.

79. Mrs Houssein was adamant that she would not have accepted security being granted over 71 Hamilton Road because it was the family home. Even if Mr Houssein had suggested this she would have refused. LCL submitted in closing that Mrs Houssein's later willingness to propose a refinancing that would involve charging 71 Hamilton Road shows this to be untrue. The context there was completely different, however: receivers had been appointed and Mrs Houssein was looking at ways of resolving this dispute and repaying LCL. A party may agree to something in a crisis situation that they would have opposed when they had options. The evidence of Mr Griffiths was that in June 2020 the timing for a refinancing of the Bridge Loan was tight but entirely achievable; many lenders active in the market at that time were able to refinance in 40 days or less. This was the first meeting with LCL and the Housseins therefore did have options. I found Mrs Houssein's evidence on this point to be very strong indeed and I accept that she would not have agreed to a charge on 71 Hamilton Road had that been put to her in terms she understood.

80. Of course, given my view on her fluency in English this only addresses what was translated, not what was said. It does, however, necessarily mean that I reject Mr Liondaris' evidence that he specifically asked that this point be translated by Mr Akkaya and that Mrs Houssein confirmed that she had understood it. I have little hesitation in doing that. In his witness statement he simply said that he was certain Mrs Houssein understood what was said; at no stage did he indicate that he had specifically asked for this point to be translated. Given the centrality of the point to this dispute, that would be an odd omission if it had happened. There is also the relative credibility of the witnesses, which in itself strongly suggests to me that Mrs Houssein's recollection is to be preferred. Finally, other aspects of Mr Liondaris' evidence about this meeting are, by reference to his own email exchanges, demonstrably untrue, which calls into question the reliability of all aspects of his evidence on it.

81. Was the point discussed at all? Houssein Houssein also says that it was not, but for reasons I go on to note, his evidence on what he was told regarding 71 Hamilton Road being charged is wholly unreliable and in places plainly false. That leads me to treat his evidence on this question with caution.

82. I also found unconvincing his suggestion that very little changed at the meeting and that, on leaving it, the Housseins thought the LCL Loan would, essentially, replace the Bridge Loan with security over the same properties. That evidence is impossible to square with the first indicative terms and the application form, both of which record a much higher loan amount than was required to discharge the Bridge Loan and security being taken over the five Downhills Way properties and 71 Hamilton Road. As I have noted, the differences between the two documents suggest that Mr Liondaris completed the form at least in some way independently of the indicative terms, meaning that Mr Liondaris and Mr Stylianides had independently concluded that the refinancing was to be of the whole debt, not simply the Bridge Loan, and would involve security being taken over all six properties. It may have been that they discussed this on their initial call the day before, but that would in no way be inconsistent with the point being discussed at the 30 June meeting at some point. The Housseins would obviously be told by their lawyers, as indeed they were, that security was to be taken over 71 Hamilton Road and all five Downhills Way properties; there was no reason to avoid discussing this important aspect of the LCL Loan at the initial meeting.

83. The setting of the meeting itself also suggests that points of substance needed to be discussed. This was, on Houssein Houssein's evidence, a two to two and a half hour meeting to discuss the structure of the LCL Loan. Around 30 minutes were spent by Mr Liondaris on calls to look at exit financing; that leaves up to two hours spent on other issues. If the only point was to refinance the Bridge Loan, with some extra amounts for completing the renovation works on 71 Hamilton Road, it is hard to see why it took that long. It seems more likely that the discussion was broader than that, encompassing different lending options that included a refinancing of all of the Housseins' debt.

84. I therefore accept that the change in structure to the loan, and the security supporting it, were discussed and broadly agreed at the 30 June meeting.

85. By contrast, I do not accept that including 71 Hamilton Road in the security for the LCL Loan was expressly linked to a need for the Housseins to vacate the property for the term of the loan.

86. First, the Housseins plainly did not want to move out of 71 Hamilton Road, indeed it is uncontroversial that they have not done so. While I believe that Houssein Houssein subsequently came to understand that vacating 71 Hamilton Road was a requirement of the LCL Loan, had he or Mr Houssein been told at such an early stage that this was a mandatory condition of borrowing from LCL I believe they would simply have instructed Mr Liondaris to find someone else. As I have noted, the evidence of Mr Griffiths was that other lenders could have completed as quickly as LCL.

87. Secondly, Mr Stylianides' evidence was that moving into 61 Hamilton Road coincided with the Housseins' plans to have the construction work at 71 Hamilton Road completed, but as the photographs of the valuation of 71 Hamilton Road on 9 July and Mr Stylianides' own inspection visit on 29 July show, that cannot have been right because the work was almost complete. I cannot envisage any circumstances in which the Housseins would spontaneously have referenced the works as an independent reason for wanting to leave 71 Hamilton Road. If Mr Stylianides was wrong in remembering the Housseins raising the renovations as a reason to move out, that casts doubt on his broader recollection on the point.

88. Finally, in their evidence both Mr Liondaris and Mr Stylianides link the discussion about the move out of 71 Hamilton Road with the option to move into 61 Hamilton Road, which was owned by Mr Ali. Their evidence on this was plainly unreliable.

89. Mr Liondaris had two versions of events. In his statement he said that the Housseins proposed it. In cross examination he said that he proposed it and everyone agreed. Mr Stylianides said in his statement that the Housseins "*confirmed*" at the 30 June meeting that their plan was to move to 61 Hamilton Road, which could be consistent with either of Mr Liondaris' versions of events. The documentary evidence is inconsistent with both, however.

90. If the move to 61 Hamilton Road had been confirmed or agreed on 30 June it would equally have been known on 1 July. Yet at 12:40pm on 1 July Mr Stylianides sent his email to the underwriting team at LCL attaching a number of items including a proof of address, in the form of bank statements showing the 71 Hamilton Road address. Mr Stylianides explained "*applicant are* [sic] *moving to a different address which I will provide details of shortly.*" This supports Mr Stylianides' evidence that following the 30 June meeting he thought the Housseins would move out, but undermines his evidence and Mr Liondaris' evidence that some agreement had been reached at that meeting that the Housseins would move to 61 Hamilton Road.

91. When that email was put to Mr Liondaris he suggested that Mr Stylianides was aware of the move to 61 Hamilton Road at the meeting but had asked for details because it was not on the application form that Mr Liondaris had sent to him that morning. That was at best speculation and was not Mr Stylianides' evidence: when the same documents were put to him, he acknowledged that he had not been told about a move to 61 Hamilton Road at the 30 June meeting and the first time such a move was suggested was in Mr Liondaris' email.

92. I believe that Mr Stylianides was honest in saying his initial recollection was that a move to 61 Hamilton Road was proposed at the 30 June meeting but was, as he accepted, mistaken. If he was mistaken on that point, it seems to me that he may well equally have been mistaken on the related point of the need to vacate 71 Hamilton Road being discussed. The issue of vacating the security properties may have been raised in general terms, but not with the specificity that Mr Stylianides recalled. Given that on the following day he received the signed application form, apparently confirming the Housseins' agreement to vacate 71 Hamilton Road, such a mistake would be entirely understandable. As I have noted, Mr Liondaris should have known that no reliance could be placed on that apparent confirmation, given that Mr and Mrs Houssein had signed the form without sight of its contents, but there was no way at the time that Mr Stylianides could have known that. I believe that the statement in the form has influenced his recollection of the meeting and that his evidence on this point was incorrect but given honestly.

93. Mr Liondaris was a somewhat different matter; I simply did not believe his evidence at all. His mutually inconsistent versions of how the supposed move to 61 Hamilton Road came about strongly suggested that his evidence was, at best, self-serving theorising. The documentary evidence plainly demonstrates that he was not told on 30 June that the Housseins intended to move to 61 Hamilton Road. Given how weak his evidence was on that point, I attach no weight to his suggestion that this was premised on an expressed need to move out of 71 Hamilton Road.

94. The final question is who proposed the use of CEK as the borrower. Houssein Houssein said that Mr Liondaris proposed the use of a corporate borrower, at which point Mr Houssein and Houssein Houssein raised the possibility of using CEK. Mr Liondaris said the proposal came from the Housseins, who intended to transfer the investment properties to the corporate vehicle. The evidence of Mr Theophanous, which I accept, was that it made no substantive difference to LCL whether the loan was to individuals or a company, so it was unlikely that LCL was involved at all. It therefore seems to me most likely that it was some combination of Houssein Houssein, possibly Mr Houssein, and Mr Liondaris who proposed using CEK. Given that Mr Liondaris was the agent of the Housseins, ultimately the suggestion came from them rather than from LCL.

95. The conclusion I draw from all this is that the 30 June meeting did discuss a change to the loan structure such that the LCL Loan would be taken out by CEK to replace all the existing debt with security being taken over all properties, including 71 Hamilton Road. It did not specifically address the requirement for the Housseins to vacate 71 Hamilton Road. None of this was explained to Mrs Houssein in Turkish. Instead, Mr Liondaris and Mr Stlyianides believed she had understood the point; that belief may have been somewhat understandable, given Mrs Houssein's engaged and attentive demeanour, but it was a mistaken one.

96. A move to 61 Hamilton Road was never discussed at the 30 June meeting. That first happened on 1 July when Mr Stylianides asked Mr Liondaris for details of where the Housseins would reside. There is no evidence, even from Mr Liondaris, that the Housseins suggested at any stage after the 30 June meeting they would move to 61 Hamilton Road. The most obvious, and I believe accurate, explanation for why Mr Liondaris told LCL that the Housseins would move there was that it was a convenient and reasonably plausible answer to LCL's question. Put another way, Mr Liondaris

just made it up. There was, however, no way that Mr Stylianides or anyone else at LCL could have appreciated that at the time.

The appointment of SCW

97. Mr Liondaris started dealing with SCW almost immediately; at 11:58am on 1 July he was sending copies of bank statements and passports to one of the partners, Mr Constant. Later that day, at 5:16pm, Mr Constant emailed Mr and Mrs Houssein, via Houssein Houssein's email account, attaching a client care letter. Since Mr and Mrs Houssein were directors of CEK there is a question as to the capacity in which SCW thought they were instructed. I was not provided with the client care letter, which would have answered that question, but given that SCW advised on both the Facility Letter, which was an agreement with CEK, and the Charges, which were agreements with Mr and Mrs Houssein personally, it seems that SCW were acting for all three.

98. Mr Constant's email was copied to Ms Haji, an associate at SCW who had day to day carriage of the transaction. I was told by Mr Liondaris that Ms Haji was selected because she was a Turkish speaker.

99. Houssein Houssein told me that SCW took their instructions almost exclusively from Mr Liondaris. The communications that I have seen are not so clear-cut. As I have noted, they certainly did liaise with Mr Liondaris, at times without copying Houssein Houssein, but he was sent the key documents and advice so far as those exchanges are in evidence. Moreover, as Houssein Houssein acknowledged, the way that SCW took instructions was not something to which he ultimately objected at the time.

The conveyancing process between 1 July and 29 July

100. Mr Liondaris sent Houssein Houssein a copy of the first indicative terms on 1 July 2020. As I have noted, that document clearly sets out that the security is to apply to 71 Hamilton Road and the five properties on Downhills Way and that the existing loans are to be discharged. In seeking to address the indicative terms, Houssein Houssein stated that the only part of the indicative terms that he read was the loan amount; he "*assumed that only* [the buy-to-let] *properties would be secured because, to my knowledge, their value was sufficient to justify the loan applied for.*" In cross-examination he added, "*For me it's a document – it's not a document that I would understand the seriousness of, or how important it is.*" I did not believe any of that evidence.

101. First, Houssein Houssein's evidence was that he and his father were both "*very experienced*" in property matters. The first indicative terms represented the commercial basis on which LCL was willing to lend; its importance was obvious. Secondly, and connectedly, there was no suggestion that Houssein Houssein believed there was anywhere else that LCL had set out its proposed terms, such that LCL obviously intended to lend on the basis, and only on the basis, that all six properties were security. Thirdly, the loan amounts in the indicative terms only made sense if all of the debt was being refinanced, not just the Bridge Loan. If all of the debt was being refinanced, the need for more security than that required by Bridge would have been apparent to anyone, but especially to someone "*very experienced*" in property matters. Fourthly, the indicative terms are very simple documents, the first indicative terms particularly so: its main points can be ascertained in literally 30 seconds.

Finally, the list of secured properties is the first item; Houssein Houssein would have to read past it to get to the loan amount.

102. Even if one were to accept that Houssein Houssein initially only read the loan amount, it was very little short of £2 million in circumstances where, on Houssein Houssein's evidence, he thought that around £1.2 million was required. Even allowing for the fact that the gross loan amount included rolled up interest, additional borrowing and fees, I cannot believe he would go forward with his parents borrowing fully one third more than they needed without any further inquiry, such inquiry most obviously comprising taking the few seconds needed to read the rest of the document, speaking to Mr Liondaris or both. That would immediately have flushed out that Mr Liondaris and LCL both thought the deal had changed. In fact, Houssein Houssein did nothing in response to seeing the increased loan, I think because it was largely what he expected to see. The reason he expected to see it was that it had been discussed at the meeting the day before.

103. On 2 July 2020, Bridge provided a redemption figure of £1,020,000. Houssein Houssein provided that to Mr Liondaris and at that point did suggest a reduction in the loan amount, reinforcing the point that he would only have accepted the loan amount in the first indicative terms if it was broadly what he expected to see. Mr Liondaris in turn forwarded Houssein Houssein's email to Mr Constant and Mr Stylianides.

104. This prompted the second indicative terms of 2 July, which were largely identical to the first indicative terms other than a reduction in gross loan amount to £1,792,000, of which almost £300,000 was retained interest or fees.

105. On 3 July there followed the third indicative terms, with the amount increased by £75,000. It appears that LCL understood this to be in respect of unpaid tax bills, although how they obtained that understanding is unclear. Again, the terms are otherwise identical.

106. A valuation was carried out of 71 Hamilton Road on 9 July as part of the refinancing. Houssein Houssein accepted that he was aware of this at the time, indeed he was present when the valuation was carried out, but had no answer to the obvious question of why LCL would want a property valued other than for the purposes of taking security over it. Mrs Houssein recalled photographs being taken of 71 Hamilton Road at around that time but had no recollection of it being for the purposes of a valuation.

107. On 14 July 2020 Mr and Mrs Houssein were sent a letter by email from Stanway Little, their architects involved in earlier works on 71 Hamilton Road. Since they did not use email it seems very likely that this was received by Houssein Houssein in the first instance, although for whatever reason the covering email was not in evidence. That letter clearly states that 71 Hamilton Road was to be secured under the refinancing arrangements. I found Houssein Houssein's answers on whether he had seen this letter to be, at best, evasive. In my view he did see it. All emails to and from his parents seem to have gone via his account. As such, he would have received it and, given his evidence that he was responsible for the day to day administration of the property business, was likely to have read it. More to the point, he forwarded it (on behalf of his parents) to Mr Stylianides at 12:55pm the same day in response to a request from Mr Stylianides. He then forwarded it to SCW the following day. After that he was involved in follow-up exchanges, including with Stanway Little,

regarding the issues raised in their letter. It is hard to believe that he was doing this in ignorance of what had been said by them, including as regards the taking of security over 71 Hamilton Road.

108. On 20 July 2020 Ms Haji wrote to Houssein Houssein with queries on the six properties. The first property referenced is 71 Hamilton Road. All of her questions were relevant to (and in this context only to) the interest a lender might have in a property as security. Indeed, she makes clear in her email that the purpose of her queries is to "*finalise our pack and issue the same to the Lender's solicitors*". When this was put to Houssein Houssein his response was: "*I just did not find this document had any relation to the loans that Dad and Mum was asking for. This was based on three properties, so again I disregarded that entirely.*"

109. Had that been the case, one would have expected Houssein Houssein to correct Ms Haji. In fact, he started to provide the information requested, and Ms Haji followed up regarding the outstanding items on 22 July. Moreover, the information he provided apparently included electrical certificates for 199 and 203 Downhills Way, properties that had not been security for the Bridge Loan. These were not documents that Ms Haji had requested in her 20 July email and seem in the first instance to have been sent by Houssein Houssein to Mr Stylianides. If it were the case that Houssein Houssein understood that the loan his parents sought was to be secured only on three of the buy to let properties, it is hard to understand why he would send Ms Haji anything in respect of other properties, whether requested or not. It makes if anything even less sense that he would send that information to LCL. If one rejects Houssein Houssein's evidence, the situation is readily comprehensible: he understood that the LCL Loan was greater in amount and required more security than had been the case with the Bridge Loan, and provided material accordingly.

110. Returning to the sequence of events, two other points of note arose on 20 July. The first was the expiry of the Bridge Loan. The Housseins were now in default and subject to additional charges. Houssein Houssein explained that he and his father became "*very anxious*" in the run-up to the expiry, which is entirely understandable.

111. The second point is that Mr Stylianides sent to SCW and Mr Liondaris the fourth indicative terms and the loan offer. The indicative terms again named all six properties as security as the first item and referred to redemption of all existing charges; the loan amount was now £1,845,000.

112. There are a number of points regarding the loan offer, which became the Facility Letter in substantially identical terms. What is critical at this stage is to note that clause 10.2(k) was a covenant that the Borrower would not occupy the Property, which included 71 Hamilton Road, and clause 10.2(g) provided that it would not create any lease or licence in respect of the property without LCL's prior written consent, which consent was never sought. There were corresponding representations and warranties at 11.1(h) and 11.1(o)(v). It was therefore apparent not simply that 71 Hamilton Road was a security address but also that it could not be used by the Housseins as their residential address.

113. Unlike the other documents to which I have so far referred in this section the loan offer is plainly a technical legal document and the Housseins would, quite properly, rely on SCW in understanding it. It is obvious, from the evidence that I have seen,

that SCW did understand the effect of those clauses to be that the Housseins needed to vacate 71 Hamilton Road. While any advice they gave on or immediately after 20 July was not in evidence, I believe that they made those requirements clear to Houssein Houssein.

114. On 23 July Ms Haji wrote to Houssein Houssein in the following terms:

> The Lender's solicitors is [sic] preparing the security documents but there is some confusion as to your parents' home address. Where do they live as the proof of address documents provided show their home address as 71 Hamilton Road but this is one of the security addresses?

115. In his witness statement Houssein Houssein claimed he did not attach any meaning to the reference to security addresses because "*she* [Ms Haji] *too never pointed out that we could not occupy 71 Hamilton Road; or that our home formed a part of the security.*"

116. I have two issues with that evidence. First, it elides concepts that are quite separate: whether 71 Hamilton Road was a security address and whether the Housseins could continue to live there. As to the former, the statement that Ms Haji failed to point out that the Housseins' home formed part of the security is plainly wrong. She did so very clearly in her 23 July email and did so again on 30 July when attaching the documents that Mr and Mrs Houssein needed to execute.

117. As to the latter point Ms Haji's email is, I accept, less clear. In saying that I mean no criticism of Ms Haji. She obviously did not know where the Housseins were living; that was the whole point of her question. From her disjunctive use of "*but*" it is apparent that she understood that residence at 71 Hamilton Road would be problematic. However, she seems to have assumed that Houssein Houssein was aware of that problem and so does not, in this email, state in terms that it is prohibited.

118. That leads back to the question of what Houssein Houssein had previously been told. Ms Haji was not a witness and, as I have noted, I do not have a copy of all of the advice provided by SCW. From what I have seen my sense of Ms Haji is that she was diligent and capable; for example, when, at around this time, Gunnercooke sought to include in the security a strip of land between 199 and 201 Downs Way, Ms Haji was alive to the fact that it fell outside the scope of the offer letter and pushed back on its inclusion in the scope of the charge. That was not an obvious point and it seems unlikely that Ms Haji would be alive to such points of detail but would not advise on the terms of the Facility Letter, one of the key agreements. Set against that, when she emailed the pack of execution documents to Houssein Houssein on 30 July her advice regarding the main terms of the Facility Letter reads more like it was being given for the first time than a reminder of key points previously discussed.

119. On balance I believe that Ms Haji's email of 23 July assumed Houssein Houssein was aware of the obligation that the Housseins could not live at 71 Hamilton Road because she had either advised him of that point or been a party to a communication with someone else in which Houssein Houssein was so advised. Certainly, for reasons I go on to address, I believe that Houssein Houssein was fully aware of that obligation before drawdown of the LCL Loan.

120. On 27 July Houssein Houssein responded to say that 71 Hamilton Road was the correct residential address. In his cross-examination he stated that in his view this concluded the discussion and denied the exchange had put him on notice that 71 Hamilton Road was to be part of the security. As with much of his evidence regarding the use of 71 Hamilton road as security, I found that answer implausible. As I have noted, Houssein Houssein stated he was "*very experienced*" in property matters, Ms Haji's email was clear that 71 Hamilton Road was to be a security address and Houssein Houssein at no stage contradicted that understanding. To the extent he believed his response clearly demonstrated that he and his parents were and would continue residing at 71 Hamilton Road and (which is a separate matter) that it was not to be charged, Ms Haji's email of 30 July made clear that she was proceeding on the opposite basis both as regards the existence of the charge and where the Housseins would live.

121. There follows what seems to me quite a significant email dated 27 July between Mr Constant and Ms Haji copied to Premier. In it, Mr Constant referenced a call with Mr Liondaris. He recorded the following:

> This was explained to the Bank by our client's broker. They are all residing at 61 Hamilton Road. They did live a long time ago at 71 Hamilton but only for a very short period of [sic] and they have not managed to change all of their correspondence details. They are in the process of dealing with this now.

122. This document was put to Houssein Houssein, who was not a party to it, but not to Mr Liondaris. Nor did Mr Liondaris address it in his witness statement. Certain points are obvious, however:

i) While not a point that arises from the email, the relevant context is that Mr Liondaris was clear throughout his evidence that he knew the Housseins would have to vacate 71 Hamilton Road before drawdown.

ii) Mr Liondaris was the sole source of the understanding that the Housseins had, in fact, moved to 61 Hamilton Road. I have already noted that the initial suggestion to LCL that the Housseins would move to 61 Hamilton Road was a creation of Mr Liondaris, brought into existence on the morning of 1 July. The suggestion to SCW that they had done so, likewise, came from Mr Liondaris rather than the Housseins.

iii) Much of what Mr Liondaris told Mr Constant in this regard was impossible to reconcile with what Mr Liondaris must have known. On the application form completed less than four weeks earlier he had recorded that the Housseins had lived at 71 Hamilton Road for a number of years; his understanding at the 30 June meeting, confirmed on cross examination, was that they still lived at 71 Hamilton Road; there is no evidence of anyone telling Mr Liondaris after that meeting that the Housseins had moved, intended to move or that they were changing their address.

123. As I have noted, this document was not put to Mr Liondaris and so he did not have the opportunity to explain those discrepancies. As I have also noted, Mr Liondaris and Premier are not parties to any proceedings. However, Mr Liondaris' state of mind is relevant to his credibility as a witness. In the absence of any evidence showing that

the idea of a move to 61 Hamilton Road came from the Housseins, I can only conclude that Mr Liondaris made up what he told Mr Constant in that discussion; he either knew it was not true or he did not care whether or not it was true. That reflected his actions on 1 July when he provided the corresponding assurance to LCL. The email was sent on 27 July and apparently reflects a discussion that Mr Constant had with Mr Liondaris that day. That Mr Liondaris put forward a false version of events on 27 July is relevant when one comes to consider the inspection visit two days later.

124. As I have noted SCW were accustomed to dealing with Mr Liondaris and the Housseins, possibly after an initial objection, had allowed them to do so in order to facilitate the transaction. That SCW accepted what they were told from Mr Liondaris is therefore unsurprising, and not a strong ground, or indeed any ground, from which to criticise them.

125. For completeness, I note that Ms Haji sent on the response the following day to Mr Merson of LCL's solicitors, Gunnercooke. The responses are described by Ms Haji as "*our replies*"; Mr Liondaris was not identified as the source.

126. Before moving to the 29 July inspection, it is worth summarising my views of the knowledge of the various parties at this point.

127. Mrs Houssein's evidence was that she had little involvement during this period and was unaware of any of the details but would not have agreed to security being granted over 71 Hamilton Road. I accept that, although she is fixed with the knowledge of Houssein Houssein as her agent.

128. Houssein Houssein's evidence was that he (and his father) had previously dealt with lenders and financial advisors and understood "*very clearly*" the explanations given by Mr Liondaris about repayment structures at the 30 June meeting, notably the proposed mechanism to exit from the LCL loan. Given that experience, there is no sensible explanation for why he would miss or misunderstand the fundamental change in the refinancing following that meeting. It was blatantly and consistently obvious from the various sets of indicative terms, the emails from SCW and the correspondence from Stanway Little that 71 Hamilton Road was to be a security address. The only plausible reason why Houssein Houssein would not question the repeated references to 71 Hamilton Road is that it was what he expected: he knew, probably at the 30 June meeting but certainly from soon thereafter, that 71 Hamilton Road was to be a security address. I found his denials that he was aware of this evasive and wholly unconvincing. I believe that he was also aware that the LCL Loan required the Housseins to vacate 71 Hamilton Road. Certainly, for reasons that I will deal with in connection with subsequent events, he was aware of that before drawdown.

129. I am cautious about drawing firm conclusions in respect of Mr Houssein given the almost total lack of evidence. Ultimately, Houssein Houssein's knowledge is imputed to him in any event. The only direct evidence that I have as to his understanding about the need to vacate 71 Hamilton Road during the term of the loan relates to the inspection visit on 29 July. Mrs Houssein's evidence was that her husband was unaware of the reason for the inspection but believed it to be a formality. I accept that

evidence. Mrs Houssein thought it was connected with further works to be carried out at the property and it may be that her husband shared that view.

130. Mr Liondaris knew that the Housseins had to vacate 71 Hamilton Road. He told Mr Constant that they had done so in the absence of any evidence to that effect, knowing that what he said would be passed to LCL's lawyers; that would not have concerned him because he had already told LCL the same thing directly, equally without any basis for doing so.

131. SCW believed that the Housseins had vacated 71 Hamilton Road, having relied on Mr Liondaris, whom they properly considered to be the Housseins' agent and with whom they had been accustomed to dealing.

132. LCL understood that the Housseins had vacated 71 Hamilton Road, having been told that both by Mr Liondaris and by SCW. From the terms of Ms Haji's email they would have been entitled to think that SCW's confirmation was separate from and in addition to that of Mr Liondaris. However, Ms Demetriou of LCL wanted this confirmed. On 24 July 2020 she wrote to Mr Stylianides noting that LCL needed "*a confirmation as to when the applicants will be moving out of the security property (prior completion of the loan)*". Ms Demetriou followed up with Mr Stylianides on 27 July and Mr Stylianides responded that the visit had been fixed for the afternoon of 29 July. The Claimants in closing sought to make something of this, saying that it showed that LCL was not content to rely on SCW. However, Mr Griffiths' evidence was that he would expect any lender to carry out an inspection of their own, such that there was nothing unusual about LCL doing so in this case.

The 29 July inspection

133. Evidence concerning the inspection was given by Houssein Houssein, Mrs Houssein and Yazmin Huseyin on the one hand and by Mr Stylianides and Mr Liondaris on the other. Put simply, the evidence of those two groups of witnesses is entirely irreconcilable; they could not both have been right.

134. In his statement, Houssein Houssein stated that he was told by Mr Houssein on the morning of 29 July that Mr Liondaris had called to arrange a visit to look at the completed works. That is somewhat at odds with the email exchange in which Mr Stylianides informed Mr Demetriou on 27 July that the inspection had been scheduled. It may be that Mr Houssein had forgotten to mention the point sooner, or that Mr Stylianides had spoken to Mr Liondaris on 27 July but Mr Liondaris had not called the Housseins until 29 July. Either way, not a great deal turns on the point. After his conversation with Mr Houssein, Houssein Houssein spoke to Mr Liondaris who confirmed he would visit with Mr Stylianides that afternoon.

135. According to Houssein Houssein, he was there that afternoon along with Mr Houssein, Mrs Houssein and their grandchildren (one of whom is Ms Huseyin). When Mr Liondaris and Mr Stylianides arrived Mr Liondaris explained that they needed to make it look as if renovation work was taking place and went to the garage to get dust sheets and paint cans. He instructed Mr and Mrs Houssein and their grandchildren to assist with stripping beds, emptying drawers, emptying the fridge and clearing work surfaces. Mr Stylianides took photographs. Mrs Houssein became upset and started to cry but Mr Houssein told her she should simply do what she was

being asked to do and Mr Liondaris said there was nothing to worry about and that this was standard procedure. The whole visit was staged to create the impression that the Housseins had moved out when it was obvious to all present that they had not.

136. Mrs Houssein's evidence in her witness statement was to similar effect, although she said nothing of Mr Liondaris' saying that they needed to make it appear that renovation works were being carried out, possibly because she was not there at the time and possibly because it was not translated for her. She further explained that Mr Liondaris told Mr Houssein that this was a formality, which he translated for his wife. She believed the inspection was connected with her desire to have further work done on the property.

137. In the course of her cross-examination Mrs Houssein identified an item in one of the bedrooms that she described as her prayer book. She explained that it was a case containing a verse from the Quran that protected her and her family. She further explained that she would always have such a prayer book in her home and would never leave it behind. It was obvious from the photograph that it was a small, readily portable item.

138. Ms Huseyin also gave similar evidence to Houssein Houssein and Mrs Houssein. There was a slight discrepancy with the evidence of Mrs Houssein as to the time that the inspection took; Ms Huseyin said a few hours, Mrs Houssein said more than an hour. I place no weight on that discrepancy; the length of the visit is irrelevant in this case and it is, in any event, wholly unsurprising that an 11 year old child, as Ms Huseyin was at the time, might perceive the passage of time differently to her grandmother.

139. Mr Liondaris and Mr Stylianides both dealt with the inspection with remarkable brevity, given its importance. Neither statement said anything about how the inspection was arranged, both covered the inspection itself in a paragraph asserting that they arrived, the Housseins had obviously moved out, Mr Stylianides took photographs and they left. In the course of cross-examination Mr Liondaris confirmed that Mrs Houssein was present and was upset. Mr Liondaris understood this was the stress of moving out of her home. Mr Stylianides denied that he saw her. Both witnesses denied seeing any of the grandchildren.

140. I have no hesitation rejecting the evidence of Mr Liondaris and Mr Stylianides as not simply mistaken but dishonest. Specifically:

    i) I fully accept that Mrs Houssein would not have left her prayer book behind had she moved out. Her evidence on this point was unchallenged and her answers to my questions were compellingly clear. While that evidences that she had not moved out of 71 Hamilton Road it does not, of course, go to what Mr Liondaris and Mr Stylianides might have believed, since there is nothing to suggest that they understood the significance of the prayer book.

    ii) The Housseins' grandchildren were at the property: Mr Stylianides' photographs prove that much. There is no sensible reason why the Housseins would have been childminding at 71 Hamilton Road unless they were living there. Moreover I accept the evidence of Mrs Houssein, Houssein Houssein and Ms Huseyin that the grandchildren interacted with Mr Stylianides and Mr

Liondaris, who were both therefore aware that the Housseins were childminding in what was supposed to be an empty property undergoing renovation works. Being so aware, they could not sensibly have concluded that the property was vacant without further inquiry.

iii) Mr Stylianides' photo that shows Ms Huseyin also shows a reflection of a sofa in the windows. There is no dust sheet on that sofa. There is a separate photo of the room with that sofa, showing the sofa covered with a dust sheet. The first image was numbered 498, the second 495. That suggests that the photo with the dust sheet over the sofa was taken first, meaning that the dust sheet was removed while Mr Stylianides was at the house. Unquestionably, the sofa must have been covered or uncovered (or both) while Mr Stylianides was at 71 Hamilton Road. That is inconsistent and irreconcilable with the versions of events advanced by Mr Stylianides and Mr Liondaris that they simply arrived and photographed what they saw. Changes were obviously made while they were in the house.

iv) Image 496 is of the dining area. There is no image 497 for whatever reason. The kitchen, sitting room and dining area at 71 Hamilton Road form one, large open plan area. It strongly seems therefore that Mr Stylianides took these three photographs, 495, 496 and 498, in close sequence; he did not go somewhere else in the house then return. That would mean he was present while the dust sheet was either put in place or removed.

v) House plants had been left there that would have died if left unattended for any length of time.

vi) Electrical appliances had been left on.

vii) Mr Stylianides took a photograph of an empty fridge. He accepted that was the overflow fridge in the garage, not the main fridge in the kitchen. His explanation for photographing that fridge was that Houssein Houssein told him that the main fridge was not working. That made no sense. Since the purpose of the photograph was to show that the fridge was empty, evidencing an empty property, it made no difference whatsoever whether the fridge was working; if the Housseins had moved out it would logically have been switched off in any event. The only relevance of the photograph was to show whether there was food in the fridge. Nor did I find any more credible Mr Stylianides' suggestion that he simply accepted what was said because he did not want to come across as aggressive or intrusive. Almost his next utterance in cross examination was angrily to accuse Ms Huseyin, aged 14 at the time of this trial and 11 at the time of the inspection, of lying to the court. Given the seriousness of the allegation I should record that I found that outburst to be contrived and lacking in any basis. Even had it been genuine, and making all possible allowance for the pressure of giving evidence, angrily accusing a child of contempt of court was not the act of a man who would be reticent about pressing for a fridge door to be opened. As for intrusion, the very purpose of his visit was, in a sense, intrusive. There were multiple photographs of the insides of wardrobes and drawers. The obvious difference is that if the fridge was full, which was likely in the middle of summer, it would take longer to clear than a wardrobe. As I have noted, Houssein

Houssein's evidence was that the children were tasked with emptying the fridge and it was presumably taking some time. That is why Houssein Houssein suggested photographing the overflow fridge as a quick and convenient alternative that would allow Mr Stylianides to create a record apparently demonstrating that 71 Hamilton Road was unoccupied.

viii) All the witnesses, with the exception of Mr Stylianides whom I did not believe, agreed that Mrs Houssein was at the property at the time of the visit; the weight of the evidence, which I accept, is that she was upset by the experience. Given that it was an upsetting experience, there was no reason why she would return to the family home for an inspection visit if she had moved somewhere else. Indeed, even had she not found it upsetting there was no reason for her, or indeed her husband, to be there; it only took one person to let Mr Liondaris and Mr Stylianides in and show them around. Her presence there would have raised questions in the mind of any rational observer. That may be why, in his subsequent report to LCL, Mr Stylianides was very specific that he was met by Houssein Houssein and made no reference to Mr or Mrs Houssein being present during the inspection.

ix) Mr Liondaris accepted in cross-examination that he returned to 71 Hamilton Road after the inspection to have documents executed. The Housseins would not arrange to meet at an empty house, especially if they were living a few doors away.

x) In a text exchange between Mr Liondaris and Houssein Houssein on 4 August Mr Liondaris was sent pictures of the dining room with sheets covering the windows. This followed a request from Houssein Houssein that Mr Liondaris call him urgently. The heavier sheets that were covering the furniture in Mr Stylianides' photographs of 29 July had been removed. The effect of covering the windows, which are the windows facing Hamilton Road, would be to create a sense that the house was unoccupied. Houssein Houssein said he was simply doing what Mr Liondaris told him to do, but that answer was plainly incomplete because it was Houssein Houssein who initiated the exchange. In his response to Houssein Houssein's text with the pictures Mr Liondaris says nothing about the removal of the heavier dust sheets, even though that was at odds with his evidence that he thought the property was vacant. The exchange is consistent with Houssein Houssein and Mr Liondaris seeking to create a false impression of an empty property in the run-up to the LCL Loan being drawn down.

141. In my view it would have been obvious to anyone that the Housseins had not moved out of 71 Hamilton Road by 29 July. Moreover, I can see no way that Mr Liondaris or Mr Stylianides sensibly would have believed that the Housseins had moved out: at the very least, the insistence on photographing the wrong fridge, the fact that dust sheets were put over furniture for the purpose of it being photographed, the presence of Mrs Houssein and the presence of the grandchildren would have put them on notice that the Housseins still lived there. In fact I think it went significantly further than that. I believe that they staged the inspection to create a false impression that a step had been satisfied that was necessary to allow drawdown.

142. There is more of a question of whether Mr Stylianides thought they would move out. His evidence is so entirely unreliable that it is impossible to be sure. One can be more certain with Mr Liondaris: from the point when, without any instruction, he told LCL that the Housseins were moving to 61 Hamilton Road he plainly did not care whether they moved or not, so long as things could proceed. That is why he found it unremarkable that he went back to 71 Hamilton Road when he needed documents executed and equally unremarkable that dust sheets supposedly necessary to protect furniture during ongoing building works had been removed a matter of days later and, indeed, in the course of the inspection itself.

143. I accept Mrs Houssein's evidence that she did not know anything about the purpose of the visit. I cannot accept Houssein Houssein's evidence that he believed the visit was connected with the renovation works, however. A significant number of the photographs are of the upstairs rooms, which in many cases have obviously been recently refurbished, and have no possible connection with any works. Similarly, in his witness statement Houssein Houssein explained that Mr Stylianides told him to empty the bins, which he refused to do, so Mr Stylianides emptied them himself and took photographs. The works would offer no reason to photograph empty bins.

144. I also return to the photograph of the empty fridge. Mr Stylianides had no way of knowing about the existence of the overflow fridge in the garage. His unchallenged evidence was that Houssein Houssein showed it to him. An empty fridge is irrelevant to the works being or to be carried out, but is relevant to whether the property is occupied. I believe that Houssein Houssein did not remark on these things because he knew that for the refinancing to go ahead LCL needed to understand that the property was vacant. By this stage it was well past the date when the Bridge Loan needed to be repaid and LCL was the only viable alternative that did not involve simply starting again. Houssein Houssein's evidence was that he was anxious about that; he was obviously keen to secure the refinancing and, in my view, went along with what he knew to be a charade in order to achieve what he felt was needed.

145. That also explains why, at Mr Liondaris' request, he later put sheets over the windows and sent photographs to Mr Liondaris. This was not, as Houssein Houssein stated in his evidence, a question of Mr Liondaris contacting him: the text messages show that he initiated that exchange. It is an action that makes perfect sense if Houssein Houssein was trying to create the impression that the property was empty but no sense otherwise.

146. Shortly after the inspection, at 4:23pm on 29 July, Mr Stylianides sent an email attaching his photographs to the underwriting team at LCL. In that email he stated:

> Please find attached photos that I took for the inspection at the 71 Hamilton Road property. I was met by the borrowers [sic] son who showed me around. The property appeared to be vacant at the time of inspection.
>
> I asked the borrowers [sic] son what the plans where [sic] for the property and they [sic] said they [sic] will either let it out or keep it unoccupied until the broker refinances.

147. In light of what I set out above I can only conclude that none of that was true, and that Mr Stylianides was fully aware that it was untrue.

Mr Fahri's advice

148. The final incident of note before drawdown was the advice of Mr Fahri on 30 July. This was given by some form of video-call with Mr and Mrs Houssein participating from Mr Liondaris' office. Houssein Houssein was also present but was not an active participant. Mr Fahri advised in Turkish, although there was some debate as to his fluency. The call lasted in the region of 20-30 minutes.

149. Immediately prior to that meeting, Ms Haji wrote to Houssein Houssein. It is worth setting out that email in full, since it illustrates a core concern with Houssein Houssein's evidence:

> Hi Houssein,
>
> Please see attached the various security documentation in readiness for your meeting later today:
>
> 1. Third Party Legal Charges (x4) – 71 Hamilton Road, 199 and 201 Downhills Road, 203 Downhills Road and 205 and207 [sic] Downhills Road;
>
> 2. Debenture;
>
> 3. Facility Letter (main terms have been set out below); and
>
> 4. FCA Declaration – this needs to be signed for each property.
>
> The main terms of the Facility are as follows however you should carefully read the full Facility Letter before signing as the below is not an exhaustive list:
>
> 1. Term: 12 months from the Drawdown Date
>
> 2. Loan Advance: £1,845,000.00
>
> 3. Interest Rate: 1% per month payable from the Drawdown Date (completion). In an event of default or if the Borrower fails to repay any amount payable under the Facility, the interest rate increases to 3% above the Interest Rate;
>
> 4. Repayment: repay (or prepay) either the whole or part only of the Loan in tranches of £50,000.00 (Fifty Thousand Pounds Sterling) or such lesser tranches as agreed with the Lender.
>
> Please could you ensure that your parents take their passports with them and proof of address not less than three months old. As they have moved to 61 Hamilton, do you now have a utility invoice addressed to that Property in their name? If so, please take [sic] with you.
>
> I look forward to hearing from you.
>
> Kind regards,
>
> Meadya Haji

150. Two fundamental points seem to me obvious from this email: that 71 Hamilton Road was a security address; and that SCW believed that the Housseins had moved out from that address to 61 Hamilton Road. Houssein Houssein's explanation of both points was wholly unconvincing.

151. As to the first point, Houssein Houssein stated that he did not read the email because had been out with his son that afternoon and did not return until 2:30pm. That is not remotely credible. First, his evidence in his witness statement was that "*As a result of this case I now know how important it is actually to read* [financing and legal] *documents but, at that time, we both relied on our solicitors to advise and warn us of any special conditions which they thought we needed to know.*" The email from Ms Haji is therefore precisely the type of advice upon which he said he would rely; it would be remarkable if he simply ignored it. Secondly, his evidence was that he did not read any of the legal or financial documents themselves, nor had he read the indicative terms. If the totality of his evidence is to be believed, he was therefore happy for CEK (for whom he acted as agent) to take out a loan of over £1.8 million and for his parents (for whom he also acted as agent) to guarantee that loan without being aware of any of the terms other than the loan amount, having read neither the loan documents nor the advice about them. I do not accept that was the case. Finally, there was no real time pressure, even allowing for the fact that he did not return home until 2:30pm. The meeting with Mr Fahri was to take place at Premier's offices at 4:30pm and while the email is obviously significant it is also short. I believe that Houssein Houssein did read it and was aware, from what Ms Haji said, that 71 Hamilton Road was a security address.

152. Houssein Houssein's answers on the second point were equally unsatisfactory. Essentially, he said that his parents did not need to take any such documents as they had already provided them earlier in the process. That is hard to square with his answer that he did not read Ms Haji's email which, if true, would be the reason why no documents were taken. It also fails to address the fact that Ms Haji's email put him on notice that the parties believed his parents were living at 61 Hamilton Road and that he did nothing to address that understanding.

153. The evidence around why Mr Fahri's advice was required was patchy at best. Mr Constant's email to Mr Fahri described him as an independent legal advisor, but it was unclear from whom he was thought to be independent since, like SCW, Mr Fahri was instructed by the Housseins. Mr Fahri spoke Turkish, but I was told that Ms Haji also spoke Turkish, meaning that Mr Fahri's language skills did not add much, if anything. The Fahri Letter was advising on the Guarantees, which were needed because CEK had no assets of its own. That would suggest that the independence needed to be from CEK, but it is unclear how the Housseins would have conflicting interests from a company they wholly owned and controlled. To the extent that it was thought CEK should have wanted independent advice it cannot have been given by Mr Fahri: since he was advising on the Guarantees, which Mr and Mrs Houssein were giving in their personal capacities, he obviously was not acting for CEK. Given the risk of undue influence, which has indeed been alleged, it would have been wise for Mrs Houssein to have independent advice, but The Fahri Letter advises Mr and Mrs Houssein jointly.

154. The Certificate raises more questions. It seems that Mr Demetriou of SCW, who signed it, was present at Premier's offices during the call with Mr Fahri. Although

that is not wholly clear, Houssein Houssein recalls someone else being there and an email from SCW to Gunnercooke sent on the following day suggests that it was Mr Demetriou. The Certificate records:

i) Mr Demetriou advised "*the Applicant(s)*" on the terms of the Facility Letter and the Charges. The term "Applicant(s)" is not defined. The Borrower is defined as CEK and the Certificate confirms that the funds are to be released into a UK bank account in the name of the Applicant, suggesting the Applicant and Borrower are being used synonymously. However, the Borrower was not granting the Charges and required no advice on them.

ii) Mr Demetriou saw the Applicant(s), asked about the circumstances in which the loan was being taken out and was satisfied that there was no undue influence applied to any Applicant. The Certificate specifically confirms that in the case of multiple Applicants, each was seen alone by a separate solicitor and given independent legal advice. This is difficult to follow, since on any analysis there would need to be two solicitors involved. Mr Fahri plainly was not the second solicitor, because he was advising only on the Guarantees and the Certificate relates to the Facility Letter and the Charges. Ms Haji was not present, and her advice always seems to have been sent via Houssein Houssein who acted as agent for both of his parents.

iii) The Applicants confirmed that the explanations were clear and gave Mr Demetriou no reason to doubt their full understanding or competence to proceed with the transaction.

iv) The Certificate required that if any change were made to the Facility Agreement SCW needed to give further advice. In fact, a Deed of Variation was executed on 31 July, the day after the Certificate, reflecting an increase in the LCL Loan of £36,000. There is no evidence that further advice was given to Mrs Houssein (or, indeed, to Mr Houssein) regarding this, or that any further version of the Certificate was issued.

155. As I have noted, Mrs Houssein would need any explanation of such technical matters to be given in Turkish if she was properly to understand it. LCL was aware of that through Mr Stylianides' interaction with Mrs Houssein on 30 June. Nothing in the Certificate, or indeed the Fahri Letter, suggest that this was done.

156. The position is further clouded by Ms Haji's email to Gunnercooke the next day stating that Mr Demtriou had attended the meeting as a witness. There is no evidence that Mr Demetriou had advised on any earlier occasion, so it is unclear how he came to give the confirmations that he did.

157. Mr Maynard emphasised that I did not need to make any adverse finding in respect of Mr Fahri and Mr Demetriou. While there are obvious questions to be answered about how they gave the confirmations they did, it would be unusual to make a finding that solicitors deliberately mis-stated the position to a potential lender when those solicitors had no opportunity to explain what they had said. It would be particularly unusual here where Mrs Houssein's evidence on the meeting was not always clear and was at odds with the documents and where Houssein Houssein was not present throughout the whole meeting. As I have noted I also have serious reservations about

Houssein Houssein's evidence around the advice that he received on his parents' behalf in the course of this transaction, advice that may well be relevant to understanding the Certificate, in particular.

158. It seems to me, however, that some of these points would not necessarily require resolution. The relevant question is whether LCL could rely on the Fahri Letter or the Certificate to resist the allegation of undue influence. That question would not turn on the quality of advice received by Mr and Mrs Houssein, about which LCL would have been unaware, but on what LCL could reasonably have understood, given its knowledge of the Housseins' position and given the terms of the Fahri Letter and the Certificate.

The position at drawdown

159. The position at drawdown can be summarised as follows:

i) Houssein Houssein knew that 71 Hamilton Road was a security address and knew that meant the Housseins were prohibited, under the terms of the loan, from living there. He understood that the 29 July inspection was a charade designed to allow drawdown to take place and assisted Mr Liondaris and Mr Stylianides in creating an impression that 71 Hamilton Road was unoccupied.

ii) Mrs Houssein did not directly know that 71 Hamilton Road was to be used as security and, accordingly, did not know that the loan precluded her from residing there. She had no active involvement in staging the 29 July inspection; she trusted others and did as they asked. Mr Houssein is more likely directly to have known that 71 Hamilton Road was to be used as security but, I believe, did not know that he would be prevented from living there. In the case of both Mr and Mrs Houssein I use the term directly because Houssein Houssein was their agent and his knowledge is imputed to them in any event.

iii) Mr Liondaris knew that 71 Hamilton Road was a security address, knew that meant that the Housseins should not be living there but knew that they intended to continue doing so. He had told LCL that the Housseins had moved to 61 Hamilton Road, which was a fiction entirely of his own creation. At the 29 July inspection he worked with Houssein Houssein and Mr Stylianides to create the impression that 71 Hamilton Road was unoccupied.

iv) Mr Stylianides may have believed that the Housseins were going to move out before drawdown, but he knew that as of 29 July they had not done so. He worked with Mr Liondaris and Houssein Houssein to create the impression that they had, however, and sent the results to LCL. His emails of 29 July to LCL were deliberate falsehoods.

v) SCW believed that the Housseins had moved to 61 Hamilton Road, having been told this directly by Mr Liondaris.

vi) With the exception of Mr Stylianides, LCL believed that the Housseins had moved to 61 Hamilton Road, having been told this by Mr Liondaris via Mr Stylianides following the 30 June meeting, by SCW (who were also told by Mr

Liondaris, something of which LCL was unaware), and having seen the photographs from Mr Stylianides' inspection.

Drawdown and discovery

160. On 7 August 2020, LCL advanced £1,881,000 to CEK. That comprised:

i) Rolled-up interest of £225,720.

ii) Fees of £75,473 (of which £75,240 was paid by LCL to Premier).

iii) A net advance to CEK of £1,579,807.

161. The loans to Aldermore, Birmingham Midshires and Bridge were repaid and those charges were released; LCL's charges against the various properties were registered by the end of August 2020.

162. Mr Theophanous explained that following completion the loan was effectively sold to an investor or consortium of investors. Some time between drawdown and 21 August one of those investors informed Mr Theophanous that he had seen movement inside 71 Hamilton Road. Mr Theophanous arranged for an inspection of the property on 6 September, this time carried out by an external agency, NCI.

163. Two points are significant about this. First, it undermines any suggestion that Mr Theophanous personally or LCL on a corporate level had a policy of laxity regarding the residence restriction. Such a policy would have undermined their attempts to on-sell the loans. Mr Theophanous' reaction to learning there may be an issue was prompt and professional.

164. Second, the inspection came as a genuine surprise to Mr Stylianides and Mr Liondaris. Mr Liondaris, in particular, seemed to have been caught entirely off-guard. He explained that such a thing had never happened before in his experience of working with LCL. In explaining this I found him to be spontaneous and convincing. Mr Stylianides had thought that there might be some sort of check, but not at such an early stage; he thought it may come after around six months.

165. That helps to explain why they would go ahead with constructing a false impression and, in the case of Mr Stylianides, filing a false report on 29 July. If the loan in respect of 71 Hamilton Road could be redeemed before the six-month mark, any inspection would become irrelevant. That may have given Mr Stylianides, in particular, comfort to file his report in the form that he did. As it was, the follow-up inspection happened much sooner than they anticipated.

166. The NCI inspection took place on 6 September. Almost immediately after, Houssein Houssein contacted Mr Liondaris to inform him that LCL had come to the house. Mr Liondaris asked, "*Why*", to which Houssein Houssein responded, "*Don't know*". He added that, "*He might be checking to see if we live here*". He concluded, "*Looks like we jumped in from headache to another headache*".

167. I found Houssein Houssein's explanation of this exchange once again unconvincing. He started by saying he was concerned that LCL had made a visit unannounced on a Sunday, but that would not explain why he would conclude that LCL was seeing if the

Housseins lived at 71 Hamilton Road. Moreover, even if he had somehow drawn that conclusion, it would not explain why it was a "*headache*" if he believed, as he said in his witness statement that he did, that the Housseins were entitled to live there.

168. Houssein Houssein then advanced a somewhat different explanation, which seemed to me inconsistent with his earlier answer but consistent with his witness statement, saying that the LCL representative had asked if the Housseins were living at 71 Hamilton Road. The text exchange strongly suggests that no such question was put to Houssein Houssein before he sent his message, since he told Mr Liondaris he did not know why NCI had come and was obviously speculating when he said their representative "*might be checking*" whether the Housseins were residing at the property. Had he been told that was what the visit was about, he would have known and his response to Mr Liondaris question, "*Why*" would have been different.

169. In fairness to Houssein Houssein, it appears from the text exchange that there were two visits separated by around an hour and his evidence may have confused the two; if the NCI representative had stated on his second visit that he was checking to see if the Housseins were in residence that would explain why Houssein Houssein was uncertain of the reason for the visit when he texted Mr Liondaris but later recalled being told it was a check on residence. That is somewhat besides the point. The text exchange shows that Houssein Houssein was able to guess the reason for the visit before he was told and was concerned that this represented a "*headache*".

170. There is nothing to suggest that Houssein Houssein had come to appreciate, between drawdown and the 6 September visit, what the Facility Letter provided. This exchange therefore supports my conclusion that Houssein Houssein knew that the Housseins were not permitted to reside at 71 Hamilton Road, and had known that for some time.

171. The exchange is also revealing as regards Mr Liondaris' state of knowledge. When Houssein Houssein told him that LCL had visited he replied "*Why*". Mr Liondaris' explanation was that he may have meant, "*Why are you there?*" That is a very strained reading of the exchange indeed. A far more obvious reading, and in my view the correct one, was that Mr Liondaris was surprised that LCL had visited, as he admitted in his evidence that he was, and wanted to understand what had prompted it. I do not believe he was in the least surprised to learn that the Housseins were resident at 71 Hamilton Road, and nothing in this exchange suggests that.

172. On 8 September 2020 Gunnercooke wrote to SCW regarding the breach of the no-residency provision. Ms Haji responded on 14 September to say that they had informed their client and advised "*him*", which I take to be Houssein Houssein, to rectify the breach.

173. Understandably, at this point positions quickly hardened and they offer much less guidance as to what the parties thought in the critical period of June, July and August 2020. Ultimately, LCL sought to enforce its security by way of appointing the second Defendants and these proceedings ensued.

For whom did Mr Liondaris act?

174. The question around Mr Liondaris' agency affects a number of other issues in this claim, and so is worth addressing separately and at the outset of the legal analysis. LCL and Mr Liondaris himself say that he was acting for the Housseins; the Claimants say that he was the agent of LCL.

175. The Claimants accept that the starting point is that a broker is the agent of the buyer, in this case the borrower. Mr Griffiths made the same point in cross-examination, that the broker should be acting in the interests of the borrower. That conclusion is entirely consistent with the facts here. The Housseins approached Mr Liondaris on the suggestion of Mr Ali to assist them in finding refinancing. They did not think that Mr Liondaris would be the lender, nor did they think that he was tied to any one lender. They viewed him as their agent, not a principal with whom they would deal and not the agent of another party.

176. Mr Liondaris' evidence, which was not challenged on this specific point, was that when first instructed he made at least initial approaches to other lenders. At the meeting on 30 June it is agreed by the parties that Mr Liondaris left the main meeting room on occasion to contact lenders about a potential exit from the LCL Loan. Plainly, he was not doing any of that as a representative of LCL; it is far more consistent with him acting for the Housseins. Similarly, he sought to have Bridge waive or reduce late payment fees, which he could only have done on behalf of the Housseins.

177. As the transaction moved forward, SCW plainly thought that Premier, and in turn Mr Liondaris, acted for the Housseins. Houssein Houssein, in his evidence to me, complained that they habitually accepted instructions direct from Mr Liondaris: SCW could only have done that if they regarded Mr Liondaris as being the agent of their clients, the Housseins. Moreover, Houssein Houssein accepted that he allowed Mr Liondaris to give instructions; I cannot imagine that would have happened had he thought Mr Liondaris acted for LCL, who were separately represented. That conclusion is reinforced by the documents. For example, on 24 July 2020 Ms Haji sent an email to Mr Zographou, of Premier, describing the Housseins as "*our mutual client*".

178. By contrast, there is no evidence suggesting that LCL at any time invested Mr Liondaris or Premier with any actual authority to act on its behalf. Nor is there anything to suggest that he had some form of apparent authority. Indeed, the continued involvement of Mr Stylianides rather contradicts that, since if Mr Liondaris were acting for LCL it would not have been necessary to have both of them involved at events such as the 29 July inspection.

179. Finally, the way that the point was put in closing is telling. Mr Maynard highlighted that Mr Liondaris had not sought a better rate from other lenders, had not advised on the default rate and had not sought to roll over the Bridge Loan when he could have done so. Again, I emphasise that Mr Liondaris and Premier are not parties to these proceedings, and I make no findings in respect of those allegations. What I do draw from them is that they are all allegations of breach of agency by Mr Liondaris and Premier; they do not support an allegation that they were appointed as agent by anyone else.

180. It seems to me clear that Premier was the agent of the Housseins. The actions and knowledge of Mr Liondaris are therefore imputed to them, not to LCL.

The claims

Sham

181. The Claimants' broad argument was that the purpose of the loan to CEK was actually to provide money to Mr and Mrs Houssein that was in some way disguised by the use of CEK so as to permit LCL to make what was, in reality, a regulated loan. Mr Maynard was clear that he did not need to advance a case on veil piercing and was not doing so.

182. That argument reflects the observation of Diplock LJ, as he then was, in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802C-E:

> As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham," it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different to the actual rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co. v Maclure* and *Stoneleigh Finance Ltd. v Phillips*) that for acts or documents to be a "sham" with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating.

183. The core of the allegation is one of deception, therefore. In the case of LCL, it implicitly, but necessarily, involves an allegation that LCL was seeking to deceive the FCA. That is, of course, an extremely serious allegation. It was baseless and I reject it.

184. The immediate problem with the Claimants' position is that the parties made no effort to disguise what LCL was doing. The Facility Letter clearly stated that the purpose of the LCL Loan was to permit CEK to make an onward loan to Mr and Mrs Houssein to allow them to refinance their existing debt and refurbish the defined Property, which included 71 Hamilton Road. It further detailed the security they would be expected to give, in the form of the Charges and the Guarantees. That is precisely what happened.

185. The second difficulty is that I have found that at the time that the loan structure was being considered LCL, including Mr Stylianides, did intend to enforce the provisions preventing residential use of the secured properties by the Housseins. That is clear from the evidence. From the outset, Mr Stylianides noted, both internally and in correspondence with Mr Liondaris, that the Housseins could not reside at 71 Hamilton Road and asked where they were moving to. When the Housseins later provided a residential address of 71 Hamilton Road, Gunnercooke insisted that this was not permitted. LCL was not prepared simply to accept SCW's assurance and wanted its own inspection. Had the Housseins complied with that provision, there would have

been no regulatory need to use a corporate borrower. There was therefore no incentive, at least on LCL's part, to create a sham transaction; it would have been equally comfortable with a direct loan to the Housseins.

186. Of course, I have also found that Mr Stylianides was acting for LCL at the 29 July inspection such that, as LCL recognised in closing, it is fixed with his knowledge for the purposes of waiver, which I address below. It does not show that LCL wanted to create a regulated loan, however. On the contrary, it accepted a structure with a degree of redundancy built in. It was a belt and braces approach of both using a corporate borrower and requiring non-residence. The belt snapped; the braces held. Such redundancy does not render the transaction a sham.

187. Third, and coupled to that point, the potential penalties for an unregulated lender carrying on regulated business were severe, as Mr Griffiths pointed out. Unquestionably, in managing that risk it was a mistake to have Mr Stylianides carry out the inspection. Such a mistake does not approach persuading me that this was a conscious choice by LCL to breach its legal duties. On the contrary, the response of Mr Theophanous to the report of a potential breach was to investigate it and seek to remedy it. It was not the action of someone willing to turn a blind eye to such things; quite the opposite, he acted in a way that was entirely professional.

188. Finally, it was also the evidence of Mr Theophanous that he had seen similar structures used "*on many occasions*" as parties sought to restructure the way that they held their property portfolios. In his view it was "*normal practice*" and not something he found at all strange. I accept that evidence, and indeed he was not seriously challenged on it. In my view, had Mr Theophanous had concerns about the structure, he would not have gone ahead with it.

Breach

189. This potentially involved numerous issues, but in the end only one was relevant. In closing both parties agreed that if LCL was aware on 29 July 2020 that the Housseins were and intended to remain in residence then the residence prohibition would have been waived from drawdown, such that there was no breach of it. They further agreed that waiver would be by election so would extinguish LCL's right to insist on non-residence, rather than simply suspending it. Finally, they agreed that the knowledge of Mr Stylianides was, for these purposes, the knowledge of LCL.

190. I have found that it was obvious at the 29 July inspection that the Housseins were living at 71 Hamilton Road, that the photographs were staged and that Mr Stylianides was fully aware of the true position. The only suggestion that the Housseins intended to move came from other people, not from them. Mr Liondaris said they intended to leave in his emails to LCL and his discussion with SCW; Mr Stylianides told LCL in his email sent immediately after the inspection that 71 Hamilton Road was to be let out or left vacant. In each case, I have found those communications to be deliberate, or at best reckless, falsehoods. I do not believe that the Housseins gave any indication that they intended to move out, and even had they done so Mr Stylianides' report to LCL and his evidence before me, both of which related to the position on 29 July 2020, would still have been false and knowingly so.

191. In circumstances where LCL waived the no residence provision in the loan there could be no breach of it, even if it might as a matter of contractual interpretation have extended to prevent occupation by the Housseins and not simply CEK. Accordingly, there was no default, no right to demand default interest and no basis to appoint receivers.

192. I should add two points for completeness. First, there was a suggestion by Mr Maynard that there was some form of collateral agreement by conduct that the provision would not be enforced. He referenced Chitty on Contracts paragraph 15-018. I do not accept that submission. Obviously, as a matter of law a collateral contract can be entered into and there is no entire agreement clause in the loan that might have precluded that from happening in this case. However, the suggestion that Mr Stylianides would have authority to bind LCL to such an agreement was unsupported by evidence. Indeed, it was wholly at odds with the evidence. Throughout this process he had needed approval from LCL's underwriting team, as the Housseins well knew. Nothing that LCL said or did supported an argument that Mr Stylianides could, on an inspection visit, enter into new terms without approval. His authority as agent was limited; it was sufficient for his knowledge to be imputed to LCL but did not approach an authority to enter or amend contracts on his own initiative.

193. Second, Mr Maynard sought to suggest that, just as LCL was willing to be flexible with its own internal underwriting guidelines, the inspection photographs were seen simply as a "*fig leaf*" to give the appearance of compliance with the Financial Services and Markets Act 2000 (**FSMA**). Mr Stylianides' approach was, he suggested, symptomatic of a certain corporate laxity within LCL.

194. This, it seemed to me, was not much more than a repetition of the sham argument. Like the sham argument, it was an extremely serious allegation to make about LCL. Non-compliance with internal guidelines is a matter for the organisation. As Mr Theophanous noted, they are just that – guidelines – and not mandatory if he considers, on reflection and within the scope of the discretion afforded to him by LCL, that they need not apply in a particular case. Non-compliance with FSMA is a serious criminal offence. I have already set out the steps that LCL took to secure compliance with the non-residence requirement. Those observations are equally relevant here. I have no hesitation in rejecting this argument; there was no basis on which it could reasonably have been advanced.

Penalty

195. In light of my finding that the non-residence provisions of the Facility Letter were waived I do not need to address the question of default interest in that context: since there was no default, under the terms of the Facility Letter the 1% rate continued to apply, and while that was subject to comment by Mr Maynard, it was not subject to challenge.

196. However, under clause 6.6 of the Facility Letter, default interest also applies "*if the Borrower fails to repay any amount payable by it under any Finance Document on its due date*". Under clause 5.1, repayment was due by the Repayment Date, defined as 12 months after the Drawdown Date; as I have noted, drawdown occurred on 7 August 2020. To the extent that sums remained outstanding under the Facility Letter

after 7 August 2021, the question of whether the default rate applies is potentially a relevant one.

197. The Claimants argue that the 4% per month default rate is a penalty and so unenforceable. The Defendants reject that, but the parties are agreed that if it is a penalty it is simply unenforceable. I am not required to, and indeed cannot, substitute what I think is an appropriate rate.

198. The leading case on penalties is *Cavendish Square Holdings BV v Makdesi* [2015] UKSC 67. There, Lord Neuberger put the test in the following terms at paragraph [32]:

> The true test is whether the impugned provision is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation. The innocent party can have no proper interest in simply punishing the defaulter. His interest is in performance or in some appropriate alternative to performance.

199. He emphasised that the rule on penalties interfered with freedom of contract and undermined certainty that parties are entitled to expect of the law. Accordingly, courts should not be astute to descry a penalty clause.

200. Lord Hodge noted at [255]: "*I therefore conclude that the correct test for a penalty is whether the sum or remedy stipulated as a consequence of a breach of contract is exorbitant or unconscionable when regard is had to the innocent party's interest in the performance of the contract.*"

201. Mr Maynard made particular reference to HHJ Hodge KC's "rule of thumb" in *Ahuja Investments* at [144] that while a doubling of the interest rate payable on a defaulted loan might be legitimate, anything more than that would need to be justified by the lender. In saying that, the learned judge agreed with the observation of Bryan J in *Cargill International Trading PTE Ltd v Uttam Galva Steels Ltd* [2019] EWHC 476 (Comm) at [50] that there was a good commercial justification for charging a higher rate after a default, since a person who has defaulted is necessarily a worse credit risk.

202. Mr Whitfield cautioned me against putting too much reliance of the "rule of thumb", and it is certainly true that in *Ahuja Investments* HHJ Hodge KC seems to have been concerned both by the multiplier and by the fact that it produced a default interest of 12% per month, compounded monthly. Here, the default rate was higher than the experts concluded was normal in the market (which was 3% in total) and produced a quadrupling of the normal rate, but the final rate was not of the order of magnitude presented in *Ahuja Investments*.

203. It seems to me that the analysis does not, in fact, get that far. The question is whether the default rate protects a legitimate interest of LCL. That interest cannot be the no residency requirements, since the purpose of that provision was to ensure that there was no breach of FSMA, and in the context of this loan the use of a corporate borrower, CEK, meant that was achieved in any event. I accept the Claimants' case in that regard.

204. Charging a higher rate on default can be commercially justified on the basis of the enhanced credit risk of the borrower but it does not seem to me that this was the interest that LCL was seeking to protect.

205. First, it is certainly the case that the Housseins had credit issues that could legitimately have led a lender to consider them higher risk; Mr Theophanous took into account factors such as the CCJ judgment against Mr Houssein and that this was a second rebridge in setting the base interest rate and this justified a move from 0.7% to 1% per month. That meant that a level of credit risk had already been priced into LCL's rate, however. I had no evidence on why late payment, even by a short period, justified an increase of a further 3% when 0.3% was sufficient to cover the historic credit risk factors.

206. Secondly, the default rate was the same regardless of the breach and was set without reference to the borrower or the particular loan. As Mr Theophanous explained, the default rate was set centrally at 3%; he had no control over it. The LCL Loan was well secured – the LTV was around 54% in circumstances where LCL's guidelines permitted much higher LTVs. If the legitimate interest were credit risk, one would expect some account to be taken of the security, but none was.

207. Thirdly, the same default rate applied to all breaches. That would mean that LCL required identical protection for each of the following: late payment; residence at a security address (whether or not the loan was to a corporate borrower); final judgments against the borrower in excess of £20,000; and litigation or arbitration threatened or commenced against the borrower. That cannot be right – to take an obvious example, a final and unappealable judgment for £20,000 is a very different thing to a letter of claim for the same amount, yet they are subject to the same default rate.

208. Finally, the experts agreed that a more typical default rate was 3% in total per month. That obviously does not represent a cap, but in circumstances where there was nothing specific to the Housseins or the security for this loan and where there was nothing specific about the breach, it is hard to see what took this outside the norm to justify an additional 1% per month.

209. In the circumstances I do not believe the default rate did protect any legitimate interest of LCL; it was a penalty. For the avoidance of doubt, that does not affect the normal rate of 1% per month. As I have noted, that was not challenged and in any event I accept that Mr Theophanous gave proper consideration to LCL's legitimate interests in setting it, such that any challenge would not have succeeded.

Undue influence

210. It is alleged that Mrs Houssein's consent to this transaction was procured by undue influence on the part of Mr Houssein and that LCL was on notice of that fact.

211. The position of a lender such as LCL was addressed by Lord Nicholls in *Royal Bank of Scotland v Etridge (No 2)* [2001] UKHL 44 at [37] and [40]-[41]:

> The House [in *Barclays Bank v O'Brien*] decided what are the steps a bank should take to ensure it is not affected by any claim the wife may have that her

> signature of the documents was procured by the undue influence or other wrong of her husband.
>
> …The law imposes no obligation on one party to a transaction to check whether the other party's concurrence was obtained by undue influence. But *O'Brien* has introduced into the law the concept that, in certain circumstances, a party to a contract may lose the benefit of his contract, entered into in good faith, if he ought to have known that the other's concurrence had been procured by the misconduct of a third party.
>
> …In the present type of case, the steps a bank is required to take, lest it have constructive notice that the wife's concurrence was procured improperly by her husband, do not consist of making inquiries. Rather, *O'Brien* envisages that the steps taken by the bank will reduce, or even eliminate, the risk of the wife entering into the transaction under any misapprehension or as a result of undue influence by her husband. The steps are not concerned to discover whether the wife has been wronged by her husband in this way. The steps are concerned to minimise the risk that such a wrong may be committed.

212. He concluded at [56]-[57]:

> Ordinarily it will be reasonable that a bank should be able to rely upon confirmation from a solicitor, acting for the wife, that he has advised the wife appropriately.
>
> …The position will be otherwise if the bank knows that the solicitor has not duly advised the wife or, I would add, if the bank knows facts from which it ought to have realised that the wife has not received the appropriate advice. In such circumstances the bank will proceed at its own risk.

213. There are therefore two stages in this analysis: did Mrs Houssein execute documents as a result of undue influence by Mr Houssein; and if so, was LCL constructively on notice of this. The focus of the Claimants' case was on the second of those elements, but that simply means that LCL took the risk if there was a finding of undue influence. If I do not make such a finding, even if the advice given did not meet the standard in *Etridge*, there would have been no wrong, on the part of Mr Houssein, that would justify setting aside the guarantee or the charges.

214. In that regard I note a point made in the Particulars of Claim, but not developed at trial, that by advising Mrs Houssein to take independent legal advice, LCL is estopped from denying that she required it. That seems to me to approach saying that where a lender follows the guidance in *Etridge* it is precluded from raising an argument that there was no undue influence. If that is the Claimants' position, it seems to me to be wrong. The cases concern fixing the bank with knowledge of undue influence; they do not create a presumption of such influence simply because a spouse has been advised to take independent advice.

215. There is no presumption of undue influence between a husband and a wife (Chitty on Contracts, 10-119). Indeed, it was emphasised by Lord Scott in *Etridge* at [162] that "*undue influence, though a possible explanation for the wife's agreement to become a surety, is a relatively unlikely one*".

216. The claimants must therefore show, and in fairness seek to show, actual undue influence. In advancing that case they rely on the statement at 8-033 of Snell's Equity that "*undue influence consists not of a lack of understanding or an absence of consent but of a lack of sufficient independence in relation to the transaction*". I accept that summary. The point was, I think, neatly encapsulated by Millett LJ as he then was in *Dunbar Bank plc v Nadeem* (1999) 31 HLR 402 at 410: "*Before us Mr Price, to my mind, aptly described it as a case where although the pen may have been the pen of Mrs Nadeem, the mind was the mind of Mr Nadeem.*"

217. The Particulars of Claim list 19 grounds of alleged undue influence. Some are generalisations, making assertions said to be based on Mrs Houssein's background, and some appear unsupported by the evidence. For example, it is stated that Mrs Houssein has never had a bank account, but the identification documents sent to LCL include her HSBC Advance account, into which rent from at least one of the Downhills Way properties was paid; it may be that she used that account with the assistance of others, but it was in her name.

218. It seemed to me, based on the Particulars and Mrs Houssein's witness statement, that the grounds can be grouped into the following categories:

    i) Her formal education stopped at the age of 12, after which she worked as a seamstress; since 1996 her full-time occupation has been that of housewife. This was said to show a lack of commercial sophistication.

    ii) She has limited spoken English and cannot read English, so could not effectively follow the meeting on 30 June other than to the extent it was translated for her into Turkish and could not read documents like the facility letter that were sent to her.

    iii) She and Mr Houssein had been married since 1970. She viewed her role as being subordinate to her husband, at least in business matters. He exercised control over both their financial affairs and she put her trust and confidence in him to do so. She had no personal involvement with the property business, nor was she given information on it. She acted in complete reliance on her husband to explain the effect of business transactions.

    iv) The loan to CEK was not, on its face, to her advantage. 71 Hamilton Road was in good repair and her solely owned property did not require refinancing. The interest rate and default rate of the loan were both above market rates and the personal guarantee was unlimited.

    v) Before signing the Facility Letter, the FCA Declarations, the Guarantee and the Charges, Mrs Houssein could not read them for herself and received no effective or independent explanation of or advice about their contents.

219. I am not persuaded by those arguments.

220. In terms of her sophistication, as I have noted my impression of Mrs Houssein was that she was intelligent and capable. While her formal education stopped at the age of 12, many people without formal schooling go on to be very successful; it speaks more to the culture in which she was brought up than to her individual capabilities. I

recognise that she did not recall all details of this transaction, but she was alive to the way that properties might be released from LCL's security as the loan was repaid and clearly saw some value in such a structure. This was one of the more nuanced and unusual parts of the arrangement; her ability to understand that suggests to me that she would have had little difficulty understanding points such as the default rate or the security that was required.

221. I have also noted that Mrs Houssein spoke only limited English. However, all communication was routed through Houssein Houssein, who could speak English and Turkish, and if points of technical clarification were required Ms Haji was a Turkish speaking solicitor, instructed by the Housseins. Nothing I saw suggested that Mr Houssein was a bar to his wife receiving advice; I would accept that Houssein Houssein may have filtered the advice provided, but no allegation of undue influence is made in respect of him.

222. The relationship that Mrs Houssein had with her husband was clearly fundamental to the allegation of undue influence. In his prime Mr Houssein was a formidable man who had successfully built his family's wealth to allow for a comfortable life, having started with very little by way of capital. I can well believe that Mrs Houssein had deferred extensively to his judgment in the course of their marriage, particularly in property matters. That, however, was the historic position; in my view it did not reflect the position at the time of this transaction. The change in the relationship was reflected in the evidence of all of the witnesses familiar with Mr Houssein's declining health:

    i) Houssein Houssein had taken over the day-to-day running of the property portfolio, and largely took the lead on the refinancing. This followed what he described, in his witness statement, as the change to his father's personality following his various treatments for medical issues.

    ii) Mr Houssein was aware that his wife could and did handle property matters, evidenced by the acquisition of the property in Cyprus, and apparently did not object to her doing so. In completing that transaction Mrs Houssein relied on her daughter, not her husband.

    iii) On that transaction, Mr Çelikli had, as a matter of professional conduct, felt unable to accept instructions from Mr Houssein. He had no such concerns receiving instructions from Mrs Houssein. While he recognised that Cypriot property transactions are more straightforward than was the refinancing, that simply highlights the reliance that Mr Houssein had come to place on others, even in relatively simple transactions.

    iv) Mrs Houssein was fully aware of the decline in her husband's health, and concerned at his ability to understand the decisions he made. It was, she noted, as if his brain felt numb. Using Millett LJ's metaphor, it seems to me unlikely that Mrs Houssein would have permitted the mind to be that of Mr Houssein when she considered that his mind had become numb.

223. Moreover, whatever the historical position might have been, by June 2020 Mrs Houssein was clear in her evidence that she had her own views on what she was prepared to accept and would not simply have done what her husband asked or told

her to do. She had strong views, particularly as regards charging 71 Hamilton Road. Whatever influence Mr Houssein had previously had, it would not have induced her to sign such an agreement.

224. Equally, I do not consider that she simply signed what her husband told her to, without him explaining the contents. As she explained, she no longer believed that he fully appreciated the consequences of his decisions. She had, quite possibly as a consequence, become much less reliant on Mr Houssein and much more reliant on her children. The evidence shows that, in both this transaction and the Cypriot transaction, Mr Houssein knew of and accepted that.

225. In this case, Houssein Houssein was told repeatedly and clearly that the transaction involved charges over all Downhills Way properties and 71 Hamilton Road. As I have set out above, I believe that he fully understood that aspect of the refinancing. I also believe that he took a deliberate decision not to tell his parents, since had he done so I accept Mrs Houssein's evidence that she would not have agreed to it. That does not demonstrate, using the terminology in *Etridge*, any "*undue influence or wrong*" on the part of Mr Houssein, however.

226. In terms of the benefit of the transaction, it is overly simplistic just to look at the situation in respect of 71 Hamilton Road and Mrs Houssein's solely owned property, 203 Downhills Way. The Bridge Loan was secured on a property that she jointly owned, 201 Downhills Way, and was at the time of the transaction in default, so her assets were at risk. The Housseins needed to move quickly and LCL offered that. Other lenders might also have offered that, but the reason that did not happen was down to Mr Liondaris, not Mr Houssein.

227. The Bridge Loan was owed by both Mr and Mrs Houssein. While the Bridge Loan was well collateralised, the fact remains that Mrs Houssein was exposed to significant personal liability on a joint and several basis on a defaulted obligation. The refinancing addressed that.

228. Moreover, the LCL loan was seen as a steppingstone both to the release of security over individual Downhills Way properties and to moving the loan to a mainstream lender. Mrs Houssein understood both those things and they obviously had some value to her. As I have noted, the use of 71 Hamilton Road as security assisted in reducing the LTV, which was a factor relevant to Mr Theophanous in mitigating other risk factors associated with this being a rebridge and being made to borrowers with issues around their credit history.

229. Objectively, the transaction would have been better for the Housseins had the Aldermore and Birmingham Midshires loans not been part of the refinancing. The necessary LTV could have been achieved purely through the inclusion of 71 Hamilton Road as security. However, the fact that the transaction could have been improved does not mean that it cannot be explained on "*ordinary motives*" (*Etridge* at [29] referencing Lindley LJ in *Allcard v Skinner* (1887) LR 36 ChD 145 at 185). There were benefits to the Housseins, including to Mrs Houssein, in using LCL.

230. That leaves the ability of Mrs Houssein to read and obtain advice on the various agreements. I accept that she could not read them. Houssein Houssein, who was her agent for these purposes, could do so, however, and I have found that he was aware of

their key terms. The problem was that while he knew of the proposed charge over 71 Hamilton Road and the obligation not to reside there, he closed his eyes to the issue, and left his parents in ignorance of it, until it was too late.

231. I therefore conclude that Mrs Houssein was not subject to any undue influence from Mr Houssein. She did rely on Houssein Houssein, but no claim is made regarding his conduct.

232. In the circumstances, LCL do not need to rely on the Fahri Letter and the Certificate. As I have noted, there might have been questions to address in respect of both those documents, but given the gaps in the evidence and any need to deal those questions in the absence of undue influence, nothing is gained by attempting to answer them.

The consumer claims

233. There were two claims premised on the Housseins being consumers. The first was advanced under section 62 of the Consumer Rights Act 2015. That would require the Claimants to show that the Housseins were consumers. Under section 2, a consumer is "*an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession*". The Housseins' business was the renting of residential property and this transaction was a refinancing of their residential property portfolio. On that ground alone the claim was, quite rightly, abandoned by the Claimants on the last day of trial. I have also found that there was no sham, such that the borrower was the third Claimant, a corporate entity. On that ground, also, this claim would have failed.

234. The second claim was asserted under section 140A of the Consumer Credit Act 1974 (the **1974 Act**). In closing the Claimants accepted that such a claim can only be brought by an individual. For the reasons given above, I have rejected the argument of sham, such that the borrower under the Facility Letter was CEK. Accordingly, this argument also fails.

Conclusion

235. In light of what I have found above:

i) I refuse the declarations sought under section 26(1) of FSMA. The loan was made to CEK, whose obligations were guaranteed by Mr and Mrs Houssein and which loan was secured over the six properties they owned, solely or jointly, between them.

ii) I agree that there was no event of default arising from the Housseins' continued residence at 71 Hamilton Road. LCL is fixed with Mr Stylianides' knowledge that the Housseins were in residence at drawdown and so has waived its rights to insist on compliance with that provision.

iii) The default interest rate was unenforceable, both because there was no default and because it was in any event a penalty. There was no challenge to the regular interest rate under the Facility Letter.

iv) In the absence of default, the enforcement steps taken were void and of no effect.

v) The claims of the First Claimant to set aside the Guarantee and the Charges for undue influence, so far as they relate to her, fail. In the circumstances, no order is made under the Land Registration Act 2002.

236. Accordingly, the position is that the Facility Letter remains in place. Any outstanding debt created by or arising under it is a debt of CEK but secured by the personal guarantees of Mrs Houssein and the estate of Mr Houssein, and further secured by the charges over 71 Hamilton Road and the five properties on Downhills Way.