



Neutral Citation Number: [2022] EWHC 449 (Ch)

Case No: FL-2020-000023

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

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

Date: Wednesday 2 March 2022

**Before :**

**MR JUSTICE MILES**

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**Between :**

- (1) BUSINESS MORTGAGE FINANCE 4 PLC
- (2) BUSINESS MORTGAGE FINANCE 5 PLC
- (3) BUSINESS MORTGAGE FINANCE 6 PLC
- (4) BUSINESS MORTGAGE FINANCE 7 PLC

**Claimants**

**- and -**

**RIZWAN HUSSAIN**

**Defendant**

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**Anna Dilnot QC and Alexander Riddiford** (instructed by **Simmons & Simmons LLP**) for  
the **Claimants**

**James Counsell QC and Alex Haines** (instructed by **Janes Solicitors**) for the **Defendant**  
Hearing dates: 2-11 February 2022

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**APPROVED JUDGMENT**

## Mr Justice Miles :

### Introduction

1. This is my judgment after the trial of the claimants' committal application dated 28 June 2021. The claimants allege that the defendant, Mr Rizwan Hussain, has breached an injunction granted by me on 8 February 2021 and sealed on 12 February 2021 ("the Injunction").
2. The proceedings leading to the Injunction concerned a number of securitisations of loans and mortgages (sharing the name Business Mortgage Finance or BMF). The claimants are the issuers of various series of notes traded on public exchanges (and are sometimes referred to below as "the Issuers"). As is commonplace in securitisations there are many parties having the functions set out in the transaction documents. These parties include the Issuers themselves, the directors of the Issuers, the trustees of the notes, the servicers of the underlying loan and mortgage portfolios, the cash/bond administrators and the banks who hold various accounts for the securitisation parties.
3. Mr Hussain was one of the principal defendants in the proceedings which culminated in the Injunction. The judgment ([2021] EWHC 171 (Ch)) has this summary at [1]:

"I have heard the trial of two closely related Part 8 claims: FL-2020-000023 ("the Injunctions Claim") and CR-2020-003605 ("the BMFH Claim"). In very broad terms the Claimants say that there has been a sustained and determined assault by the principal Defendants on a group of securitisation structures in which the Claimants are the issuers of publicly traded notes. They say that the Defendants have purported since early 2019 to assume various roles and offices in relation to those structures (as directors, trustees, receivers and otherwise) and have usurped the existing office holders. The Defendants have used those assumed positions to interfere with the business of the Claimants: they have purported to change the registered offices, sell the underlying securitised assets, sought to change bank account mandates, forfeit and sell the Issuers' shareholdings, make filings at Companies House, and make regulatory news service announcements to the capital markets. The Claimants say that the Defendants have done all this without any right or basis – they say indeed that the Defendants are strangers to the securitisation structures. They say that the Defendants have done this in the teeth of the Claimants' protests and repeated legal proceedings designed to halt the Defendants' conduct."
4. I found in the judgment that the true directors of the Issuers were employees of a corporate services group called the Sanne Group and that the defendants had sought to remove and replace them unlawfully and without authority. I found that the defendants had taken other steps to interfere with the securitisations, including by purporting to replace the trustees, Bank of New York Mellon (BNY) and the servicers and cash/bond administrators, and to forfeit and sell the shares in the Issuers to a Marshall Islands company called Highbury Investments Limited (Highbury). I found that the defendants' conduct constituted an unlawful and unauthorised interference with the Issuers and their affairs.
5. I summarised my conclusions at [252] of the judgment:

“The Defendants have targeted these securitisation structures relentlessly. One or other of them have pretended to occupy the roles of directors of the Issuers, trustees for the noteholders, receivers of the underlying assets, Servicers, advisers to the Issuers, and other positions. They purported (in their assumed role of directors) to forfeit the shares held by BMFH in the Issuers and sell them to Highbury. They managed to change important company filings at Companies House and made misleading announcements to investors over the RNS. None of this is legitimate. The Defendants have never occupied any of these roles. They are, for legal purposes, strangers to the Securitisations. The reasons they have given for their actions are spurious. The corporate assault has been going on for the best part of two years, in the teeth of earlier orders of the courts and the Claimants' reasoned protests. It must now stop. I shall grant relief in respect of both claims. This includes orders for the rectification of the Companies House registers for the Issuers, declarations and final injunctions.”

6. The Injunction was a final order made after the trial. In broad terms it prohibited the defendants from interfering in the BMF securitisations, including by holding out anyone other than the true directors of the Issuers as directors; or by holding out other persons as having the roles of trustees, servicers, cash/bond administrators and other roles concerning the securitisation structures. I shall return below to the terms of the Injunction.
7. The committal application had annexed to it particulars of contempt arranged under seven heads (called “Breach One” to “Breach Seven”, but I shall substitute the neutral terms “Count One” to “Count Seven”). At the trial the claimants dropped Count Five and most of Count Six as they were repetitive of other grounds. They produced a marked-up version of the particulars of contempt showing the remaining Counts.
8. The claimants also made an application for relief retrospectively dispensing with the requirement under CPR 81.4(2)(c) for personal service of the Injunction on Mr Hussain. They also sought an order dispensing with the requirement that the penal notice appear on the front of the Injunction.
9. The committal application was supported by the first affidavit of David Pearlman; the first affidavit of Glen Watford; the first affidavit of Philip Smith; the first affidavit of Kirsten Kitt; the first affidavit of Caroline Hunter-Yeats; the second affidavit of Caroline Hunter-Yeats; the eighth witness statement of Caroline Hunter-Yeats; the second affidavit of Kirsten Kitt; and the second affidavit of Glen Watford.
10. In broad outline the claimants allege that Mr Hussain knew of the Injunction by 7 April 2021 at the latest; that between then and 18 June 2021 he took a series of steps which constituted breaches of the Injunction; and that he knew of the facts which made his conduct a breach of the Injunction. Mr Hussain has not taken any of the relevant steps in his own name. The claimants say that Mr Hussain has indeed deliberately taken the relevant steps in the names or other individuals and entities (or in collaboration with them) and has thereby breached the Injunction; or that he has caused or procured others to act in breach of the Injunction. They also say that there have been further steps after 28 June 2021 which, while not forming the subject matter of the charges of contempt, are further evidence that Mr Hussain has taken or caused or procured the steps taken by or in the names of others.

### **Relevant procedural history**

11. The committal application was issued on 28 June 2021. I am satisfied that it was served by email on Mr Hussain on 9 July 2021. I have already ruled to this effect on 8 February 2022: see [2022] EWHC 353 (Ch). I shall also address it further below.
12. There was a directions hearing in the committal proceedings on 27 September 2021. Mr Hussain did not appear, but a company called Kipling Firs Limited (“Kipling”), acting by a Mr Artemiou, sought an adjournment of the committal proceedings. (I shall have much more to say about the connections between Mr Artemiou, Kipling and Mr Hussain below.) I refused Kipling’s application and gave directions for the service of evidence and for the trial of the committal application. I was satisfied that the committal proceedings had been brought to Mr Hussain’s attention by email on 9 July 2021 by service to his various email addresses and ordered that there had been valid service on that date and that further documents could be served by the same means.
13. Another company associated with Mr Artemiou is called BMF Assets No. 1 Limited (“BMF Assets”). An application was made in the name of that company for an injunction seeking to restrain the claimants from spending their funds on (inter alia) the legal fees of pursuing the committal proceedings against Mr Hussain. A hearing took place on 19 November 2021. Mr Artemiou appeared at the hearing on behalf of BMF Assets. He filed long and detailed written submissions. As I recorded in my judgment of 19 November 2021, Mr Artemiou had no understanding of the legal basis of the application. He declined to answer questions about it and indeed invoked the privilege against self-incrimination. The injunction he was seeking would have had the practical effect of ending the committal proceedings against Mr Hussain by stopping the payment of legal fees. I dismissed the application on the grounds that BMF Assets had not raised a serious issue to be tried and that there was in any case no proper basis for the relief sought. I held that the application was totally without merit. The judgment is at [2021] EWHC 3306 (Ch).
14. Mr Hussain has not engaged in the committal proceedings. He did not communicate with the claimants or the court about them until 17 December 2021, when he emailed the court claiming that he had only just heard about the Injunction and committal proceedings and that he was making arrangements to take part in the trial. The claimants’ solicitors then re-sent him a full set of the documents for the committal application. Mr Hussain was told by the court’s listing office that the trial was fixed for a window of 2 to 8 February 2022. He was also aware that my order of 27 September 2021 required his personal attendance at the trial. On 18 January 2022 Mr Hussain sent a further email to the Court (copied to various members of the claimants’ legal team) saying, “I am grateful for the Court's confirmation of the dates for the trial and that it is to take place in person. My assistants are making appropriate arrangements for me and I look forward to be present on the specified dates of 2-8 Feb inclusive at the Royal Courts of Justice as I have been ordered to do so by Mr Justice Miles.” Mr Hussain did not seek an adjournment of the trial at that time.
15. In the run up to the trial there were several applications.
16. On 7 January 2022 Mr Hussain applied to the Court of Appeal for permission to appeal the Injunction out of time. Newey LJ dismissed that application on 28 January 2022 on the grounds that it was too late. He also said that the merits of the application for permission to appeal appeared very weak at best.

17. BMF Assets applied on 17 January 2022 for me to recuse myself from all cases concerning the BMF companies, including these committal proceedings, notwithstanding that BMF Assets is not a party to the committal application. I dismissed that application as totally without merit on 26 January 2022: see [2022] EWHC 140 (Ch).
18. Also on 26 January 2022 the claimants applied for the issue of a bench warrant for the arrest of Mr Hussain. Mr Hussain took part in the hearing remotely. He said that he was at the house of his parents at Fishwick Parade, Preston, Lancashire. He assured the court that he would attend the trial personally. He confirmed that he was aware of his ability to apply for legal aid and that he had decided to represent himself at the trial. He agreed to give the address in London where he would be staying during the trial. On the basis of those assurances and information I decided on balance not to issue a bench warrant for his arrest.
19. On 1 February 2022, the day before the start of the trial, Mr Hussain, after obtaining permission under the General Civil Restraint Order to which he is subject, issued two applications: one that I should recuse myself and the other seeking to set aside the order of 27 September 2021 concerning the alternative service of the committal application. The court informed the parties that these applications would be heard at the start of the trial the next day. In the event I dismissed both applications.
20. Also on 1 February 2022 a series of purported notices of discontinuance of the committal proceedings were filed on CE-File. These were purportedly signed on behalf of the Issuers. Also filed on CE-File was a new set of Part 8 proceedings issued in the names of three Marshall Island companies seeking declarations (among other things) concerning the identity of the directors of the Issuers. Mr Hussain contended in an email to the court and supporting written submissions that the notices of discontinuance meant that the committal proceedings must cease and that the court had no continuing jurisdiction. I shall return to this below.
21. Mr Hussain did not attend the first day of the trial on 2 February 2022. Late on the previous evening he sent a grainy pdf image of part of a lateral flow Covid-19 test strip and said that he had tested positive and would not be attending. The number and QR code on the pdf image were not legible. In light of his email I agreed to provide Mr Hussain with a remote link for a short hearing on the morning of 2 February 2022. Mr Hussain made representations. I concluded that there was no proper evidence of him having Covid-19. He had not registered the test with the NHS, had not provided a proper picture of it to the court, had not arranged a PCR test, and had not taken undertaken a further test with a remotely located medically trained observer (as had been suggested in an email from the claimants' solicitors). Mr Hussain refused during the hearing to disclose his location or surrender his passport. I concluded that there was no good reason for Mr Hussain's absence. On the claimants' application I granted a bench warrant (giving my reasons in an immediate ruling at the hearing) and adjourned the trial in the hope that Mr Hussain could be located and brought to court. Mr Hussain sought permission to appeal this order but the application was dismissed by Newey LJ on 21 February 2022.
22. The police could not find Mr Hussain under that bench warrant and he continued to refuse to attend at the trial. On the basis of further evidence, I issued a further bench warrant on 4 February 2022 for the Tipstaff and police to be allowed to enter various

properties using force if needed. The further attempts to execute the further bench warrant failed. The bench warrant remains outstanding. Mr Hussain has sought permission to appeal and a stay of execution of this bench warrant too. The application has not yet been determined.

23. Also on 4 February 2022 the court received a letter from Mr Livingston, a solicitor in the firm of Janes Solicitors, saying that Mr Hussain had been in contact, that Janes was expecting to seek legal aid and that Janes had advised Mr Hussain to surrender to custody. On the resumed hearing at 11.30 am on 7 February 2022, Mr Hussain did not attend at the trial. Mr Livingston attended with counsel. He explained that his firm were not yet formally instructed but had been liaising with Mr Hussain over the weekend. They had made an emergency application for legal aid that morning and expected to receive confirmation quickly. Mr Livingston did not know where Mr Hussain was. Mr Livingston had advised Mr Hussain to submit to arrest and attend at the trial. Mr Livingston explained that he and counsel had not yet had an opportunity to read into the case and did not expect to be able to advance a full positive case for Mr Hussain, even if instructed, absent another adjournment.
24. I granted another adjournment until 8 February 2022 to allow the legal aid process to be completed and for Mr Hussain to have a final chance to surrender to custody. I refused any longer adjournment.
25. Legal aid was granted to Mr Hussain on 7 February 2022.
26. On 8 February 2022 I ruled that the trial should continue in the absence of Mr Hussain: see [2022] EWHC 353 (Ch). In essence I concluded that there was no proper medical evidence to excuse Mr Hussain's absence; that Mr Hussain had known of the proceedings for months and had not engaged in them; he had decided not to serve any evidence himself; had decided to represent himself and had only applied for legal aid after the start of the trial; and had absented himself from the trial in breach of the court's orders. There was no proper reason for his failure to appear at the trial; he had waived his right to be present; there would be serious prejudice to the claimants and other court users if the trial did not go ahead; and Mr Hussain's lawyers would be able to present arguments about the procedural requirements for contempt applications.
27. I also rejected Mr Hussain's contention that the court should provide him with a remote link for the trial for two main reasons. First, I had ordered the trial to take place in person. There were compelling reasons for that: a committal application concerns the public administration of justice and the claimants are contending that the defendant has breached the order of the court; the hearing should therefore take place with the alleged contemnor present to answer the charges. It may be possible to contemplate unusual cases where the defendant's remote appearance may be justified for reasons of health or vulnerability or otherwise. But that requires evidence and is not this case. I also noted that Mr Hussain did not object to the hearing taking place in person in his email to the court of 17 December 2021 or indeed at the hearing of 26 January 2022 when he assured the court that he would be attending in person. In any event, the mode of hearing is a matter for the court, not the parties, and I had ordered that this trial should be in person.
28. Secondly, Mr Hussain had not only failed to comply with the order that he attend in person, but he also refused to tell the court of his whereabouts or hand over his passport or passports. He was therefore asking the court to allow him to participate on his own

terms from an undisclosed location while avoiding arrest and refusing to cooperate with the court and its officers. He was trying to have the option of avoiding the court's reach if the trial went against him. He could not dictate the terms of his engagement in that way.

29. As already explained, Mr Hussain has not served any evidence in the committal proceedings (though he has served various witness statements in making the interlocutory applications referred to above). That was his right. He has indeed said that he intended to rely on his right to silence.
30. Mr Hussain nonetheless sought on 9 February 2022 to introduce a witness statement of Mr Artemiou, a copy of which was given to the claimants shortly beforehand. Mr Artemiou did not attend at court but it was said that Mr Artemiou was prepared to attend for cross-examination at a time to be fixed. I gave a separate ruling on 9 February 2022 refusing to admit the witness statement. The statement had not been provided in accordance with the timetable contained in the court's directions of 27 September 2021; that timetable had been set to ensure that there would be an orderly trial, with the claimants having proper time to consider and respond to any evidence served by the defendant; there was no explanation for the failure to serve it in accordance with the court's directions; the evidence was not in an affidavit as required by the September order; the admission of the statement would be likely to lead to an adjournment of the trial; the trial had already been delayed by a week (by reason of the events already recorded); and the claimants would face real difficulties if it did not proceed so that the claimants would be seriously prejudiced by the delay.
31. I return at this stage to the purported notices of discontinuance filed on CE-File on 1 February 2022, the day before the commencement of the trial. They were filed using the andreouartemiou@businessmortgagefinance.com email. On the same day a Part 8 claim form was filed on CE-File by the three Marshall Islands companies seeking declarations about the identity of the directors of the Issuers. The claim form filing was made in the name "Godfrey Hicks", using a digitalassetpartnerslimited.com email address.
32. I gave a ruling on 9 February 2022 concerning these filings. In summary:
  - i) The issue raised by the new documents is identity of the true directors of the Issuers. I have already granted declarations in February 2021 and on 26 January 2022 that the true directors of the Issuers are the Sanne directors. The new documents contend that the Sanne directors were replaced by different directors in January 2022 and that the new directors then resolved to discontinue the committal proceedings and signed the notices of discontinuance.
  - ii) The new Part 8 proceedings have been brought in the names of three Marshall Islands companies, Blue Side, Cherry Services and Corelli. These names have featured heavily in earlier challenges to the authority of the Sanne directors (which led to the declaration on 26 January 2022 that the Sanne directors are the true directors of the Issuers).
  - iii) Whoever is acting for the three Marshall Islands companies must have provided information for the application for an injunction heard on 19 November 2021. Mr Artemiou's statement for that application gave information about those

companies' purported interests as noteholders in notes issued by the Issuers and exhibited what were described as screenshots of their interests. Corelli also offered (through Mr Artemiou) to provide a cross-undertaking in damages in support of the injunction, though Mr Artemiou told the court that he was not a director of Corelli.

- iv) The new claim form and indeed the notices of discontinuance are signed in the name Rahshi Dhaliwal. She claims on the claim form to be either a director or secretary of the three companies, but does not say which office she holds. She also signed a witness statement accompanying the Part 8 proceedings but gave there no evidence about her own identity or about the directorships or management of the three companies. I made a specific order on 19 November 2021 requiring any person who issued new proceedings concerning the Issuers in the names of (inter alia) these three companies to provide evidence of the identity of the person signing any statement of truth. Ms Dhaliwal did not do that when filing the claim. The Claimants have not previously heard her name.
- v) The address on the claim form of the new Part 8 claim is a shared office address in London. It is a hot-desking space and is not a proper address for service. There is therefore no proper address within the jurisdiction as required by the CPR.
- vi) The proceedings were filed in court using the email address in the name of Mr Hicks on the Digital Asset Partners email. There are known connections between that the name of Mr Hicks and Mr Hussain, and between Mr Hussain and Digital Asset Partners.
- vii) The case being advanced in the new documents is this. A number of alleged noteholders in the Issuers caused there to be a change in the directors of BMF Holdings in mid-2020. Those new directors of BMF Holdings raised calls on the Issuers for the payment of sums due on shares owned by BMF Holdings in the Issuers. When these were not paid, the shares in the Issuers were forfeited by BMF Holdings in mid-2020 and were then sold by BMF Holdings to "Highbury" for about £20 million. (I note here that Mr Hussain informed the court on the first day of the trial in January 2021 that he was a director of Highbury.) Highbury is then said to have sold 65% of the shares to the three Marshall Islands companies (Blue Side, Corelli and Cherry Services) in August or September 2020. Those three companies, as shareholders in the Issuers, are then said to have served notices on the Issuers requiring them to hold an AGM. When the boards of the Issuers (that is the Sanne directors) failed to call such meetings, the shareholders convened EGMs and at those meetings replaced the existing directors of the Issuers with Blue Side, Corelli, Cherry Services, Ms Dhaliwal and Usman Ahmad (Usman Ahmad's name has featured earlier in the proceedings being the named provider of a witness statement in September 2021 (though no evidence of his identity has been given)). The case now advanced is that the new boards then resolved to discontinue the committal proceedings.
- viii) This new case lacks a plausible factual or legal basis:
  - a) It is inconsistent with the two narratives previously advanced in the earlier proceedings. Under the second of those narratives, in which the names of the three Marshall Islands companies featured heavily, various



other individuals and entities purported to become directors of the Issuers in March 2021 by putting themselves forward as de facto directors. Evidence was also advanced to the court in the November 2021 application about the three Marshall Islands companies being beneficially interested in the notes of the Issuers. That evidence included purported screenshots said to show their interests as noteholders, but nothing at all was said about them supposedly buying shares in the Issuers in mid-2020. That is inexplicable if they were already shareholders.

- b) The case now being advanced depends on a valid forfeiture of the shares in the Issuers in 2020 and sale to Highbury in 2020. But I have already declared in February 2021 that the alleged sale to Highbury was invalid and was a nullity. I explained the reasons for that in the February 2021 judgment. In short, there was never a change in the identity of the directors of Holdings, there was no valid forfeiture of the shares, and there was no sale to Highbury. I also recorded in that judgment that there was no evidence of any sums having actually been paid by Highbury.
- c) Highbury and Mr Hussain were parties to the February 2021 decision. Since the court has declared that Highbury never obtained title to the shares, it follows that the three companies cannot have obtained title. There has been no appeal from that decision (Mr Hussain and Highbury recently sought permission to appeal out of time but that was refused by Newey LJ).
- d) Moreover, since the Sanne directors remained the directors of Holdings and the Issuers throughout, nobody with authority to act for those companies could have properly entered Highbury in the register of members of the Issuers.
- e) There is no evidence of the three Marshall Islands companies having paid anything to Highbury for the shares. There are simply some unstamped standard form share transfers, which have no real evidential value.
- f) So there is no cogent evidence that the three companies became members of the Issuers.
- g) But even if the three companies could show that they became members of the companies, they would still have to show that they served notices on the Issuers seeking to convene an EGM in accordance with the provisions of the Companies Act 2006. Though the witness statement under the name of Ms Dhaliwal says that such notices were served in December 2021, she does not provide any copies or exhibit any documents to show service on the Issuers. The Issuers have confirmed on instructions that no such notices were ever received by them.
- h) Even had such notices been served, the three Marshall Island companies would then have had to convene EGMs themselves and serve further notices on the Sanne directors of an EGM and to have complied with the

notice requirements under the Companies Act for a meeting where a director is sought to be removed from office. There is again no documentary evidence that any such steps were taken.

- ix) For these various reasons I concluded in my ruling of 9 February 2021 that there was no realistic or plausible factual or legal basis for the case now being advanced in the new documents. There is no realistically arguable case for saying that the board of directors of the Issuers has changed or that the Sanne directors do not continue to have authority to direct their affairs, including in relation to these committal proceedings.
33. I am indeed satisfied that the new documents filed with the Court on 1 February 2022 were a totally unmeritorious attempt to derail the committal proceedings.
34. To summarise: I have given a series of separate rulings since the start of this trial. I have granted a bench warrant; I have refused to recuse myself; I have dismissed Mr Hussain's application to set aside the order of 27 September 2021 which declared that Mr Hussain was validly served with the committal application on 9 July 2021; I have decided to continue the trial in the absence of Mr Hussain; I have refused the admission of the witness statement of Mr Artemiou; and I have declined to accept the validity of the purported notices of discontinuance filed with the court on 1 February 2022. A reader who needs further detail is referred to the various rulings.
35. Turning to the conduct of the trial, the claimants relied on a long and full skeleton argument which had been served in advance in accordance with my directions of September 2021. Counsel for the claimants went through the evidence referred to in that skeleton in open court and made extensive submissions.
36. Mr Hussain's counsel made short submissions but, in the absence of evidence or instructions from Mr Hussain, was not able to advance a positive case. The claimants' witnesses were available to be cross-examined (in accordance with my order of 27 September 2021). Counsel for Mr Hussain explained that he lacked instructions to enable him to cross-examine them. Their affidavit evidence was therefore unchallenged. The weight to be given to the affidavits is of course for the court to assess as part of the overall evidence.

### **Legal principles**

37. The principles are well known. Proceedings for civil contempt are sometimes described as "quasi-criminal" because of the potential penal consequences. They are criminal proceedings for the purpose of Article 6 of the ECHR. The charges raised have to be clear; the criminal standard of proof applies; and the respondent has a right to silence. There must be a high standard of procedural fairness: see *Navigator Equities Limited v Deripaska* [2021] EWCA Civ 1799, per Carr LJ, at [79].
38. The fact that civil contempt proceedings are criminal proceedings for the purpose of Article 6 does not mean that they are not civil proceedings: see *Masri v Consolidated Contractors International Company SAL* [2011] EWHC 1024 (Comm), at [157]; *Navigator Equities* at [80].

39. The applicant is required to establish the following elements to the criminal standard of proof: (i) that the alleged contemnor knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach: see *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch), per Nugee LJ, at [19]. It is not necessary for the applicant to show that the alleged contemnor acted in the belief that what he did was a breach of the order or that his conduct was contumacious (though that is highly relevant to sanction): *Kea Investments*, at [26].
40. Each element has to be proved to the criminal standard. This does not mean that every fact or piece of evidence relating to each element must itself be proved beyond reasonable doubt. In a case based wholly or primarily on circumstantial evidence, the Court must assess the evidence cumulatively rather than piecemeal. As Rix LJ said in *JSC BTA Bank v Ablyazov (No 8)* [2013] 1 WLR 1331, at [52]:

“It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: *R v Hillier* (2007) 233 ALR 634, cited in Archbold's Criminal Pleading, Evidence and Practice, 2012 ed, para 10-3. Or, as Lord Simon of Glaisdale put it in *R v Kilbourne* [1973] AC 729, 758, “Circumstantial evidence ... works by cumulatively, in geometrical progression, eliminating other possibilities”. The matter is well put by Dawson J in *Shepherd v The Queen* (1990) 170 CLR 573, 579–580 (but also *passim*):

“the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact—every piece of evidence—relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately.”

41. In *Masri* Christopher Clarke J said at [145] to [146]:

“Inferences

145. In reaching its conclusions it is open to the court to draw inferences from primary facts which it finds established by evidence. A court may not, however, infer the existence of some fact which constitutes an essential element of the case unless the inference is compelling i.e. such that no reasonable man would fail to draw it: *Kwan Ping Bong v R* [1979] AC 609.

Circumstantial evidence

146. Where the evidence relied on is entirely circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the

contempt in question has been committed: *Hodge's Case* [1838] 2 Lewin 227; and that there are “no other co-existing circumstances which would weaken or destroy the inference” of guilt: *Teper v The Queen* [1952] AC 480, 489. See also *R v Blom* [1939] AD 188, 202 (Bloemfontein Court of Appeal); *Martin v Osborne* [1936] 55 CLR 367, 375. It is not, however, necessary for the court to be sure on every item of evidence which it takes into account in concluding that a contempt has been established. It must, however, be sure of any intermediate fact which is either an essential element of, or a necessary step on the way towards, such a conclusion: *Shepherd v The Queen* 170 CLR 573 (High Court of Australia).

#### Adverse inferences

[Counsel for] the judgment debtors accepted that, although (i) an application for contempt is criminal in character, (ii) an alleged contemnor may claim a right to silence, and (iii) the provisions of sections 34 and 39 of the Criminal Justice Act 2003 do not apply, it was open to the Court to draw adverse inferences against the judgment debtors to the extent that it would be open it to do so in comparable circumstances in a criminal case. Thus it may be legitimate to take into account against the judgment debtors the fact (if it be such) that, when charged with contempt, as they have been in these proceedings, they have given no evidence or explanation of something of which they would have had knowledge and of which they could be expected to give evidence if it was true.”

42. Where there is a number of charges of contempt the court should have regard to the “overall picture”: see *Gulf Azov Shipping Co Ltd v Chief Idisi* [2001] EWCA Civ 21, per Lord Phillips MR, at [16]-[18]. At [18] he said:

“It is not right to consider individual heads of contempt in isolation. They are details on a broad canvas. An important question when that canvas is considered is whether it portrays the picture of a Defendant seeking to comply with the orders of the Court or a Defendant bent on flouting them. It is right that the individual details of the canvas should be informed by the overall picture. But, having said that, each head of contempt that has been held proved must be established beyond reasonable doubt.”

#### **The new CPR 81 – procedural requirements**

43. The Committal Application is governed by the new CPR 81, which came into force on 1 October 2020. This followed the revocation of the old CPR 81 (and of the old PD81, which has not been replaced), following a consultation exercise undertaken by the Civil Procedure Rules Committee between March and May 2020.
44. CPR 81.4 gathers in one place the requirements for a contempt application, including what factual and other matters are to be specified/addressed and the procedural safeguards intended to achieve fair disposal of the application.
45. I am satisfied that the application notice contains the details of the alleged contempts as required by CPR 81.4(2) (a), (b) and (h).
46. There is an issue concerning the penal notice. CPR 81.4(2)(e) states that the application notice must include “confirmation that any order allegedly breached or disobeyed included a penal notice”. The phrase “penal notice” is defined to mean “a prominent notice on the front of an order warning that if the person against whom the order is

made (and, in the case of a corporate body, a director or officer of that body) disobeys the court's order, the person (or director or officer) may be held in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law”.

47. In the present case the penal notice on the Injunction contained the required warning. It was set out prominently and in bold font, but was included on page 2 of the Injunction rather than on the front page, because the title of the proceedings took up a whole page.
48. The claimants seek an order dispensing with the requirement that the penal notice be placed on the front of the Injunction.
49. There is no express power in CPR 81 to dispense with the requirements set out in CPR 81.4.(2)(e). I am nevertheless satisfied that the court has such a power for the following reasons:
  - i) There was such a power under the old Part 81 and PD81: see, e.g., *Gill v Darroch* [2010] EWHC 2347, where the test was whether the defect had caused any injustice to the alleged contemnor, with the onus of persuasion being on the claimant.
  - ii) The editors of the White Book at para 81.4.4 consider that there is a power to waive defects concerning penal notices and they refer to the test set out in the earlier case law (as set out above).
  - iii) It would be contrary to the overriding objective if an otherwise compliant committal application could be defeated by a technical procedural defect which could be shown to have caused no injustice to the defendant. The court has a general power under CPR 3.1(2)(m) to take any step or make any order for the purpose of managing the case and furthering the overriding objective. I consider that the court can exercise this power where there is no injustice to the defendant to waive a defective penal notice and thereby further the overriding objective.
  - iv) The claimants also relied on CPR 3.10, which provides the court with a general power to remedy errors of procedure. *Ideal Shopping Direct Ltd v Mastercard Incorporated* [2022] EWCA Civ 14 shows that this rule cannot be used as a default power where there is more specific provision of the CPR covering the relevant procedural issue. That restriction on the scope of CPR 3.10 does not bite here as there is no relevant express specific provision. I accept the claimants' submission that this power can also be exercised to remedy errors concerning penal notices where there is no injustice to the defendant.
  - v) The court has an inherent jurisdiction to make appropriate gap-filling orders where necessary to further the due and fair administration of justice and I consider that, if needed, this power would also allow the court to waive defects in procedure under CPR 81, including concerning penal notices. If the power cannot be found elsewhere in the CPR to my mind the court must have this residual jurisdiction. It cannot be the case that committal applications which are otherwise fairly and properly brought should be stymied by technical procedural defects or slips.

- vi) CPR 81 was intended to simplify and clarify the procedures for contempt applications. There is nothing in it to suggest it was intended to remove the power of the court to ensure that contempt proceedings are conducted fairly and justly in accordance with the overriding objective (including by allowing the court to waive or correct technical defects). CPR 81.1(2) states that “[t]his Part does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law.” I agree with the obiter views of Cockerill J in *Deutsche Bank AG v Sebastian Holdings Inc* [2020] EWHC 3536 (Comm), at [148] that the omission of an express power to waive defects should not be read as abolishing the existing powers of the court.
50. I have concluded that on the current facts I should waive the requirement for a penal notice on the front of the Injunction:
- i) The penal notice appeared prominently and in bold font immediately after the names of the parties. It was at the front of the operative parts of the order even if it was not on the front page. Any reader of the order would have read and understood it.
- ii) The application notice also contained a separate statement that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law (as required by CPR 81.4(2)(p)).
- iii) Mr Hussain knew that he risked imprisonment if he breached the Injunction. When the order was granted he was in prison for an unrelated contempt of court so he could have had no doubts about the penal consequences of breaching orders of the court.
- iv) Mr Hussain indeed said in an email of 21 April 2021 that he had no wish to breach the injunction or any orders of the court, and said, “I have already been in jail for a long time and don’t want to go back.” I note that Mr Hussain has said in evidence served in an interlocutory application that he was referring to an earlier order of Zacaroli J made in 2019 rather than to the Injunction. I am unable to accept that. The letter to which he was replying in his email of 21 April referred to him as “a defendant” to the proceedings which had led to an injunction and he was not a defendant to the 2019 proceedings (though he was named in the order of Zacaroli J). Moreover there would have been no reason for anyone to be referring in April 2021 to the historical 2019 proceedings rather than the very much more recent and extensive Injunction of February 2021.
- v) Applying the test in *Gill v Darroch* there is no injustice to Mr Hussain arising from the positioning of the penal notice.
- vi) In the circumstances the breach is a technical one which the court can and should relieve.
51. I am satisfied that the application notice contained the other statements required by CPR 81.4(2)(i)-(s) informing the defendant of his procedural rights and safeguards.

### **CPR 81.4(2)(c) and the service of the Injunction**

52. The Injunction was not personally served on Mr Hussain. The claimants seek an order retrospectively dispensing with the need for personal service.
53. The old CPR 81.8(1) provided as follows:
- “(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it—
- (a) by being present when the judgment or order was given or made; or
- (b) by being notified of its terms by telephone, email or otherwise.”
54. Paragraph 16.2 of the old PD81 gave the court an express power to waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect. Under paragraph 16.2 PD81 the court had the power, additional to its powers under the old CPR 81.8(1)(a) and (b), to dispense with service of an order: see e.g. *Khawaja v Popat* [2016] EWCA Civ 362, at [40].
55. The new CPR 81.4(2)(c) and (d) provide that a committal application must include the following statements:
- “(c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
- (d) if the court dispensed with personal service, the terms and date of the court’s order dispensing with personal service”
56. The new CPR 81 does not include a provision analogous to the old CPR 81.8(1) or (2) specifically concerned with dispensing with service of an order, or a general relieving provision like para 16.2 of the old PD81.
57. I am nevertheless satisfied that the court has a power to dispense with personal service of the order if there is no injustice to the defendant;
- i) CPR 81.4(2)(c) and (d) presuppose that the Court has the power to dispense with personal service. There is therefore a dispensing power.
- ii) On a strictly literal reading these rules might be thought to require that an order dispensing with service must have been made before the committal application is issued as there must be a statement of “the terms and date of the court’s order dispensing with personal service”: CPR 81.4(2)(d)).
- iii) However the CPR are to be read purposively: CPR 1.2 provides that the court must seek to give effect to the overriding objective when it interprets a rule. I do not think that the overriding objective would be promoted by reading rules 81.4(2)(c) and (d) as restricting the power to dispense with personal service to cases where this occurs before the application is issued. Sensible case

management may dictate that it is best to decide whether to dispense with service at the hearing of the committal application itself: the defendant's knowledge of the order is relevant both to the substantive application for committal and to dispensing with personal service. There are examples of this happening in the cases decided under the old Part 81: see e.g. *Masri* and *Khawaja*. It may also be necessary in some cases to issue a committal application urgently so that there would be no opportunity to make a prior application to dispense with service.

- iv) I therefore consider that on its proper interpretation CPR 81 contains an express power to dispense with personal service and that there is no warrant for reading it as applying only to cases where the application for dispensation is made before the issue of the committal application itself.
  - v) Moreover, for reasons already given above, I do not think that in framing the new simplified CPR 81 the Civil Rules Committee intended to abolish the useful powers of the Courts to waive or dispense with procedural defects in committal applications. Again I agree with the obiter comments of Cockerill J in *Deutsche Bank AG v Sebastian Holdings Inc* at [148].
  - vi) I also consider that the court has a power under CPR 3.1(2)(m) or the gap-filling inherent jurisdiction of the court to dispense with personal service in an appropriate case for the reasons already given.
  - vii) I record that the claimants did not seek to rely on CPR 3.10 in this context as they submitted that the power to dispense with service is specifically covered expressly by CPR 81 (as explained above) and therefore the general dispensing power in CPR 3.10 is not available. In light of my conclusion that the court has the necessary power elsewhere I shall say nothing more about this possibility.
58. The test under the previous rules was whether injustice has been caused to the defendant by the applicant's failure to effect personal service (and not for instance whether the circumstances are exceptional): see e.g. *Khawaja* at [40]. I consider that the court should continue to apply that test, which accords with the overriding objective. I shall return to the exercise of the power after I have reached a conclusion about Mr Hussain's awareness of the Injunction.

### **Mr Hussain's awareness of the Injunction**

- 59. This is the first substantive element the claimants must prove to the criminal standard. It is also relevant to the application to dispense with personal service.
- 60. I have concluded to the criminal standard of proof that Mr Hussain was aware of the Injunction and its terms by 7 April 2021. My reasons follow.
- 61. At 16:26 on 7 April 2021 S&S sent an email to rizwan.hussain@clifden.group and rizwan.hussain.personal@outlook.com email addresses, enclosing a letter. The letter was not sent to anyone else or sent to Mr Hussain otherwise than via email.
- 62. The letter (inter alia) sought Mr Hussain's proposals for payment of the £293,573.04 in costs which he was liable to pay to the Issuers pursuant to paragraphs 2 and 17 of the Injunction. The covering email referred to and attached a copy of the sealed Injunction.



63. Mr Hussain did not respond to the email in his own name.
64. But later on 7 April 2021 S&S received a letter on the headed notepaper of Kipling. Kipling had by then (starting on 30 March 2021) written a number of letters to the claimants contending that various corporate steps had occurred which had (among other things) effected changes in the directors of the claimants. Kipling's letter of 7 April 2021 referred to S&S's letter to Mr Hussain of the same day. It said,
- “Therefore we are surprised to learn that unexpectedly and totally without notice various letters were delivered today purportedly from you directed to Mr Glen Watford and directed to Mr Rizwan Hussain, individuals whom, in the circumstances, and given their historical relationships with the BMF Companies, you know to be assisting in and are witnesses or potential witnesses in respect of one or more of the criminal proceedings against the defendants...”
65. The letter also made various points in response to S&S's letter, including this:
- “The letter to Mr Hussain, was of a similar construction, in that without reasoning, reminds him of his previous incarceration at HMP Hollesley Bay for civil contempt and purports to afford him less than 48 hours to make a payment of £293,573.04 to you and purportedly on behalf of the BMF Companies... Moreover, it appears to have menaces in that it states that the author will be taking “all appropriate steps” to recover costs but shows no lawful rights to do so”.
66. This is in part a direct quote from S&S's letter of 7 April 2021.
67. The Kipling letter also acknowledged the existence of the Injunction and said that “permanent junctions [sic] and declaratory relief were sought and obtained”.
68. As already noted, on 21 April 2021 Mr Hussain (in his own name) sent an email saying that he had no wish to breach the injunction or any orders of the court and did not want to return to prison. I have already explained why I am sure that Mr Hussain was referring in that email to the Injunction and not the earlier order of Zacaroli J.
69. I consider that this chain of correspondence establishes to the criminal standard of proof that Mr Hussain was aware of the Injunction and its terms by 7 April 2021 at the latest. Mr Hussain has chosen not to advance any contrary evidence at the trial.
70. However I should for completeness address some evidence Mr Hussain has submitted for his various interlocutory applications (including in support of the applications for recusal and to set aside the order of 27 September 2021).
71. Mr Hussain accepts that he had three email accounts (referred to for convenience as the “clifden” account, the “personal” account and the “clavis” account).
72. In support of his set-aside application, Mr Hussain served a witness statement which says that in March 2021, shortly after he left prison, his personal assistants blocked all emails from the S&S domain for the “personal” and “clifden” addresses; and that the “clavis” account was deactivated at some date in 2021, but before 9 July 2021.

73. Mr Hussain also served witness statements in the names of “Amina Hussain” and “Mahmood Khan”, who he describes as his personal assistants. The statements state as their address “Block 5” in an area of Karachi, which is not a proper address as it does not identify a building or even a street. The statements confirm what Mr Hussain has said in his statement and provide no independent details. There is no back-up documentation supporting his narrative about the blocking of the accounts. For his part, Mr Hussain says in his statement that he cannot remember the blocking of the email accounts.
74. I do not consider Mr Hussain’s evidence about email accounts to be remotely credible when set against the contemporary documents:
- i) The idea that the emails from S&S were blocked is inherently very improbable. Mr Hussain has been involved in serious proceedings with the Issuers. He knew that the trial that led to the injunction was taking place and indeed appeared at the first day of the trial in January 2021. The evidence shows also that he was aware of the terms of the draft injunction that had been sought by the Issuers. Mr Hussain would have wanted to know the outcome of the proceedings. He is a seasoned and determined litigant. He has been involved in a great many sets of legal proceedings and he is a sophisticated and intelligent man. He would also have known that any order would be likely to include a liability for costs. Mr Hussain has offered no explanation why, in those circumstances, he would have given an order to his “assistants” to block emails from S&S, who were acting for the claimants. Indeed his own evidence is that he cannot remember asking for a block being put on his accounts.
  - ii) Mr Hussain in his statement says that he did not receive the email and letter of 7 April 2021 from S&S. But that email was sent to Mr Hussain alone and only via two of the email accounts (personal and Clifden) from the S&S domain. It is clear from the Kipling letter of the same day that Mr Hussain received the email and its attachments. The Kipling letter referred to the Injunction and the contents of S&S letter. This documentary record is completely at odds with the idea that the email accounts had been blocked. It is clear beyond doubt that he received the letter.
  - iii) Mr Hussain has offered no explanation of this. This is particularly telling because, when Mr Hussain recently applied for an extension of time for permission to appeal the February 2021 order, one of the reasons specifically given by Newey LJ on 28 January 2022 for refusing permission was that Mr Hussain had not addressed the evidence about the 7 April 2021 email.
  - iv) Mr Hussain says in his witness statement that the blocking of the accounts did not always work perfectly, but he does not elaborate on this or explain how some emails still came through to him.
  - v) He has also said in his evidence that he was not aware of the Injunction until December 2021. That evidence is not credible in the light of the documents just recited.
  - vi) Nor has Mr Hussain addressed the claimants’ evidence of a read receipt dated 13 July 2021 from his own email address for an email originally sent on to Mr

Artemiou of Kipling on that date (to two email addresses at “legal@businessmortgagefinance”). The read receipt shows that the accounts were linked and that the email was read by a user of Mr Hussain’s own email address that day. The attachment to that email included the Injunction. This read receipt further undermines Mr Hussain’s claim that he only learnt of the Injunction in December 2021. He has not answered this evidence.

- vii) There are no documents, emails or otherwise, passing between Mr Hussain and his alleged “personal assistants” relating to the blocking of the email accounts.
- viii) Mr Hussain also says that one of the assistants, Mr Khan, told him that the clavis account was deactivated in mid-2021. This too is contradicted by the documentary evidence. There are delivery receipts for emails addressed to that account up to 3 December 2021. One of them was for the committal papers emailed to that account on 9 July 2021. Emails to the account only started being returned as “undeliverable” on 21 December 2021.
- ix) Mr Hussain's claim that he only became aware of the application in December 2021 also cannot be squared with his own actions at that time. He wrote to the court on 17 December 2021, saying that he would attend the trial in person, but he made no efforts to obtain the committal application or the supporting evidence from S&S. It was S&S who volunteered a full set of the documents and sent them to Mr Hussain. It is not credible that he would have been so passive and uninterested if he had just discovered the existence of a committal application against him. His own email of 21 April 2021 shows that he knows the potentially painful consequences of a committal application, having been sentenced to 12 months imprisonment for contempt in unrelated proceedings in the summer of 2020.

75. For these reasons I am satisfied to the criminal standard that Mr Hussain was aware of the terms of the Injunction by 7 April 2021 at the latest.

**The application to dispense with personal service: reprise**

76. I have already held that the court has power to dispense with personal service where there would be no injustice to the defendant.

77. I am satisfied that I should dispense with personal service in the present case:

- i) Mr Hussain knew of the order and its terms by 7 April 2021 at the latest.
- ii) For reasons already given Mr Hussain understood the potentially serious consequences of breaching the order.
- iii) There are good reasons why the claimants did not serve Mr Hussain personally at the time the Injunction was sealed. He was in prison and it was not possible to serve him personally because of the Covid-19 pandemic. The claimants did not know of his whereabouts after his release from prison.
- iv) There is no prejudice or other injustice to Mr Hussain if the court dispenses with personal service.

### **The conduct alleged to constitute breaches of the Injunction**

78. As already explained, the committal application concerns events between 7 April 2021 and 18 June 2021 (“the relevant period”). However the claimants rely on events before and after the relevant period as evidence of the links between Mr Hussain and steps taken in the names of other individuals or entities. They contend that Mr Hussain was directly responsible for those steps or that he caused or procured others to take them. In a later section of this judgment I shall return to the specific events relied on in the committal application. I agree with the claimants that in principle events taking place outside the relevant period are potentially probative of Mr Hussain’s involvement in the alleged contempts.
79. At this stage I should say something more about the roles of some of the parties. As already noted, the claimants are the Issuers of various series of notes under securitisations of loans and mortgages. The current directors of the Issuers are Ms Bidel and Mr Speight, who are employees of the Sanne group. Until recently Mr Surnam was also a director of the Issuers. These directors (“the Sanne directors”) have instructed S&S to act for the Issuers since 2019. The note trustee is BNY. The obligations of the Issuers to the noteholder and others are secured by charges over the underlying loan portfolio in favour of BNY. The shares in the Issuers are held by BMF Holdings Limited (“BMFH”). The shares in BMFH are in turn held by Sanne Group Nominees 1 (UK) Limited and Sanne Trustee Company UK Limited as Share Trustees. The Special Servicers and Cash/Bond Administrators are Target Servicing Limited (“Target”). HML Management Limited (“HML”) is the Standby Cash/Bond Administrator and Mortgage Administrator. The bank accounts through which payments are received and disbursed are maintained with Barclays Bank plc (“Barclays”) as the Account Bank. The notes are held and traded through Euroclear/Clearstream and the persons who count as Noteholders under the securitisations are those entities who have holdings in the notes recorded in accounts held by them with Euroclear/Clearstream.

### **Events of 30 March 2021 to 6 April 2021**

80. A series of co-ordinated steps took place on and after 30 March 2021.
81. On 30 March 2021 the Sanne Group received a letter in the name of Mr Artemiou on “Andreou Artemiou” headed notepaper. He signed it “acting in a personal capacity and for and on behalf of BMF HOLDINGS LIMITED, BUSINESS MORTGAGE FINANCE 4 PLC; BUSINESS MORTGAGE FINANCE 5 PLC; BUSINESS MORTGAGE FINANCE 6 PLC and BUSINESS MORTGAGE FINANCE 7 PLC”. It was addressed to Sanne, Ms Bidel, Mr Surnam (at that time a director of the claimants) and Mr Speight, and copied to BMFH, the Issuers, BNY, Homeloan Management Limited and Barclays. The footer on page 1 gave Mr Artemiou’s address at Ajeltake Island, Majuro, in the Marshall Islands. The letter said that BMFH and Lark Holdings Limited (“Lark”), a Marshall Islands company, together hold 49,999 ordinary shares of each of the claimants. Lark was said to be an Instrumentholder with a beneficial interest in greater than 50% of the aggregate Notes outstanding in each claimant. The letter claimed that Sanne Group Secretaries had been removed as secretary to each of the claimants and BMFH and that a replacement had been appointed. It said that “BMFH and each and every Issuer hereby gives notice and terminates any and all contractual agreements, arrangements or otherwise, which they have or purport to have with each

and every one of you...”. The addressees of the letter were told that they must not hold themselves out as acting for the Issuers or BMFH.

82. The letter said, “To the extent you wish to contact myself then I am available on +44(0)78xxxxxx92 or [andreou.artemiou@businessmortgagefinance.com](mailto:andreou.artemiou@businessmortgagefinance.com).” (The mobile number was given in full in the original.)
83. The affidavit evidence shows that the Sanne Group, the directors of the Issuer and S&S had never come across anyone called Andreou Artemiou until their receipt of this communication on 30 March 2021.
84. The 30 March 2021 letter also had various enclosures: (a) A “resolution by way of written resolution” said to be executed by Lark in its purported capacity as an Instrumentholder of the Issuers (BMF4, BMF5, BMF6 and BMF7, but not BMF3). This resolution purported, among other things, to: (i) remove Sanne Group Nominees 1 (UK) Limited and Sanne Trustee Company UK Limited as Share Trustee (over the share capital of BMFH), and (ii) transfer the entire share capital of BMFH to Lark. (b) A “written resolution” of BMFH, said to have been executed by Lark in its purported capacity as holder of 100% of the voting rights of BMFH, which purported to remove Ms Bidel, Mr Speight and Mr Surnam as the directors of BMFH; and (c) Four documents entitled “written resolution”, in respect of each of the Issuers (but not BMF3), stated in each case to have been executed by Lark and BMFH purportedly in their capacity as holders of 49,999 ordinary shares in each Issuer, and which purported to remove Ms Bidel, Mr Speight and Mr Surnam as the directors of each Issuer.
85. On 30 March 2021 a letter was also sent to BNY (by email from “Andreou Artemiou”) on “Andreou Artemiou” headed notepaper, signed by “Andreou Artemiou” in a personal capacity and for and purportedly on behalf of each of the Issuers, enclosing documents entitled “written extraordinary resolution” in respect of each Issuer. These were purportedly effected by Lark as a purported Instrumentholder of more than 75% in the most senior class of Notes outstanding in each of the Issuers. The resolutions purported to remove BNY as Trustee and to authorise the “Remaining Trustees” to give effect to the resolution. The so-called Remaining Trustees were not named in this document, although they were identified in a letter to Target of the same date.
86. On 30 March 2021 a letter was sent in the name of Lark to BNY (by email from “Andreou Artemiou”), said to be signed by Lark “acting by one of its [unnamed] duly authorised signatories”. This letter concerned Lark’s alleged “interests in the securities” issued by the Issuers (defined in that letter as the “Investment”) and included a confidentiality undertaking for the supply of information relating to this Investment.
87. On 30 March 2021 four letters were sent to Target in the names of Andreou Artemiou and Centrum Trustees Limited (“Centrum”), a Marshall Islands company, both stated to be Trustees of the Issuers, in respect of each of the Issuers (the “Target Termination Notices”). These notices each purported to terminate Target’s role as Special Servicer and Cash/Bond Administrator of each of the Issuers and to notify them that a replacement had been appointed in Target’s place.
88. Centrum is a Marshall Islands company. There is unchallenged evidence from its founder and beneficial owner, Mr Pearlman, that Centrum’s name has been used without his knowledge or authority and that Centrum had no involvement in the affairs

of the Issuers. I am satisfied that its name has been used unlawfully and without its authority.

89. Also on 30 March 2021 four RNS announcements (titled “NOTICE TO NOTEHOLDERS”) were released through Euronext Dublin (“Euronext”). These were stated, on their face, to be made on behalf of each Issuer and each gave an “investors@businessmortgagefinance.com” email address as the contact address. Each announcement stated that it was notifying Noteholders of the steps described above, namely: (i) the replacement of the Share Trustee (over the share capital of BMFH), the directors (including of BMFH), company secretary, Trustee, and Special Servicer and Cash/Bond Administrator; (ii) the termination of all arrangements with Sanne Group; and (iii) that BMFH and/or Lark are “minded to transfer some of their shares in [each] Issuer to one or more of [BMF3 or the other Issuers]”.
90. On 30 March 2021 a letter in the name of Mr Artemiou was sent to the Irish Stock Exchange, under cover of an email timed at 17:41, complaining that the RNS announcements had been removed and asking for “specific reasons” for the removal of the announcements “shortly after their release”. The letter said he could be contacted on ‘andreou.artemiou@businessmortgagefinance.com’.
91. On 30 March 2021 one of the Issuers’ true directors received notification from Companies House that the records of BMF3 and BMFH had been changed in respect of their registered address, the Person with Significant Control (“PSC”), and their directors and company secretary.
92. On 4 April 2021 letters were sent on Kipling headed notepaper, under two emails from Mr Artemiou’s email address, to various individuals and to a Target group email address at Sanne Group and Target, notifying them that criminal proceedings had been instituted in an unspecified magistrates court against Mr Barbour, Mr Bingham, Mr Larkin and Mr Surnam (each being current or former employees of Sanne Group or Target, and Mr Surnam being, at that time, a director of the Issuers) for alleged conspiracy to defraud.
93. On 6 April 2021 Ms Hunter-Yeats, a partner in S&S, tried three times to speak with Mr Artemiou using the mobile number provided in the 30 March letter. None of the calls got through and Ms Hunter-Yeats left a voicemail message.
94. Later on 6 April 2021, by email in the name of Mr Artemiou at 11:45, a letter on the headed notepaper of Mr Artemiou was sent to the senior partner, managing partner and general counsel of S&S, stating that “a telephone message was received this morning by a person identifying themselves as ‘calling on behalf of Simmons & Simmons’ and purportedly acting on behalf of ‘her clients’ which purportedly appear to be the BMF Companies”. This letter referred to the criminal proceedings said to have been instituted against Mr Barbour and three other named individuals, and stated that S&S was advised to preserve documents in connection with its involvement with the BMF Companies.
95. Later on 6 April 2021, by email at 12:45, a letter on the headed notepaper of Kipling was sent under the name of Andreou Artemiou to the senior partner, managing partner and general counsel of S&S, stating that “criminal proceedings were instituted in the Magistrates Court” against Ms Hunter-Yeats and another partner at the firm, Mr Siddiqui, for allegedly entering into or becoming concerned in an arrangement which

they knew or suspected facilitated the acquisition, retention, use or control of criminal property by or on behalf of another person, contrary to section 328 of the Proceeds of Crime Act 2002. The letter also stated that an application had been made for their arrest.

### **On and after 7 April 2021**

96. As already noted, on 7 April 2021 at 16:26 S&S sent by email to Mr Hussain to the @clifden.group and personal@outlook.com email addresses enclosing the letter of 7 April 2021 and a copy of the Injunction.
97. On 7 April 2021 S&S also wrote to Glen Watford who, at that time, was listed on Companies House as the sole director and shareholder of Kipling, noting the various steps taken by Kipling. The letter requested various confirmations and information, including that, to the extent Mr Watford had taken any actions in relation to the Issuers, BMF3 and BMFH to date, he would desist immediately.
98. The claimants' evidence establishes that this letter was delivered to an address believed to be Mr Watford's home address, 5 Kipling Terrace, Great Cambridge Road, Edmonton, London, by a process server, Mr Philip Smith. Mr Smith served a pack of documents including the Injunction. Mr Smith's evidence is that the documents were received there by Mr Artemiou, who was at the home at the time.
99. It will be noted that the name of "Kipling Firs Ltd" appears to derive from the names of the streets where Mr Watford resides (5 Kipling Terrace) and a nearby residential address given by Mr Watford for Mr Artemiou (31 Firs Park Avenue). These are both in Edmonton, North London. Kipling was incorporated on 23 March 2021.
100. Neither Mr Hussain nor Mr Watford responded to the letters of 7 April 2021.
101. However, as already explained, later on 7 April 2021, S&S received an email in the name of Andreou Artemiou, attaching a letter on Kipling headed notepaper. This alleged that S&S's "letters, steps and conduct amounted to witness intimidation of Mr Hussain and Mr Watford". I have already addressed this above.
102. On 8 April 2021 notices were produced in the names of Andreou Artemiou and Centrum telling Barclays that Target had been replaced by Kipling as Special Servicer and Cash/Bond Administrator of each of the Issuers (the "Target Replacement Notices"). These notices were enclosed with a letter from Kipling to Barclays dated 9 April 2021.
103. On 9 April 2021 a letter was sent by Kipling to Barclays. This letter enclosed the Target Termination Notices. Kipling's letter stated that it and "the Trustees" were investigating the bank accounts for each Issuer and requested the Issuers' bank statements for the last 24 months and on an ongoing basis. Kipling stated that the Issuers intended to replenish all the Reserve Funds (a defined term in the securitisation documentation) on or before the Interest Payment Date (another defined term) of 15 May 2021. Kipling stated that £22.4 million of funds were being held for that purpose, following the sale of shares of the Issuers. Kipling asked Barclays to confirm that they would take receipt of such funds in the Issuers' GIC Accounts (another defined term).
104. A copy of this letter was provided by Barclays to S&S.

105. On 14 April 2021 Ms Hunter-Yeats was informed by Mr Speight that a number of further filings had been made at Companies House in respect of Kipling, including an AP02 appointing BMFH as director as of 11 April 2021 and a PSC02 notifying BMFH as a PSC as of 11 April 2021.
106. On 14 April 2021 Sanne sent a letter to all of the parties to the BMF Securitisations (including, amongst others, Barclays, HML, Target and BNY): (i) noting the steps taken since 30 March 2021 and that they had all been unauthorised, void and of no effect (and were regarded by Sanne as a continuation and extension of Mr Hussain’s campaign); and (ii) noting that any communications from the individuals and entities involved should be ignored and not acted upon, and asked that the recipients notify Sanne as soon as possible if they receive any correspondence from those individuals or entities.
107. On 19 April 2021 four letters were sent in the name of Mr Artemiou said to be “on behalf of” each of the Issuers to Barclays. Each of these letters was written on what purported to be the letterheads of each of the Issuers; had a signature matching that used for Mr Artemiou in the 9 April 2021 letter to Barclays; had various “references” like those used by law firms to refer to cases, e.g. “Ref: 1004/BMF/ART31/4911931”; stated that Barclays was in breach of its obligations; and threatened to commence a claim for damages in excess of £253 million (in total across the four Issuers).
108. A copy of this letter was provided by Barclays to S&S.
109. Also on 19 April 2021 CMS (acting for S&S) wrote to Kipling by email, copying Mr Artemiou and Mr Hussain, requesting that they each withdraw all allegations of criminal conduct or breach of duty, and undertake that they would not make or repeat or refer to any allegation that Mr Siddiqui and Ms Hunter-Yeats had committed any breach of duty or any criminal offence, or make or seek to make contact with them at their homes or in their personal capacities save through their legal representatives. The letter stated that it was unclear why Kipling should have any interest of its own in the BMF Proceedings and that, unless a credible explanation was provided, “it can be assumed that Mr Artemiou and Kipling Firs are either alter-egos of or collaborators with Mr Rizwan Hussain and/or other defendants in the BMF Proceedings. They appear to be being used by Mr Hussain and/or others to continue to interfere in the affairs of the BMF Parties in defiance of a very clear judgment and High Court Injunction which prohibits such conduct”.
110. On 20 April 2021 further filings were made at Companies House in respect of BMF3, to the effect that three charges had been satisfied in full. The person shown as delivering the statement was Mr Artemiou whose interest was noted to be “officer of the company”.
111. On 21 April 2021 Mr Hussain wrote an email to CMS from his personal email address responding to CMS’ letter of 19 April 2021. I have already addressed this. Mr Hussain said that he had no wish to breach the injunction. (I have also explained that I am satisfied so as to be sure that Mr Hussain was referring to the Injunction and not (as he has suggested in interlocutory evidence) an order made by Zacaroli J in 2019.) The email also said that Mr Hussain “was just trying to see if I could help with the investigation where I was asked if I could consider being a witness. But I will now stop doing so as you want.” Mr Hussain attached to his email of 21 April 2021 a signed undertaking that had been sought by CMS.



112. On 21 April 2021 CMS received a letter (sent by email) on the headed notepaper of Kipling. The letter repeated the assertion in the name of Kipling that it had been appointed to “various offices” “at the behest and direction of the shareholders and investors in the Notes issued by the BMF group of companies... The same is said of Andreou Artemiou who in addition to being an officer of the BMF Companies is an investor in some of the securities issued by some of the BMF Companies”. The letter said that the assumption made by CMS that “Mr Artemiou and Kipling Firs are either alter-egos of or collaborators with Mr Rizwan Hussain and/or other defendants in the BMF Proceedings is “manifestly wrong and entirely rejected”. The letter asked CMS to “explain why... in the case of Mr Hussain correspondence [had been] sent without reason or proper instructions or authority, reminding him of his previous incarceration at HMP Hollesley Bay for civil contempt ...”. Kipling undertook not to publish the fact of the (supposed) criminal proceedings against Mr Siddiqui and Ms Hunter-Yeats until the matter was heard in open court. (I note in parentheses that no such proceedings have ever been issued by any magistrates court.)
113. On 21 April 2021 Barclays received a further letter on Kipling headed notepaper, again signed in the name of Mr Artemiou. It said that “we are the Corporate Servicer for each Issuer and our directors Andreou Artemiou and BMF Holdings Limited are also directors of the Issuers alongside Business Mortgage Finance 3 plc”. It also said that BNY was removed on 30 March 2021 as trustee by a series of extraordinary resolutions. It said “we are not aware of any dispute with Target Servicing Limited, being the former Cash/Bond Administrator and Special Servicer. They were served with the termination notices herein over 21 days ago and, through the passage of time and the lack of any opposition or challenge, are deemed to have now accepted them by acquiescence or otherwise and both as a matter of law and equity.” It said that if Barclays failed to comply with the previous requests by 5pm “UKT” [sc. UK time] on 23 April 2021 remedial action would be sought. The letter included copies of the Target Termination Notices (again).
114. On 26 April 2021 a claim was issued in the names of BMF3 and the Issuers against Barclays, under Claim No. CL-2021-000242, seeking damages of £293 million (the “Barclays Claim”). The basis of the claim was stated to be “breach of [Barclays’] contractual obligations and duties pursuant to the respective Bank Agreements and the Guaranteed Investment Contracts” and in the alternative negligence. The statement of truth is signed in the name “Charles Hewitt”, stated to be a director of each of the claimants, i.e. the Issuers. The evidence establishes that the Issuers and S&S had not heard of Charles Hewitt being held out as a director of the Issuers before this (or as having any other connection with the BMF Securitisations). There is no evidence showing any such person exists. In the box on the Claim Form which sets out the Claimants’ address, the mobile number provided for Charles Hewitt is the same as that provided for Mr Artemiou in his letter to Sanne Group and others of 30 March 2021. As explained above Ms Hunter-Yeats had previously called that number without response. It had though led to various letters and emails to the senior management of S&S complaining about her calls.
115. On 27 April 2021 an email was received by CMS from Westminster Magistrates Court (timed at 09:55) attaching copies of a letter on Kipling’s headed notepaper to the Court, dated 4 April 2021; and a copy of the application for a private prosecution against Mr Surnam and others which had been enclosed with Kipling’s letter of 4 April 2021. The

main text of this email confirmed that the applications had been rejected since they were not submitted in the proper form.

116. A few minutes later CMS received a further email from Westminster Magistrates Court (timed at 09:59), attaching copies of (i) a letter on Mr Hussain's headed notepaper to Westminster Magistrates Court dated 13 April 2021, regarding a private prosecution application against a Mr Jai Singh; (ii) email correspondence between Westminster Magistrates Court and Mr Hussain from 24/25 March 2021, from Mr Hussain's personal email address, regarding his application for a private prosecution against Mr Jai Singh; and (iii) Mr Hussain's private prosecution application against Mr Jai Singh.
117. On 10 May 2021 S&S sent (under cover of an email) a letter to Mr Hussain, noting the steps taken since 30 March 2021 and stating that the Issuers considered those to be in breach of the Injunction and that Mr Hussain had either taken those steps personally (in the names of Mr Artemiou and others) or had caused, procured or permitted them to take those steps. This letter asked Mr Hussain to (i) assist in the correction of the Companies House filings, (ii) withdraw any representations made to third parties that he/his associates had authority to act for the Issuers or BMFH, (iii) ensure that they did not use the "businessmortgagefinance.com" email address suffix, and (iv) withdraw the unauthorised legal proceedings commenced in the names of the Issuers or BMFH. The letter also noted that if Mr Hussain failed to provide those confirmations by 17 May 2021, which presented a single and final opportunity for Mr Hussain to purge his contempt, the Issuers would be issuing the committal application. No response has been received to this letter or email.
118. On 10 May 2021 S&S also sent an email to Mr Artemiou, Kipling, Lark and Centrum, noting the steps taken since 30 March 2021, making them aware of the Injunction (a copy of which was enclosed) asking for the same four confirmations as in the letter to Mr Hussain, and noting that the Issuers considered the steps taken to be ineffective and void as well as in breach of the Injunction. No response has been received to this email, save from the true owner of Centrum, Mr Pearlman.
119. On 10 May 2021 S&S also wrote to Mr Watford, following up on S&S' letter to him of 7 April 2021, asking for various confirmations and information by 19 May 2021, and confirming that the Issuers considered the steps taken since 30 March 2021 to be in breach of the Injunction.
120. On 10 May 2021 S&S also wrote a letter to four of the named defendants in the 2020 Injunctions Claim (being Mr Rajnish Kalia, Mr Jai Singh, Ms Elizabeth Kirby and Mr Mohamed Osman, sent to all of the known email addresses for them), asking for their proposals for payment of the costs in those claims, noting the recent steps taken in breach of the Injunction and asking, to the extent they are involved in those steps, for confirmation that they will desist. Mr Oyekoya and Mr Kalia responded on 14 and 17 May 2021 respectively (see below).
121. On 10 May 2021 CMS sent a letter to Kipling, Mr Artemiou, Mr Hussain (by email) and Mr Watford in copy, making requests for information about Mr Artemiou and any documentation he could provide to evidence his identity, and offering to make an appointment to meet Mr Artemiou in person. The letter also asked for information about Lark and requested that Mr Watford contact CMS to explain his role and his present relationship with Kipling, Mr Artemiou and/or Mr Hussain.

122. On 11 May 2021 a claim form was issued in the Kipling Claim (signed by “Oliver Taylor” in the names of each of the Issuers) with Claim No. CL-2021-000279. The Kipling Claim was issued in the names of BMF3, the Issuers, BMFH and Kipling against thirteen defendants: Greencoat Investments Limited; Greencoat Holdings Limited; Portfolio Logistics Limited; Roundstone; Rizwan Hussain; Alfred Olutayo Oyekoya; Rajnish Kalia; Elizabeth Kirby; Jai Singh; Mohammed Osman; Callon Shared Equity Limited; Callon Capital Management Limited; and Highbury Investments Limited. These were defendants to some of the proceedings taken by the Issuers, BMF3 and BMFH in 2019/2020. The commencement of the Kipling Claim was not authorised by the true directors of the Issuers or the other BMF named Claimants. The Kipling Claim sought an order to vary, set aside or rescind the Orders of Miles J dated 3 and 12 February 2021, Nugee J dated 22 October 2019 and Zacaroli J dated 31 July 2019. The basis for the relief was that the orders were obtained by fraud or there was material non-disclosure as to the want of authority of the parties and that there had been unforeseen and unforeseeable events.
123. There is no evidence about the existence of “Oliver Taylor”. He is not a director of the Issuers. None of the filings for Kipling lists him as a director. The claim form gave the 86-90 Paul Street address for service of documents and the legal@businessmortgagefinance.com email address.
124. Also on 11 May 2021 a claim form was issued (“the S&S Claim”) in the names of each of the Issuers, BMF3, BMFH and Kipling (signed by “Oliver Taylor” on behalf of all of the Claimants and Kipling) with Claim No. CL-2021-000274. It was issued in the names of BMF3, BMFH and the Issuers without their authority. The proceedings were instituted against S&S, Mr Siddiqui and Ms Hunter-Yeats, seeking: (i) a declaration that they do not act for or represent the Claimants or their assets, and (ii) an injunction restricting them from taking any step in relation to the Claimants or their assets. The mobile number provided for “Oliver Taylor” was the same as that provided for Mr Artemiou in his letter to Sanne Group and others of 30 March 2021 (and the same as that provided for “Charles Hewitt” in the Claim Form for the Barclays Claim). The claim form gives the 86-90 Paul Street address for service of documents together with the legal@businessmortgagefinance.com email address.
125. On 14 May 2021 a copy of this claim form was emailed to S&S along with a letter on Andreou Artemiou headed notepaper. The signature on the letter is a characteristic tilted alpha which has been used on other documents, including in 2020 (a point returned to below) and does not resemble other signatures of Mr Artemiou.
126. On 12 May 2021 a claim form was issued with Claim No. CL-2021-000282, in the name of Andreou Artemiou against Ms Nike Shoge and Mr Martyn Reece, both of Barclays, seeking damages for the tort of negligence and/or for unlawful means conspiracy in respect of Mr Artemiou’s stated rights, interests and benefits in the securities issued by BMF3 and the Issuers (the “Second Barclays Claim”). The claim form again gave the Paul Street address for service of documents on the claimant. The claim form also included the solecism “in the alternate”. Particulars of Claim in the Second Barclays Claim, dated 18 June 2021, were subsequently received by Barclays. Paragraph 5 contends that Mr Artemiou has an aggregate interest in the Notes of the Issuers of approximately £36 million.

127. On 14 May 2021 a second letter was received by S&S, from Mr Artemiou in his purported capacity as “a director of the BMFH Companies”. The letter contends that S&S lack standing or capacity to correspond on behalf of the Issuers, BMFH, the true directors, Sanne or Target; that Lark is an Instrumentholder; that a non-disclosure agreement was needed if Lark were to provide additional information; that Sanne Trustees Company UK Limited can be removed by Instrumentholders from the position of Share Trustee; that the e-mail address ‘legal@targetgroup.com’ is a matter of public record (an issue that had been raised by S&S in an earlier letter); and that S&S’s reliance on the judgments of Nugee J, Zacaroli J and Miles J “may be nugatory as they are presently subject to a claim by the BMF companies”.
128. On 14 May 2021 Mr Oyekoya responded to S&S’ email of 10 May 2021 (copying Mr Kalia), in which he denied having any involvement with the most recent phase of the steps concerning the Issuers.
129. On 14 May 2021 Kipling wrote to Mr Riddiford (who had been instructed as counsel for the Issuers) to notify him that it had instituted criminal proceedings on “3 counts of MONEY LAUNDERING” against him.
130. On 14 May 2021 CMS received a letter on the headed notepaper of Kipling, stating (among other things) that Kipling had resubmitted its application for a private prosecution against Mr Barbour and others (referred to above) in what it considered to be the correct form and with a different (unspecified) magistrates court and noting that the Kipling Claim had been issued.
131. On 17 May 2021 Barclays received a letter on Kipling notepaper informing them that the S&S Claim and Kipling Claim had been issued and inviting them to have regard to the contents of those claims in their dealings with the parties involved.
132. On 17 May 2021 a letter was sent on Kipling notepaper to HML in substantially the same terms.
133. On 17 May 2021 Mr Kalia responded to S&S’ email of 10 May 2021 denying involvement in the steps against the Issuers.
134. On 18 May 2021 S&S sent a letter to “Mr Akis Artemiou,” on the basis of an understanding (derived from Mr Watford) that Mr Akis Artemiou was the true identity of Mr Andreou Artemiou. The letter referred to (and enclosed) S&S’s letter of 10 May 2021 to Andreou Artemiou (see above), noting the various steps taken in the name of Andreou Artemiou since 10 May 2021 in breach of the Injunction, which was enclosed, and noting the penal notice. The letter asked for various confirmations and information from Mr Akis Artemiou.
135. On 19 May 2021 S&S sent a letter to the Chief Magistrate’s Office (copying Kipling and all of the magistrates courts in England) which noted it of the background and the Injunction, and requested that the Magistrates Court office notify S&S if any information had been laid or application made against Mr Barbour and the three other individuals by any private prosecutor and of the outcome and, if so, asking that they consider that application alongside the contents of S&S’s letter. S&S sent a copy to Mr Artemiou by email.

136. On 20 May 2021 S&S sent a letter to Mr Hussain (by email), Mr Akis Artemiou (by post to Firs Park Avenue and by email to Andreou Artemiou's e-mail address) and Kipling by post to its registered office at the Paul Street address (although, as before, it was returned to sender), as well as by email to Andreou Artemiou. The letter noted Kipling's statement of 14 May 2021 that it had re-submitted the private prosecution application against Mr Barbour and others in what it considered to be the correct format; said that any allegations of criminal misconduct against those individuals were untrue and vexatious; and asked them to withdraw those allegations and undertake not to make, repeat or refer to them, nor to seek to make contact with those individuals at their homes or in their personal capacities.
137. On 21 May 2021 S&S received a letter from Kipling signed by Andreou Artemiou, in which Mr Artemiou stated that "we have no knowledge of or dealings with a purported individual (if he exists) by the name of Akis Artemiou purportedly of ... Firs Park Avenue ... and it is not clear why you are copying our Andreou Artemiou under his name or stating (wrongly) that Akis Artemiou is an alias of Andreou Artemiou without any evidence to corroborate or support your contention". The letter added: "we are unsure as to why you are copying in Rizwan Hussain to this chain of correspondence. Your "clients" (whomever they may be) "positions" with respect to him are a matter for him and him alone and not for us to be involved with." The letter also stated that a copy had been "provided to the Solicitors Regulation Authority for information purposes only and in respect of their investigations in relation to" Ms Hunter-Yeats and Mr Siddiqui.
138. I note here that the denial of knowledge and dealings with "Akis" Artemiou and the Firs Park Avenue address in this letter was false and misleading. Artemakis Artemiou is the name of the individual who attended at a hearing before me on 19 November 2021 on behalf of BMF Assets. He claimed at first to be Andreou Artemiou, but during the hearing his passport was produced which showed him to be Artemakis Artemiou (see my judgment of 19 November 2021). He also uses the name Akis Artemiou on his own Facebook profile. He has also given his name as Akis and Artemakis on Companies House filings for another company, Global Communications Limited and the address given there is the same house in Firs Park Avenue, London N21. I shall return to this evidence further below.
139. On 21 May 2021 CMS sent a letter to Akis Artemiou (by hand at the Firs Park Avenue address and by email to Andreou Artemiou and copying Mr Hussain by email), noting that Mr Watford had recently provided information to S&S. This included information about Mr Artemiou's use of an alias. The letter said that Kipling had no standing to bring the S&S Claim. The letter also asked questions about "Charles Taylor", whose signature was on the Claim Form for the S&S Claim, noting that S&S, Mr Siddiqui and Ms Hunter-Yeats intended to apply to strike out those proceedings, and asking for various confirmations by 24 May 2021.
140. On 24 May 2021 three letters, stated to be on behalf of BMF5, 6 and 7, were received by HML. These letters referred to Kipling's letters to HML of 19 May 2021 (although HML had not actually received such letters); and stated that if HML did not cure its alleged breaches by 5pm "UKT" on 28 May 2021, the "Issuers" (i.e. Mr Artemiou) intended to take remedial action and that they estimated their loss to be £7 million each; stated that the 19 May 2021 letter had requested that HML terminate and cease all use of the old collection accounts with Barclays and procure that all payments be credited

to a new collection account; and stated that a Standby Special Servicer had been appointed to assume HML's functions.

141. Also on 24 May 2021 Mr Jones and HML received letters from Mr Artemiou (purportedly on behalf of BMF4 and BMF6), referring to Mr Artemiou's letters to HML of 24 May 2021. These threatened legal action against Mr Jones personally.
142. On 25 May 2021 BMF3 and the Issuers (acting on the authority of the Sanne Directors) filed a Notice of Discontinuance in the Barclays Claim, accompanied by a letter to the court recording that the Notice was filed without prejudice to the fact that the claim had been issued without the claimants' authority.
143. On 27 May 2021 S&S sent a letter to Allen & Overy LLP ("A&O"), the solicitors for BNY, noting the steps taken since 30 March 2021 and, in particular, that Lark was holding itself out as an Instrumentholder of each of the Issuers. BNY's response on 28 May 2021, via email from A&O, confirmed "we have received nothing that would constitute a proof of holding in the normal course of business of the Trustee and as such we don't consider Lark as a holder at this time".
144. On 31 May 2021 Particulars of Claim were signed in the Barclays Claim, purportedly on behalf of the Issuers and BMF3, with a statement of truth signed in the name of "Charles Hewitt".
145. On 1 June 2021 a claim form was issued in the HML Claim, with Claim Number CL-2021-000344, signed in the name of "Oliver Taylor" purportedly on behalf of the Issuers, against HML and Mr Jones seeking damages for, among other things, breach of contract. Mr Taylor is stated on the face of the Claim Form to be a director of each of BMF3, the Issuers, BMFH and Kipling. The mobile number given on the claim form is the same as that given earlier by Mr Artemiou. The address for service of documents is 86-90 Paul Street and the email is legal@businessmortgagefinance.com. The claim form contains the distinctive usage "in the alternate".
146. On 1 June 2021 another claim ("the CLS Claim") was issued by the Court, in the name of Mr Jason Fung against Computershare, Mr Jones and Mr Sarkar. Mr Fung claims to have interests in securities issued by the Issuers. The 86-90 Paul Street address is given for service of documents. The wording at paragraphs 3 to 5 of the Claim Form in the CLS Claim is identical to that in paragraphs 2 to 4 of the Claim Form in the HML Claim (which was issued on the same day). Each paragraph of the Claim Form in the CLS Claim starts with the grammatical error "the Claimant seek".
147. On 1 June 2021 CMS and S&S received a letter from the Head of Legal and Professional Services, Ms Sian Jones, at HM Courts & Tribunal Service stating that Kipling had submitted two applications to bring a private prosecution, in London, on 4 and 6 April 2021 (against Mr Barbour and others, and Mr Siddiqui and Ms Hunter-Yeats, respectively). That letter noted that Ms Jones had asked all legal advisers, court associates and magistrates' courts administrative staff to direct any correspondence on the subject to her office and that she had written to Kipling to advise them that all prosecutions should be directed through that office.
148. On 3 June 2021 Barclays and their solicitors received a letter in the name of Mr Andreou Artemiou, on Mr Artemiou's headed notepaper, purportedly in the names of the Issuers.

This letter said that the Notices of Discontinuance for the Barclays Claim had been filed without authority. The letter enclosed a copy of the Particulars of Claim in the Barclays Claim.

149. On 4 June 2021 S&S wrote to the Commercial Court confirming that the Particulars of Claim in the Barclays Claim were stated to be in the names of BMF3 and the Issuers but were served without their authority, knowledge or consent; that the Notice of Discontinuance should remain in force; and that they believed the Barclays Claim, the Particulars of Claim and the steps purportedly being taken to overturn the Notice of Discontinuance formed part of the wider long-running campaign against the Issuers.
150. On 14 June 2021 CMS wrote three letters. Two of these were to the courts regarding Kipling's attempts to launch private prosecutions against CMS' clients; the third was to Akis Artemiou (copying Mr Hussain), requesting confirmation from them that they and Kipling would comply with the Court's direction of 1 June 2021 and also immediately notify CMS of any such further attempts at prosecutions.
151. Later on 14 June 2021 Kipling responded to the letter of earlier that day objecting to CMS having written to Akis Artemiou (rather than Kipling) and having copied Mr Hussain. Kipling's letter also stated that it was yet to receive a response or determination of the "pending applications for summons and warrants of arrest" against Mr Siddiqui, Mr Riddiford and Ms Hunter-Yeats.
152. On 15 June 2021 S&S (on behalf of CLS, Mr Jones and Mr Sarkar) sent a letter to Mr Fung (by email to his email address and by courier to the Paul Street address, both provided for him on the Claim Form), sending him a copy of the Injunction and asking for evidence of his alleged interest in the Issuers' securities and various other confirmations, noting that it was the defendants' present intention to apply to strike out the CLS Claim. No response has been received to this letter.
153. On 15 June 2021 S&S wrote to A&O asking whether Mr Fung had provided BNY with any relevant current position statement taken from a recognised clearing system in relation to any Instruments issued by any of the Issuers, and/or whether BNY was satisfied that Mr Fung is an Instrumentholder of any of the Issuers. A&O responded on 16 June 2021 to confirm that no one in the Trustee or Agency teams working on the BMF deals had received any communications from Mr Fung.
154. As already noted, on 18 June 2021 Particulars of Claim in the Second Barclays Claim were settled in the name of Andreou Artemiou, the statement of truth signed in that name as claimant.
155. On 18 June 2021 Particulars of Claim in the S&S Claim were settled in the names of BMF3, the Issuers, BMFH and Kipling, the statement of truth signed "Oliver Taylor" (purportedly as director of each of the Claimants). These were sent to S&S, Mr Siddiqui and Ms Hunter-Yeats by email from Mr Artemiou on 21 June 2021.
156. As already mentioned another company associated with Mr Artemiou, BMF Assets, in November 2021 applied for an injunction seeking to prevent the Issuers from spending money on (inter alia) the committal application. I found on 19 November 2021 that there was no serious issue to be tried and for that and other reasons dismissed the

application. I also certified it to be totally without merit. The judgment is reported at [2021] EWHC 3306 (Ch).

157. By another judgment of 26 January 2021 I decided that the various claims brought in the names of the Issuers, BMF3 and BMFH and summarised above had been brought without authority. I also decided that those claims and the others summarised above disclosed no realistic claims or lacked any real prospects of success. I also declared again that the true directors of the BMF companies were Ms Bidel and Mr Speight and that the purported sale to Highbury of the shares in the Issuers had been without authority and was a nullity. I certified that all of the various claims were totally without merit. The judgment is at [2022] EWHC 140 (Ch). In the same judgment I dismissed an application by BMF Assets for my recusal, including from these committal proceedings.

**The allegation that Mr Hussain took the various steps in the relevant period or caused or procured others to take those steps**

158. As is clear from the above chronology, none of the steps summarised above and relied on by the claimants as constituting breaches of the Injunction were taken in the name of Mr Hussain. The claimants' case is that Mr Hussain took the relevant steps (alone or in combination with others) or that he caused or procured others to take those steps. I turn in this section to address this part of the claimants' case.
159. The evidence is almost all circumstantial. As explained above, such evidence is to be considered cumulatively. I shall necessarily, for the purposes of exposition, address the various features of the case one at a time before asking whether, taking them together, the claimants have satisfied me to the criminal standard that Mr Hussain has taken the relevant steps, or caused or procured others to take them.
160. I should start this section by saying something more about Mr Artemiou, who features throughout the history since 30 March 2021. There is unchallenged hearsay evidence (deriving from Mr Watford, an old schoolfriend) that Mr Artemiou was sent to prison for two years for defrauding a company and was released in January 2021. He was first imprisoned at HMP Pentonville and then moved to a prison which Mr Watford believes was HMP Hollesley Bay. Mr Artemiou told Mr Watford that when in prison he met someone who offered him work for £100,000 a year. Mr Watford also said that Mr Artemiou was known as Akis and did not recognise the name Andreou Artemiou. After his release from prison in January 2021 Akis Artemiou stayed with Mr Watford at Mr Watford's address. Mr Watford said that Mr Artemiou used to have a company called Global Communications Limited and that he was "into computers".
161. There is documentary evidence showing Mr Artemiou using the names "Akis Artemi Artemiou" and "Artemakis Artemiou" and (historically) giving 31 Firs Park Avenue, London N21 as his address. Filings for Companies House for Global Communications Ltd record him as a director in both these names (though not in the name Andreou Artemiou). The filings use his familiar signature and give his date of birth so there can be no doubt that he made them.
162. I have already said that the Kipling letter of 21 May 2021 to S&S denying any knowledge and dealings with "Akis" Artemiou was a falsehood.



163. I should also record that when S&S first spoke to Mr Watford he said that Mr Artemiou had not mentioned the name “Hussain”. Mr Watford later changed his evidence and said that Mr Artemiou had mentioned Mr Hussain as the person who he had met in prison and who offered to pay him. Mr Watford produced a photo which he said Mr Artemiou had given him and which appears to show Mr Hussain. Given the change in Mr Watford’s story I do not give any significant weight to this part of his evidence.
164. There is nothing to suggest that Mr Artemiou has any background, training or experience in sophisticated financial instruments or structures, still less in securitisations.
165. I now turn to the various strands of evidence by which the claimants seek to connect Mr Hussain to the events between 7 April 2021 and 18 June 2021.
166. The first strand is based on the email of 21 April 2021, already set out above. They say that this shows that Mr Hussain has been involved in the steps taken in the name of Kipling and others since 30 March 2021. Though he says that he was helping with an investigation as a witness, he nonetheless admits involvement with Kipling.
167. Moreover, Kipling’s letter of 7 April 2021 referred to the contents of, and quoted from the letter which had been sent by S&S to Mr Hussain by email earlier that day. This shows there must have been contact between Mr Hussain and whoever wrote the Kipling letter of 7 April. That letter described Mr Hussain as an “individual whom, in the circumstances, and given their historical relationships with the BMF Companies, you know to be assisting in and are witnesses or potential witnesses in respect of one or more of the criminal proceedings against the defendants”.
168. I agree with the claimants that these documents constitute direct evidence of a link between Mr Hussain and Kipling/Mr Artemiou. It undermines the suggestion made in some of Kipling’s letters that Mr Hussain had nothing to do with Kipling or Mr Artemiou.
169. The next strand of evidence linking Mr Hussain to the conduct said to constitute a breach of the Injunction is the use of various email domain names.
170. The first of these is “legal@businessmortgagefinance.com”.
171. The claim forms in the Barclays Claim, the S&S Claim, the Kipling Claim and the HML Claim all include the legal@businessmortgagefinance.com address.
172. This email address is also linked to the events of 2020. It was referred to in a letter dated 28 August 2020 on BMF6 headed paper and stated to be signed by Jai Singh, addressed to Gordon Wilson at CW Consulting in the Isle of Man. That letter was sent by email from an email address for Ms Elizabeth Kirby, copied to Mr Hussain (among others) in the context of the liquidation of Greencoat Investments Limited (“GIL”) and Greencoat Holdings Limited (“GHL”), of which Mr Wilson was liquidator. GIL and GHL were companies in which Mr Hussain had an interest.
173. There is clear evidence that Mr Hussain was taking steps concerning BMF6 by August 2020. There are purported resolutions dated 20 May 2020 recording him as a director of BMF6. The resolutions state that meetings were held at Riverlight Quay, London

SW11 8BF. The evidence shows that Mr Hussain had a flat in that building at the time. Mr Oyekoya's signature also appears on the document.

174. It is also to be noted that in the 24 August 2020 Claim Form in a claim by Mr Singh concerning the Issuers (CL-2020-000542), which was struck out by Birss J in September 2020, the '@businessmortgagefinance.com' domain name was given by Mr Singh. That was one of a series of claims made in 2020 which were struck out by Birss J. In July and September 2020 Mr Hussain was involved in at least some of them.
175. Turning to more recent events, an email read receipt was received by a member of the S&S team on 13 July 2021, from Mr Hussain at his "@clifden" address in response to an email sent by S&S to "legal@businessmortgagefinance.com", and copied to "andreou.artemiou@businessmortgagefinance.com".
176. This shows that there was an auto-forward link between the "@businessmortgagefinance.com" email address and the "@clifden" email of Mr Hussain.
177. There are also delivery receipts from a postmaster@clifden.group email address in response to emails sent to andreou.artemiou@businessmortgagefinance.com and legal@businessmortgagefinance.com.
178. The 30 March 2021 RNS announcements in respect of the BMF securitisations included, at the bottom of each document, a reference to the email address "investors@businessmortgagefinance.com".
179. As already noted, there is no evidence of Kipling or Mr Artemiou having any involvement in the affairs of the BMF companies before 30 March 2021. There is no explanation of how they came to have access to the domain name.
180. I find that the use of the same @businessmortgagefinance.com domain name in 2020 and again in 2021 and the fact that Mr Hussain had an automatic link from emails sent to this domain name to his own email addresses in July 2021 is powerful evidence that Mr Hussain was closely involved in the steps taken in the names of Mr Artemiou/Kipling in 2021. Mr Hussain has not provided any other explanation for continued use of the domain by Kipling/Mr Artemiou, or for his continued access to it.
181. The next strand of evidence is that a number of the communications purportedly from Kipling and Mr Andreou Artemiou have been sent to email addresses which are not publicly available so far as the Issuers can ascertain, but which were used in correspondence with Mr Kalia (one of Mr Hussain's associates) at his Clifden Group email address in August 2020. These include addresses for individuals at Barclays and Target. As for Barclays, there were communications with individuals, including a Ms Shope in 2020 on email threads to which Mr Hussain was party. These same addresses, which are not in the public domain, were used in the communications in the name of Mr Artemiou in 2021.
182. As for Target, Mr Artemiou sent the Termination Notices of 30 March 2021 to an email address which had been used by Mr Kalia (one of Mr Hussain's associates) in communications with Target in August 2020. The claimants have given evidence that this is not a publicly available address.

183. The next point relied on by the claimants is that the author of the post-March 2021 communications must have had a good grasp the history of the earlier litigation with the BMF companies; and that Kipling/Mr Artemiou, the apparent authors of the documents, had no such understanding. I consider there is force in this point. For instance the 7 April 2021 letter from Kipling to S&S (written shortly after S&S had emailed a letter enclosing the Injunction to Mr Hussain) referred to historical events, including four sets of proceedings taken in 2019 and 2020, including the dates of issue and nature of the relief claimed in the proceedings. It noted the amount said to have been spent by the BMF companies in relation to those proceedings (£3.1m). Mr Artemiou had had no known dealings with the BMF companies before March 2021 and could not have known this information. It is right to record that the letter said that Mr Hussain and Mr Watford had been assisting as witnesses or potential witnesses “given their historical relationships with the BMF Companies”. But that statement was plainly untrue at least as regards Mr Watford, who has explained in evidence that he was a lorry driver and knows nothing about the BMF companies. As to Mr Hussain, it is overwhelmingly more likely that rather than being “a witness” he was the author of the letter. As explained, I consider it inconceivable that Mr Artemiou, who has no known financial training or experience, could have written this letter (or other similar letters) concerning the complex BMF securitisation structures or the long history of disputes about them.
184. More generally there is no credible explanation of why Kipling, which had no track-record or experience as a financial adviser or financial service provider, should spontaneously have become involved in the BMF securitisations or start making serious allegations of criminal wrongdoing (repeated in this letter and elsewhere) against Sanne.
185. In my judgment these points call for an explanation and none has been offered.
186. The next strand of evidence concerns the similarities between the two applications for private prosecutions in the Westminster Magistrates Court, i.e. (i) Mr Hussain’s 23 March 2021 application for a private prosecution against Mr Jai Singh Sodhi and (ii) Kipling’s 1 April 2021 application against Mr Barbour and others. Specifically, the opening sections of the two applications start with the same phraseology and paragraph formatting, with some minor differences; and the final sections of each application (containing the Statement of Applicant) contain the same four sub-paragraphs, with some minor variations to formatting and language.
187. S&S have produced a side-by-side comparison of the applications which shows a number of common statements appearing in the two documents. The documents also contain common grammatical errors or quirks. The applications both seek relief “in the alternate,” a distinctive shared verbal tick (which also appears elsewhere in the documentary record). The two documents also have date/name statements and signature blocks with strikingly similar designs. There is an identical grammatical error on the last page (“the allegation [sic] contained in this application are substantially true”).
188. The correspondences of wording and lay-out are too many and too specific to be coincidental. There are some differences of form and content between the two documents. Nonetheless there is to my mind an overwhelming probability that they have been drafted by the same person and/or that one has been used as a template for the other. This calls for explanation. No account has been advanced by Mr Hussain to

explain how his (earlier) private prosecution application could have found its way to Mr Artemiou or Kipling if they were acting independently (as has been suggested).

189. There is also the obvious question of how Kipling (which had only been incorporated on 23 March 2021) or Mr Artemiou (who had had no previous dealings with BMF) could have had any interest in or even pretended basis for alleging criminal conduct against the Sanne officers. I have already addressed this point above. It is no answer to say (as some of the documents do) that Mr Hussain was acting as a witness and assisting Kipling in its investigations. It does not explain why Kipling or Mr Artemiou would spontaneously have initiated such investigations, relating to much earlier periods.
190. In my judgment the overwhelming inference is that Mr Hussain drafted Kipling's application for a private prosecution.
191. The claimants rely next on textual and presentational similarities between the two sets of termination notices served in respect of the Special Servicers, being those (i) dated 30 March 2021 in the names Mr Artemiou and Centrum regarding BMF, and (ii) dated 15 April 2021 from Mr Hussain himself and Digital Asset Partners Limited ("DAPL") (or and/or Highbury) regarding Clavis. These have the following features:
  - i) The two sets of notices have very similar format, use the same address, are very similar linguistically (using numerous identical phrases) and use many of the same headings.
  - ii) The signature given for Centrum in the first notice is identical to that given for Highbury in the second (indeed they appear to have been digitally generated as they exactly match). As already explained, I am satisfied that Centrum's name has been used without authority, so someone has forged its signature using the same signature as that given for Highbury.
  - iii) The signature blocks are identical and the person who has said to have witnessed the signature in each case uses Ajeltake Island, Majuro, Marshall Islands as his address.
192. I agree with the claimants that these similarities lead to the overwhelming inference that the same person was responsible for both. For reasons already given it is also overwhelmingly probable that that person was Mr Hussain rather than Mr Artemiou.
193. The next strand of evidence relied on by the claimants is the similarity between (i) the letters written on the headed paper of Mr Artemiou/Kipling on the one hand, and (ii) letters of Mr Hussain's associates from 2020 and the letters from Mr Hussain in 2021 concerning the Clavis securitisation on the other.
194. There are numerous clear similarities of format, style and presentation of the letters. For instance letters in the names of Mr Oyekoya and Mr Kalia in 2020 have the same distinctive way of setting out the name on the notepaper (lower case, using the same font and the same grey shading); the same way of addressing the addressee (defining them as "you" or "yours"), the same phrases and similar signature blocks.
195. S&S have produced a side side-by-side comparison of a letter from Mr Artemiou to Sanne dated 30 March 2021; and one from Mr Hussain (in his own name) to Intertrust

dated 16 April 2021 (in the context of Mr Hussain's steps taken in respect of another securitisation structure called Clavis – which has also been the subject of proceedings in the Business and Property Courts).

196. The letters are strikingly similar. The name on the letter paper is distinctive in the ways just listed (in lower case, same font, same grey shading). The format of the addressees is the same. There are striking similarities of content. The lay-out of the signature block and formatting of the addressees is similar.
197. The overwhelming inference is that they have been drafted by the same person. I have already explained that it is not seriously credible that Mr Artemiou (who has no experience or training in finance) could have been the author of these communications, which require a sophisticated understanding of financial instruments. The overwhelming inference is that Mr Hussain was responsible for both letters.
198. S&S have produced a further side-by-side comparison of a letter from Kipling (purportedly on behalf of BMF5) to HML dated 24 May 2021; and one from Mr Hussain (stated to be on behalf of Clavis) to Bluestone Mortgages Limited dated 16 April 2021. There are again striking similarities between the letters of the same kinds as listed above. There is a very significant overlap in the content, and much of the same language is used, word-for-word. Again there is a very powerful inference that the same person was responsible for both letters, and for reasons already given that that person was Mr Hussain rather than Mr Artemiou.
199. S&S have marked up three further letters: Mr Artemiou's 30 March 2021 letter to Sanne and two letters that Mr Hussain sent to the Directors/Sanne on 9 and 22 June 2020 in connection with the earlier steps against the Issuers. As well as strong and striking resemblances of formatting and lay out, there are a number of common phrases in the letters. While some of the points marked up are less telling than others, it is striking that the letters contain the following common phrasing: "Capitalised terms used but not otherwise defined in this letter shall have the meanings ascribed to them the Master Definitions Schedule for Business Mortgagee Finance 6 plc dated 18 May 2007 and relating to the issue of Notes and MERCs". As well as being worded exactly the same, they each contain the same error of omitting the word "in" before "the Master Definitions Schedule".
200. Taking these points together the irresistible inference is that the author of the letter of 30 March 2021 has simply copied and pasted this phrase from Mr Hussain's earlier letters and that the author was Mr Hussain.
201. S&S have also set out a side-by-side comparison of the headers and addressee blocks from the tops of the letter in the name of Mr Artemiou to S&S dated 6 April 2021 and a letter from Mr Hussain to BCLP (the solicitors for Clavis) dated 29 April 2021. This shows that:
  - i) The notepaper heading (giving Mr Hussain's or Mr Artemiou's name) is set out in (a) lower case, (b) in the same distinctive font, and (c) is shaded grey.
  - ii) Indeed this header format (name of sender in lower case and using the same font and grey shading) has been used in letters from Mr Hussain, Mr Oyekoya, Mr Kalia, GIL, GHL, Callon Capital Management Limited ("Callon Capital"),

Callon Shared Equity Limited (“CSEL”), Kipling and Lark from 15 March 2019 to date.

- iii) The “strictly private and confidential” reference is in bold and capitals.
  - iv) The addressee’s name is in capitals and then defined as “you”, “your”. This linguistic mannerism – “you”, “your” – is characteristic of many of Mr Hussain’s letters.
  - v) The human addressees are listed both by name and their e-mail address (set out next to each name and in parentheses).
  - vi) The method of delivery is shown in capitals and bold.
  - vii) The address of the sender is given at the bottom of the page, again in a distinctive grey shade.
202. These are to my mind striking similarities which lead to the irresistible inference that the letters derive from the same source. For the reasons already given I do not consider it even remotely conceivable that Mr Artemiou could have written these letters given their complex and sophisticated financial contents.
203. I have noted that some correspondence emanating from Mr Hussain or his associates earlier in the history has adopted markedly different address formats in terms of font and style. But the letters written in 2021 all appear to have these distinctive features and the similarities are many and striking.
204. Another comparison has been carried out between two letters, both in the context of the (attempted) private prosecutions, which contain similar letter references. These are Kipling’s letter to Westminster Magistrates Court dated 4 April 2021 and a letter from Ms Annabel Watson on behalf of DAPL to Ms Whitaker (an individual at Intertrust, part of the Clavis securitisation structure) dated 21 May 2021. Mr Hussain is a director of DAPL and there is no suggestion anywhere that Mr Artemiou has any connection with DAPL. There are several similarities between the references in the two letters, the most telling being the use of the letters “CRIM” in both. This gives rise to another powerful inference that the same person is responsible for both letters. It is not credible that that person is Mr Artemiou, who has had no previous dealings with the Sanne companies and who has no track record in finance. (As set out below, on 21 May 2021 an email was sent in the name of Annabel Watson from Preston, where Mr Hussain was living for at least some of the time in 2021.)
205. A number of the letters from Mr Artemiou and Mr Hussain also have identically formatted footers. See for instance Mr Artemiou’s letter to Sanne dated 30 March 2021, Mr Hussain’s letter to Clavis dated 16 April 2021, and Mr Hussain’s letter to BCLP of 29 April 2021.
206. Another strand of evidence is one I have already touched on: the appearance of distinctive stylistic quirks which run through the documents. Many documents contain the solecism “in the alternate” for the more usual “in the alternative”. This unusual phrase is found in documents containing the steps taken against the BMF securitisations in 2020, from the steps listed above commencing on 30 March 2021, and in 2021 letters

and other documents in Mr Hussain's own name. Some examples are (i) the private prosecution application in Mr Hussain's own name against Mr Singh dated 23 March 2021; (ii) the private prosecution application in the name of Kipling dated 1 April 2021; (iii) a letter in Mr Hussain's own name of 9 July 2021 concerning Clavis; (iv) a witness statement in a recusal application made in the name of Mr Artemiou on 17 January 2022; (v) the claim form in the Barclays Claim; (vi) the claim form in the HML Claim; (vii) the claim form in the CSL Claim; (viii) the claim form in the Second Barclays Claim; (ix) a letter in the name of Mr Oyekoya to the Court's listing offices of 12 July 2020; and (x) an application notice in the name of Annabel Watson in the Clavis proceedings dated 19 July 2021.

207. This again leads to a very powerful inference that the documents have a common author or source.
208. The next strand of evidence relied on by the claimants concerns the IP addresses of various emails.
209. The claimants have used a tool from a website at [www.opentracker.net](http://www.opentracker.net) for tracing the approximate location of email IP addresses. S&S have used the tool to check the sender's IP address for a number of the emails appearing on their face to be sent by Mr Artemiou (either on his own behalf, on behalf of Kipling or purportedly on behalf of the Issuers and/or BMFH) since 30 March 2021. Using the tool gives the approximate location as Moor Park, Preston, Lancs. The emails are Mr Artemiou's email to Sanne dated 30 March 2021; Mr Artemiou's email to Target dated 30 March 2021 enclosing the Target Termination Notices; Kipling's email to S&S dated 6 April 2021; Kipling's email to S&S dated 7 April 2021; Kipling's email to Barclays dated 9 April 2021; and Kipling's email to Barclays dated 19 April 2021. Two other similar online IP trackers have been used by a member of the S&S team in relation to Mr Artemiou's email to Sanne of 30 March 2021 ([www.ip-tracker.org](http://www.ip-tracker.org) and [www.whatismyipaddress.com](http://www.whatismyipaddress.com)), and these have produced similar results.
210. Mr Hussain has known connections with Preston. A number of members of his family, including his parents, a brother, and a sister live there. In his letter of 13 April 2021 to Westminster Magistrates Court, Mr Hussain gave a residential address in Kingsmuir Avenue, Preston, Lancashire. There is evidence from a process server of a conversation he had with Mr Hussain on the landline to Fishwick Parade (the parents' address) on 7 July 2021. The claimants have more recently carried out surveillance using G3 and Mr Hussain has been seen at the Fishwick Parade address many times since November 2021.
211. The Kingsmuir Avenue address is about 1.5 miles from the Moor Park location. The Moor Park location is also about 1.5 miles from the Fishwick Parade address.
212. There are no known links between Mr Artemiou and Preston. The evidence shows that Mr Artemiou lives in Edmonton, North London. Moreover there is unchallenged evidence from a process server that he served documents on Mr Artemiou at Mr Watford's home address in Edmonton on 7 April 2021, the date of one of the emails, which was sent in Kipling's name from an IP address in Preston.
213. There is also evidence that emails were received by Mr Hussain in Preston using his own name. There is a file download receipt dated 16 June 2021 that shows that Mr

Hussain, using his personal email address, downloaded a zip file which had been served on him by BCLP in relation to the Clavis case. The download location is Preston.

214. Mr Hussain also sent emails from Preston in his own name and that of Annabel Watson during the relevant period. Opentracker has been used on (a) an email from Mr Hussain, from 'rizwan.hussain@clifden.group', to BCLP and Intertrust dated 29 April 2021 attaching a letter on Mr Hussain's personal headed notepaper dated 16 April 2021; and an email from an 'annabel.watson@clifden.group' on behalf of DAPL to Intertrust, dated 21 May 2021. Opentracker gave Moor Park Preston as the approximate location for both emails.
215. There is to my mind a formidable inference that Mr Hussain, who was in Preston at the relevant times, was sending emails apparently sent by Mr Artemiou (in the name of Mr Artemiou or Kipling or the Issuers) and had control of the relevant email accounts.
216. The next strand of evidence concerns the contents of emails footers.
217. The evidence establishes that email footers are not typically automatically created. The account holder creates a template which is then generally used as a default. There are striking similarities between the email footers appearing in the various emails. The footer used in the Artemiou email of 30 March 2021 (which runs to 8 lines long when printed) is identical to the footer used the Annabel Watson email of 21 May 2021; and identical, up until the final sentence, to Mr Hussain's email of 29 April 2021.
218. I do not consider that this point carries as much weight as some of the earlier points on its own. The wording of many email footers is reasonably similar and, as noted above, there are some differences between the email footers in the present case. Nonetheless it is to be given some weight, along with the other features of the evidence.
219. The next feature of the evidence is the idiosyncratic use of "UKT" as an abbreviation for UK time. An internet search carried out by the claimants shows that this is not a standard or recognised abbreviation. It appears in the communications sent in the name of or over the signature of Mr Artemiou/Kipling (e.g. the letters of 19 April 2021, 21 April 2021, 24 May 2021). It also appears often in the earlier communications sent by Mr Hussain and his associates in 2020: see e.g. a letter of 22 June 2020 from Mr Hussain in his own name to the Issuers' directors; a letter from Clifden IOM No.1 Limited to Sanne dated 10 February 2019; a letter from Roundstone to S&S dated 22 August 2019; a letter from Callon Capital to Target dated 11 August 2020; and a letter from GHIL dated 3 July 2019. The senders of those letters were Mr Hussain himself or companies associated with him.
220. I consider that the repetition of this distinctive and unusual coinage is another weighty indicator that Mr Hussain was the author of the various communications sent out in the name of Mr Artemiou.
221. The next feature of the evidence highlighted by the claimants is the use of similar signatures on various communications and letters. I have already commented on the identical and distinctive signature appearing on a notice of termination concerning BMF, purportedly for Centrum (but without its authority or knowledge), and on a similar notice concerning Clavis, on behalf of Highbury, a company of which Mr Hussain is or has been a director. This is a compelling point on its own. A very similar



signature has also been used for “Annabel Watson” (of Digital Assets Partners, of which Mr Hussain is a director), in a statement of truth dated 19 July 2021 in the Clavis proceedings.

222. A number of communications have also been signed using a distinctive signature which resembles a tilted or oblique alpha. This has been used from time to time by Kipling, and by companies associated with Mr Hussain, namely, Clifden Management Limited, Clifden IOM No.1 Limited; GIL; GHL; Callon Capital; and CSEL. When Mr Kalia was asked about the signature used by Kipling he said that he had seen it used to represent people related to Clifden. It has also been used next to the name “Elizabeth Kirby” in an acknowledgement of service in the 2020 proceedings brought by the Issuers. As mentioned above it has also been used on a letter supposedly from Mr Artemiou of 14 May 2021.
223. It is also notable that the signatures of Centrum, Lark and Mr Artemiou have been purportedly witnessed by individuals with generic job titles and common names who have no identifiable internet presence. Examples are Lark’s signature on a letter dated 30 March 2021, notifying Sanne of its removal as Share Trustee. This signature is said to have been witnessed by “Sarah Pugh”, “Executive Assistant”, “13 Belgrave Rd, London SW1V 1RB”. The address given is for a London hotel. Mr Artemiou’s signature on 30 March 2021 in the Target Termination Notices was also purportedly witnessed by the same “Sarah Pugh”, with the same details given. Centrum’s signature on the termination notice was purportedly witnessed by “Michael Wilson”, “Senior Executive”, “Ajeltake Island, Majuro, The Marshall Islands” (a generic address, sometimes used by Mr Hussain). Mr Hussain’s own notice of termination dated 15 April 2021 in the Clavis context is witnessed by “Stuart Sherwood”, “Executive” (in the same font as for “Sarah Pugh”).
224. The next strand of evidence relied on by the claimants is the resemblance between the RNS announcements. As already explained, on 30 March 2021 there was an RNS announcement of the various steps supposedly taken by Kipling, Lark and others concerning the BMF companies. S&S have carried out a side-by-side comparison of this and an RNS announcement made by Mr Hussain in his own name dated 26 April 2021 about the Clavis structures. There are numerous points of overlap, with at least seven identical phrases appearing in these two documents. The overwhelming inference again is that they were produced by the same author. For reasons already given I do not consider it realistically credible that Mr Artemiou could have produced the RNS announcements. The similarity between the documents is another robust foundation for concluding that Mr Hussain was the author of the 30 March 2021 RNS notice regarding the BMF structures.
225. The claimants next submit that the steps taken in the name of Mr Artemiou, Kipling and others in 2021 are remarkably similar to the steps taken against or in respect of the BMF structures by Mr Hussain and his associates in 2020; and to the steps taken against the Clavis structures by Mr Hussain in 2021. The claimants identify several types of conduct.
226. First, there is the way in which an entity (usually an offshore entity) or individual has been held out as having a beneficial interest in notes issued by the Issuers. As to this, the letter in the name of Mr Artemiou to Sanne dated 30 March 2021 stated that Lark is an Instrumentholder with a beneficial interest in more than 50% of the aggregate

Notes outstanding in each Issuer. Lark contended that in that capacity it was able to pass the Written Instrumentholder Resolution transferring the share capital of BMFH to Lark. No evidence has been provided, despite requests in correspondence from S&S, to confirm that Lark holds any interest in any Notes of any Issuer - Lark has stated however that a non-disclosure agreement would need to be signed for this purpose. (As already explained, A&O on behalf of the Trustee has confirmed that the Trustee has seen no evidence of an interest in Notes on the part of Lark.)

227. There have been at least three other occasions when entities or individuals associated with Mr Hussain have been held out as being Noteholders or Instrumentholders of these Issuers (or as an attorney of the Noteholders or Instrumentholders), with this being the starting point for various steps to seek to assume control of the securitisation structures.
228. The first occasion is that on 20 June 2019, GIL sent BNY a purported “Direction/ Extraordinary Resolution” of BMF6 Noteholders of the same date. GIL claimed (without any evidence) to be the beneficial owner of certain Class A Notes of BMF6 and, in that capacity, to be able to pass written resolutions which had the effect of removing and replacing the real trustee of BMF6 (BNY). Mr Hussain was intimately involved with this set of steps. Mr Hussain was indeed a director of GIL from 25 January 2018.
229. Mr Hussain also signed board resolutions of GIL and GHL dated 22 January 2019. The liquidator of GIL/GHL concluded that Mr Hussain had been, at all relevant times, the directing mind of GIL and GHL. Attempts by the liquidator to ascertain if GIL actually held an interest in any Notes were met with an assertion in a letter dated 30 March 2020 from an Isle of Man company called Fairhold Investments Limited (“Fairhold”) that GIL’s interest had been transferred to it before GIL’s liquidation.
230. It is convenient here to digress and note an episode which further illuminates the way Mr Hussain has used the email addresses of others in the past. The 30 March 2020 letter to the liquidator was sent by email from (ostensibly) Mr Oyekoya, on behalf of Fairhold, copying Mr Hussain. Mr Wilson, the liquidator, responded to Mr Oyekoya’s email a few minutes later as follows: “Thank you for the letter... Communication from you personally in this matter has, I think, been overdue.” Mr Hussain responded to Mr Wilson, at 16:08, in Mr Oyekoya’s name (signing off with “AOO”), but accidentally used the rizwan.hussain@clifden.group’ address. He said (purporting to be Mr Oyekoya): “I was requested to send the letter by Fairhold... You may send your response letter to myself and my colleagues copied on this email and we will ensure that it is brought to the attention of the relevant parties at FIL”. At 16:09 Mr Hussain (using his own “@clifden.group” email address) sought to recall the message of 16:08. At 16:10 another email was sent from Mr Oyekoya’s email address (“Tayo.Oyekoya@clifden.group”) to Mr Wilson with exactly the same wording as had been in Mr Hussain’s email of 16:08. The liquidator noticed that Mr Hussain had used his own email. He responded, at 16:20, making the point that Mr Hussain was controlling Mr Oyekoya’s emails. Mr Hussain then said: “The email purportedly sent by me was in error as I share the same assistant as Mr Oyekoya who I understand is working remotely and requesting his assistant to send emails on his behalf. She would appear to have mistakenly logged into the wrong mailbox.”
231. I agree with the claimants’ submission that this explanation regarding a supposed “assistant” accidentally logging into the wrong mailbox was inherently highly

improbable. It is far more likely that Mr Hussain was writing the relevant emails but using Mr Oyekoya's address and slipped up.

232. I note that Mr Kalia (on behalf of himself, Mr Oyekoya and Mr Singh) said in his 7 October 2020 email to S&S that Mr Oyekoya “does not himself have access to the email address Tayo.oyekoya@clifden.group, and has never had access to that email address even though he has requested access on numerous occasions.” In a later email to S&S dated 12 October 2020, Mr Kalia, again on behalf of all three men, said, “Internally, we find ourselves having been misled from a personal and corporate perspective...”.
233. I conclude this shows Mr Hussain using the email account in the name of Mr Oyekoya. There are obvious similarities between this and the way the email addresses in the name of Mr Artemiou have been operated in 2021 (a point addressed above regarding the IP addresses and the auto link between the @businessmortgagefinance domain address).
234. Returning to the way parties have asserted an unevidenced beneficial ownership in notes issued by the Issuers, the second illustration is that on 20 November 2019 Mr Oyekoya filed a witness statement in a claim by CSEL against Target, it being asserted at paragraph 25 that CSEL “has a 24.99% beneficial interest in the Notes that Greencoat Investments Limited ("GIL") has a beneficial interest in with respect to [the Issuers]”. Again, no evidence has ever been provided to prove that this holding existed. Mr Hussain was a director of Greencoat.
235. A third example is that on 28 June 2020 Mr Hussain sent a letter (in his own name) to the Issuers' directors. This enclosed a copy of ordinary resolutions for BMF6, stated to have been passed by Noteholders on 22 May 2020 and signed by Mr Oyekoya as an “attorney of the Noteholders”. In the letter of 28 June 2020 Mr Hussain claimed to be the Executive Chairman of the board of directors of each Issuer. The resolution enclosed with that letter purported to appoint Mr Hussain as director of BMF6 and to “confirm” that Mr Oyekoya shall act upon the direction embodied in the resolution but shall not be responsible for doing so “even though there may be a defect in the giving of this direction or the passing of this Resolution...”. No evidence was provided of Mr Oyekoya's standing to represent any Noteholders or Instrumentholders.
236. The same technique has also been used by Mr Hussain more recently in relation to Clavis. On 16 April 2021 Mr Hussain wrote to Intertrust, stating that Highbury was a Noteholder of Clavis. No evidence was given for the assertion, but Mr Hussain offered to provide “suitable evidence of the relevant interests of HIL” subject to the parties signing a non-disclosure agreement.
237. The concept of entering into an NDA was also used, on 30 March 2021, in relation to the interest claimed to be held by Lark in the BMF Notes.
238. I conclude that there are marked parallels between the assertions made by Mr Hussain that various entities had beneficial interests in the notes in 2020 in respect of BMF and in 2021 by Mr Hussain regarding Clavis, on the one hand, and the very similar assertions made on and after 30 March 2021 in the correspondence sent in the names of Mr Artemiou and Kipling, in respect of BMF.
239. A second type of conduct taken in the names of Mr Artemiou/Kipling on the one hand and by Mr Hussain and those associated with him on the other is the purported

replacement of the directors, corporate secretaries and corporate administrators of the various securitisation companies.

240. As already explained, the 30 March 2021 letter in the name of Mr Artemiou to Sanne asserted that new directors of the Issuers and BMFH had been appointed; that Sanne Group Secretaries' role had been terminated and a replacement secretary had been appointed; and that all contractual relations between the Issuers and BMFH and the directors and Sanne Group, Sanne Group Secretaries, Sanne Group Nominees (1) UK Limited and Sanne Trustees Company UK Limited, had been terminated.
241. There have been previous occasions when the Issuers' directors, company secretaries and related parties were purportedly replaced in a similar way.
242. The first occasion was on 27 July 2019 when a "Patrick Anthony FitzSimons" sent a letter to BMF6's directors, stated to be in his capacity as a receiver of BMF6 (having supposedly been appointed as such by GHL and Portfolio Logistics Limited ("PLL") in their stated capacities as trustees. That letter claimed that the roles of the directors and company secretary of BMF6 had been terminated. Also on 27 June 2019, a letter in the name of Mr FitzSimons was sent to Sanne Group, stated to be in his capacity as a receiver of BMF6, terminating Sanne Group's role as corporate administrator. As already explained Mr Hussain was the controller of GHL.
243. The second occasion was in June 2020 when a resolution was purportedly passed by Mr Hussain and others, supposedly as directors of the Issuers and taking various steps in that capacity. One of the steps was a purported BMF6 board resolution (naming Mr Hussain, Mr Singh, Ms Kirby and CSEL as directors present at the meeting), removing the Sanne directors on 23 June 2020 and replacing the company secretary and corporate service provider of the Issuers with Callon Capital. Mr Hussain was appointed as Chairman and signed the minutes. The address on the resolution was the Riverlight Quay building in Battersea where Mr Hussain had a flat.
244. Mr Oyekoya, Mr Kalia, Ms Kirby, Mr Singh and CSEL were subsequently each held out as directors of the various Issuers, including in unauthorised Companies House filings. According to Companies House, Mr Hussain was a director of Callon Capital between 24 November 2015 and 30 January 2019 (when he was made bankrupt) and has again been a director of that company since 26 August 2020.
245. The same technique has also been used recently by Mr Hussain in relation to the Clavis securitisation. In his letter of 16 April 2021 to Intertrust, Mr Hussain purports to have replaced the directors, company secretary and corporate servicer of Clavis and Clavis Options Limited (assuming the role of director himself). Again Companies House filings were made to record these supposed changes.
246. I conclude that this feature of the evidence provides another powerful reason for thinking that Mr Hussain is behind the steps taken in respect of the BMF securitisations on and after 30 March 2021.
247. A third type or aspect of similar conduct is the purported replacement of the trustees in the securitisation structures.

248. As already noted, the 30 March 2021 letter from Mr Artemiou to BNY enclosed documents entitled “written extraordinary resolution” in respect of each Issuer terminating BNY’s role as Trustee and authorising the “Remaining Trustees” (undefined) to give effect to that resolution. The Target Termination Notices dated 30 March 2021 stated that Mr Artemiou and Centrum were Trustees of the Issuers.
249. The purported replacement of the note trustees also occurred in earlier phases in which Mr Hussain was involved.
250. The first occasion is again the June 2019 “Direction/ Extraordinary Resolution” of BMF6 Noteholders, sent by GIL to BNY, in which GIL and PLL were purportedly appointed as “trustees”. There was also a resolution purportedly removing BNY as trustee, leaving PLL and GHG as sole trustees. The same Riverlight Quay address was given and the resolution was signed by Mr Hussain.
251. The second occasion is found in Mr Oyekoya’s letter to the Issuers dated 22 January 2020, in which he asserted that he had “assumed the position of Trustee” in respect of each of the Issuers. This was followed some months later, on 9 June 2020, by a purported board resolution (signed by Mr Hussain and with Mr Hussain appointed as Chairman), purporting to resolve that Mr Oyekoya (to the extent he was found not to have previously been a trustee) and Talisman Granular Holdings Limited (“Talisman”), a Guernsey entity, be appointed as trustees of the Issuers.
252. I find that there are clear and compelling similarities between the 2020 conduct and the 2021 conduct in this regard, and that they provide further powerful evidence for linking Mr Hussain to the 2021 events.
253. The fourth type of conduct relied on by the claimants is the purported replacement of the Special Servicer and Cash/Bond Administrator.
254. As already explained, the Target Termination Notices dated 30 March 2021, said to emanate from Mr Artemiou and Centrum as “trustees”, asserted that Target was removed as Special Servicer and Cash/Bond Administrator of the Issuers. These were followed by the Target Replacement Notices dated 8 April 2021 stating that Target had been replaced by Kipling.
255. I pause here to observe that Kipling (which only came into existence on 23 March 2021) was utterly inapt to become a Servicer or Cash/Bond Administrator. These are complex and specialised roles which require experience and expertise and substantial resources. Kipling and Mr Artemiou had no experience or track-record of providing such services and had no resources to perform the roles. This is further reason to think that Mr Artemiou (and Kipling) were simply lending their names to be used to carry out a series of steps designed to interfere with the BMF securitisations rather than taking genuine corporate actions.
256. A similar approach (purporting to replace the Special Servicer and Cash/Bond Administrators) occurred in 2020 concerning the BMF securitisations.
257. The first occasion was on 3 July 2019 when GHG and PLL (companies connected with Mr Hussain), in their purported capacity as Trustees of BMF6, sent a notice to Target under cover of GIL’s letter of the same date stating that Target had been removed as

Special Servicer and Cash/Bond Administrator of BMF6 and that GHF had been appointed as a replacement.

258. The second was on 17 June 2020 when Mr Oyekoya and Talisman (in their purported capacity as trustees of the Issuers) sent notices to Target, stating that Target had been removed as Special Servicer and Cash/Bond Administrator of each of the Issuers and replaced by Callon Capital.
259. This is another powerfully persuasive reason for concluding that Mr Hussain (who was at the centre of the 2020 conduct) was also involved in the very similar conduct taken from March 2021 onwards concerning the BMF securitisations.
260. The fifth type of conduct relied on by the claimants is the unauthorised issuing of RNS announcements. As already noted, on 30 March 2021 unauthorised RNS announcements were issued via Mr Artemiou, purportedly on behalf of the Issuers to inform Noteholders about the various steps Mr Artemiou had purported to take that day, specifically (i) the replacement of the Share Trustee (over the share capital of BMFH), the directors of the BMF companies (including of BMFH), the company secretary, trustee, and Special Servicer and Cash/Bond Administrator, (ii) the termination of all arrangements with Sanne Group, and (iii) that BMFH and/or Lark are “minded to transfer some of their shares in [each] Issuer to one or more of [BMF3 or the other Issuers]”.
261. This feature has been seen in earlier stages. On 24 June and 10 July 2020 unauthorised RNS announcements were released by Callon Capital (purportedly on behalf of the Issuers). Mr Hussain was centrally involved in these. The 24 June 2020 RNS announcement said: “Rizwan Hussain, in addition to being a director of the Issuer, was appointed as Executive Chairman of the Board of Directors of the Issuer. His role would be to provide supervision to the Board of Directors of the Issuer and to be a valuable resource for the Issuer to utilise as well as to provide guidance on any future steps by sharing his leadership skills. He would also ensure that there is effective communication with the holders of the Instruments as a whole and at all material times. Furthermore, he has agreed to track the contribution of individual directors and ensure that they are all actively involved in all discussions and the decision-making process. Holders of the Instruments may contact the Board of Directors of the Issuer on [bmf@calloncapital.com](mailto:bmf@calloncapital.com).”
262. The 10 July 2020 RNS announcement sought to cast doubt on the authenticity of Sanne’s RNS accountment of 9 July 2020, which had sought to clarify matters with Noteholders following the 24 June 2020 RNS announcement.
263. More recently Mr Hussain has caused RNS announcements to be made in respect of the Clavis securitisations. RNS announcements were released on 26 April and 7 May 2021, purportedly on behalf of Clavis. The connection with Mr Hussain is clear. For instance the 26 April 2021 announcement stated: “HIL in its capacity as member and holder of 49,999 ordinary shares of the Issuer and thereby holding 99.998% of the voting rights in the Issuer: i. replaced Intertrust Corporate Services Limited, as Company Secretary, with Digital Asset Partners Limited (“DAPL”); and ii. replaced Helena Paivi Whitaker, Intertrust Directors 1 Limited and Intertrust Directors 2 Limited as directors of the Issuer with Rizwan Hussain, HIL and Options.”

264. The linguistic similarities between the 30 March 2021 announcement regarding BMF and the 26 April 2021 announcement regarding Clavis include a number of passages saying that various rights had been preserved. For instance they include word-for-word identical statements that “[t]he Issuer ... gave notice and terminated, with immediate effect and terminated, and without prejudice to any claims for actual and/or consequential loss or damage, any and all contractual agreements, arrangements, or otherwise, which the Issuer [has/have] or purports to have with the [the relevant counterparty] and its subsidiaries, affiliates and parent companies and undertakings”.
265. As a further example, both accounts say that steps have been taken to replace the Special Servicers and Cash/bond Administrators. The BMF announcement then says, “Target has been replaced with [Kipling], a corporate body which has access to the relevant experience and resources in administering cash/bonds and special servicing”. The Clavis announcement says, “Bluestone has been replaced with DAPL *mutatis mutandis* [sic], a corporate body which has access to the relevant experience and resources in administering cash/bonds and special servicing”.
266. There are many other identically worded statements. The matching words cannot be coincidence.
267. I also repeat here that Kipling has nil experience or resources for administering cash/bonds or special servicing. This shows Kipling allowing itself to be used to make false statements to the financial markets.
268. I note for completeness that on 20 May 2021 a further RNS announcement was released, this time by those who legitimately controlled Clavis, confirming that the earlier two announcements were unauthorised and inaccurate.
269. I conclude again that the repeated use of (unauthorised) RNS announcements as well as the striking resemblances of content and wording point overpoweringly to the involvement of Mr Hussain in the 2021 announcements concerning the BMF securitisations.
270. The sixth type of conduct alleged to show similar steps is the making of unauthorised filings at Companies House.
271. Various unauthorised and false filings were made by Mr Hussain and others at Companies House in respect of the various BMF companies in 2020. Specifically, on 6 and 21 July and 3 August 2020, filings were made at Companies House in respect of each of the Issuers to change the registered office, directors, secretary and PSC (including to make Mr Hussain a director of each of the Issuers). The registered office was changed to a shared office accommodation address in Shelton Street, London. Mr Hussain was centrally involved in making those filings. It was necessary for the Issuers to apply to the court for orders for rectification of the Companies House Register and the Injunction prohibited Mr Hussain and the other defendants from making further filings in respect of the Issuers.
272. As already noted, since March 2021 there have been further false, unauthorised filings at Companies House concerning the BMF Companies. The Registrar rejected the unauthorised filings in respect of the Issuers (relying upon the terms of the Injunction), but felt obliged to process the unauthorised filings in respect of BMF3 and BMFH

(since those entities were not covered by the Injunction). BMF3 and BMFH had to apply for rectification of the register under the Companies Act 2006 (which was successful in the face of Kipling's opposition, with the court making appropriate orders in August 2021). The filings (which succeeded in the case of BMF3 and BFMH) also sought to change the registered office of the BMF companies to the 86-90 Paul Street shared office accommodation address.

273. Mr Hussain has also made similar filings in relation to the Clavis securitisation. The RNS announcement released on 20 May 2021 on behalf of Clavis, by those who are legitimately in control of Clavis, states that unauthorised filings at Companies House have also been made in respect of both Clavis and Clavis Options Limited, including filings purporting to record a change of registered office address to the 86-90 Paul Street address (the same address as in the 30 March 2021 filings for BMF3 and BMFH).
274. The (unauthorised) RNS announcement of 7 May 2021 purportedly on behalf of Clavis also referred to the change of registered office address to the 86-90 Paul Street address.
275. I shall return to the Paul Street address further below. It is enough to say at this stage that it cannot be a mere coincidence that Mr Hussain has sought to change the registered office of the Clavis companies to the same (shared accommodation) address as has been used in respect of the BMF companies in the filings made using the name of Mr Artemiou.
276. I consider that these similarities between unauthorised filings at Companies House provide a strong reason for concluding that Mr Hussain has been involved in the steps taken against the BMF securitisations since 30 March 2021.
277. The claimants also rely on other aspects of conduct which they say show that Mr Hussain is connected with the steps taken in respect of the BMF companies since March 2021.
278. The first is the use of the names of entities and individuals without their knowledge or authority. As to this, the recent steps include using the name of Centrum without its knowledge or consent. I have addressed this above. Mr Watford has given uncontested evidence that someone incorporated Kipling and used his name as the sole director and shareholder without his consent.
279. The claimants contend that there was similar conduct at earlier stages. I have mentioned the involvement of Patrick Anthony FitzSimons. He provided an affidavit in earlier proceedings (dated 2 December 2019) in which he said: "My involvement with Rizwan Hussain has been sporadic and peripheral to his transactions where he has thought my cv may be of use" ... "I have been devastated by his actions in organizing a sale of the BMF6 mortgage portfolio without my prior knowledge".
280. The claimants also refer to Maria Stoica. Her name appeared in documents in 2019. She had been held out as a director of BMF6. She sent an email to S&S on 9 July 2019, copying Mr Hussain, saying that her identity had been misused without her consent. In the same email thread Maria Stoica confirmed to S&S that she had not heard of BMF6 and did not sign the documents on which a signature in her name was provided: "No, I have not signed any documents for the company mentioned; company which I don't know." Ms Stoica also provided S&S with a copy of her driving licence, which showed



that her signature had been forged. Ms Stoica then attended the interim hearing in the GIL Claim before Zacaroli J on 11 July 2019 with a copy of her ID. Mr Hussain's wholly implausible explanation was that the Maria Stoica S&S had served with the GIL Claim was a different Maria Stoica and that "the relevant Maria Stoica" would be in touch in due course. No other Maria Stoica has ever come forward.

281. Moreover, as noted above, in his email to S&S of 12 October 2020 Mr Kalia stated (on behalf of himself, Mr Oyekoya and Mr Singh) that they had been "misled from a personal and corporate perspective" and that Mr Oyekoya has never had access to the Clifden Group email address from which numerous communications were stated to be sent from him relating to the steps taken against the Issuers since 2019". Mr Kalia also noted, in his earlier email of 7 October 2020, that he and Mr Oyekoya had never had any contact with either Ms Kirby or Mr Osman and were "uncertain" as to whether they were aware of the matters involving the Issuers.
282. I have also recorded the episode in which Mr Hussain sent an email in the name of Mr Oyekoya but in error used his own email address.
283. I am satisfied overall that these episodes show that Mr Hussain has previously taken steps or presented documents appearing to be signed by or in the names of individuals without their authority. The same occurred with Centrum and Mr Watford in 2021.
284. The claimants also rely on the fact that during the period of 9 September 2020 when Mr Hussain was imprisoned to 30 March 2021 (shortly after Mr Hussain's release from prison on 9/10 March 2021), the Issuers received no letters, emails or other communications at all from any entities or individuals taking any corporate actions (appointments or terminations of offices or functions, sales of shares or underlying assets) in respect of the Issuers or their businesses. A series of pre-ordained and carefully structured corporate actions started again shortly after Mr Hussain's release from prison on 9/10 March 2021. I consider that this point has considerable force as part of the overall cumulative assessment the court must undertake.
285. The next strand of evidence relied on by the claimants is the use of shared offices for correspondence addresses and registered offices.
286. The evidence is summarised in the first affidavit of Ms Hunter-Yeats at [184]-[186] to the following effect:
  - i) The registered office address for Kipling (also given as the correspondence address for Mr Artemiou) is 86-90 Paul Street London EC2A 4NE. This is shared office space, and all correspondence for Kipling or Mr Artemiou sent by S&S or CMS has been rejected on the basis that neither Kipling nor Mr Artemiou is registered there.
  - ii) The address given for each of PLL, CSEL, Callon Capital, Mr Oyekoya, Mr Kalia, Mr Singh, Ms Kirby and Mr Osman was 71-75 Shelton Street, London, which was also a shared office space and, similarly, correspondence was not accepted there for those individuals and entities. This made contacting and serving them difficult, and so in the Injunctions Claim and BMFH Claim the Issuers had to apply for permission to effect service by alternative methods.

- iii) In each case, the registered office of (variously) the Issuers, BMF3 and BMFH has been purportedly changed at Companies House to these shared office spaces (Shelton Street in 2020 and Paul Street in 2021).
  - iv) It is also notable that the Paul Street address has been used as the new (unauthorised) registered office address for Clavis in Mr Hussain's recent steps in respect of Clavis in his own name: see the RNS announcements of 7 and 20 May 2021. This cannot be a mere coincidence and no other explanation has been advanced by Mr Hussain.
  - v) The Paul Street address has also been given in other documents. These include a claim form in proceedings brought by one of the Marshall Islands companies, Corelli, against Philip Wolfe relating to a company called Hurricane Energy plc. Corelli has featured in the steps taken in the names of Kipling and/or Mr Artemiou in respect of the BMF companies as already noted. Mr Artemiou, when seeking the injunction on behalf of BMF Assets in November 2021, contended that Corelli had become a director of the Issuers in March 2021. Corelli also offered to give a cross undertaking in damages. In the claim form against Mr Wolfe Corelli's address for service is given as 86-90 Paul Street (that cannot be a proper address as it is a shared office space for hot-desking). Mr Hussain has been found by HH Judge Pelling to have been centrally involved in steps to seek to take control of Hurricane Energy (see [2021] EWHC 2258). This connection has been noted by Ms Hunter-Yeats in her evidence and has not been answered by Mr Hussain. I note that Mr Hussain is not mentioned by name in the Corelli case against Mr Wolfe, but there are strong reasons for concluding that Mr Hussain is involved.
287. In my judgment, these connections, particularly the repeated use of the Paul Street addresses, are very powerful evidence that Mr Hussain was involved in the 2021 steps against the BMF companies in the names of Mr Artemiou/Kipling and others.
288. The next feature of the case relied on by the claimants is the use of offshore companies, particularly in the Marshall Islands, where corporate information is not readily available.
289. In the recent steps taken since 30 March 2021 two of the main companies said to be involved (Lark and Centrum) are incorporated in the Marshall Islands. I have already commented on the position of Centrum above.
290. The earlier steps taken in respect of the BMF companies involved Highbury, another Marshall Islands company. Mr Hussain told the court in January 2021 that he was a director of Highbury. It has also featured in the Clavis case (see the RNS announcements mentioned above); and the notice of termination notices served in respect of the special servicers of Clavis dated 15 April 2021 (see above).
291. A related feature relied on by the claimants is the use of the Ajeltake Road address in the Marshall Islands. Mr Hussain has at various times given an address in the Marshall Islands at "Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands". He has given it in his letters concerning Clavis (for instance in the letter of 16 April 2021 and the Clavis termination notice of 15 April 2021). This address (which does not identify an actual building but only a general location) has also been given in a number of letters in the

name of Mr Artemiou since 30 March 2021. It is indeed presented in those letters in precisely the same font and format as in Mr Hussain's letters. It cannot be mere coincidence that Mr Hussain and Mr Artemiou have both used this same address and (moreover) used exactly the same format in their letters. There is also no evidence to suggest that Mr Artemiou has anything to do with the Marshall Islands. The uncontradicted evidence is that he was living with Mr Watford after leaving prison, including specifically on 7 April 2021.

### **Conclusions on the involvement of Mr Hussain in the conduct said to constitute breach**

292. I shall now draw the threads together.
293. As already noted, the claimants accept that it is an essential element of their case that Mr Hussain, despite not being openly involved, was responsible for (i) creating and transmitting himself the various communications and other documents whose creation and/or transmission to others constituted the alleged breaches of the Injunction, and/or (ii) causing and/or procuring Mr Artemiou, Kipling and the other authors (or purported authors) of those documents to create and transmit those documents.
294. I have already explained that each essential element of an alleged contempt must be proved beyond reasonable doubt (though this does not mean that every single fact or piece of evidence relating to each element must itself be proved beyond reasonable doubt).
295. As counsel for Mr Hussain correctly submitted, where the evidence is circumstantial the court must be satisfied that the facts are inconsistent with any conclusion other than that the contempt in question has been committed and that there are no other co-existing circumstances which would weaken or destroy the inference.
296. The court must consider the various strands of evidence cumulatively. Circumstantial evidence works by cumulatively, in geometrical progression, eliminating other possibilities.
297. Taking this approach, I am satisfied to the criminal standard that Mr Hussain has either (a) himself created and transmitted the various communications and other documents enumerated whose creation and/or transmission to others are said by the claimants to constitute the breaches of the Injunction or (b) has caused or procured Mr Artemiou, Kipling and the other authors (or purported authors) of those communications and other documents, to create and transmit those documents.
298. Putting it another way I am satisfied to the criminal standard that Mr Hussain orchestrated the steps taken since 30 March 2021 against the Issuers. He has used the names of Mr Artemiou and Kipling and others to make communications and carry out other actions which, if they had been done openly in his own name, would have indisputably constituted breaches of the Injunction. I am satisfied to the criminal standard that the facts are inconsistent with any other conclusions.
299. As stated, I have reached this conclusion in the light of the compelling and overpowering cumulative weight of the strands of evidence summarised above. While there are dangers involved in emphasising particular parts of the evidence (rather than

acting on its cumulative weight) I shall nevertheless summarise the elements or strands of the history which seem to me to be most salient.

300. First, there are very clear resemblances of presentation, lay-out, format, verbal content and stylistic quirks between (i) the post-March 2021 documents concerning BMF, (ii) the 2021 documents in Mr Hussain's own name concerning Clavis and (iii) the 2020 documents in the names of Mr Hussain and his associates concerning BMF. I have detailed these above. There are clear similarities and repetitions in a host of different categories of documents (resolutions, notices, letters, applications for private prosecutions and others). The similarities are too many and too marked to be mere coincidences. It is not realistically credible that Mr Artemiou independently discovered and copied Mr Hussain's documents or vice versa. The overwhelming inference is that the various documents were produced by a single author or (at least) that Mr Hussain and Mr Artemiou were working in combination in producing the 2021 BMF documents (though for reasons already given and appearing in the next paragraph below I have also concluded that it is exceedingly improbable that Mr Artemiou could have contributed to the documents meaningfully).
301. Secondly, I find it inconceivable that Mr Artemiou himself could have produced the various resolutions, notices, and other communications generated from and after 30 March 2021. The securitisations are complex financial arrangements and the various resolutions and other steps taken since 30 March 2021, however legally spurious, constitute a carefully designed and executed set of steps. Mr Artemiou has no training or experience in financial instruments of structures of this type. He could not have authored the post-30 March 2021 communications. Mr Hussain clearly has the necessary experience and expertise in the field. This can be seen from his own (very similar) communications in relation to the Clavis case, and from the very similar steps taken in 2020 in respect of the BMF companies, which he organised.
302. Thirdly, the 2021 steps in relation to the BMF companies are very similar to those taken in 2020 by Mr Hussain and the steps taken in 2021 by Mr Hussain in relation to Clavis. There are many close resonances. They include the unevicenced assertions of noteholders' beneficial interests, the noteholder resolutions, the replacement of directors, trustees, servicers, cash/bond administrators and others. I do not think that these unauthorised steps, which so closely echo one another, can be seen as a mere coincidence. There is a very powerful inference that the same person has been behind the steps in all three cases. All of the evidence points decisively to that person being Mr Hussain.
303. Fourthly, in each case the steps that have been taken have been legally spurious and misguided. In each case strangers to the securitisations have sought to force themselves on the structures. They have done so without legal right or authority. This is a powerful indicator that they derive from a single mind. It is very hard to conceive that more than one person could have come up with such a legally improbable course of conduct. Mr Hussain was the central player in the 2020 events. The steps taken since March 2021 in the names of Kipling and Mr Artemiou have been just as misguided (and indeed the court has struck out the six claims listed earlier in this judgment as wholly without merit). It is hard to conceive of a newcomer to the scene in March 2021 independently devising these kinds of corporate actions against the Issuers. Indeed any independent, third party reader of my February 2021 judgment would have realised that such actions were hopeless in law.

304. Fifthly, there are other striking resemblances between the events of 2021 regarding BMF on the one hand, and the 2020 BMF steps and the steps concerning Clavis taken by Mr Hussain on the other. These include the use of the same Marshall Islands address for Mr Hussain and Mr Artemiou, the use of the same shared office spaces as registered offices and for correspondence, and the issuing of unauthorised RNS announcements.
305. Sixthly, the use of the same 86-90 Paul Street shared office accommodation address for (a) the registered office of Kipling, (b) the attempted transfer of the registered offices of the BMF companies via the unauthorised Companies House filings; and (c) Mr Hussain's steps in his own name in relation to Clavis cannot be a mere coincidence: it shows that Mr Hussain and Mr Artemiou have not been acting independently.
306. Seventhly, there is the use of the @businessmortgagefinance.com email address, both in 2020 in the steps taken against BMF6 (in which Mr Hussain was involved) and in the steps taken in the name of Mr Artemiou in 2021. Again this cannot be more coincidence.
307. Eighthly, the evidence shows that Mr Hussain had an automatic link in respect of emails being sent to Mr Artemiou in connection with the BMF securitisations and was able to read them. This echoes the evidence about the way Mr Hussain used email addresses in the names of other people in 2020.
308. Ninthly, there is the powerful evidence concerning the IP addresses. This shows that numerous emails purportedly sent by Mr Artemiou were sent from an address in Preston. There is nothing to link Mr Artemiou to Preston, but ample evidence that Mr Hussain was in Preston at the time.
309. Tenthly, no corporate actions directed at the BMF companies occurred when Mr Hussain was in prison. There had been a great deal of activity before he went into prison in September 2020. Nothing then happened for about six months. The attempts to take control of the Issuers started again within weeks of his release from prison. As explained above there was then a torrent of notices, resolutions and communications (which echoed the history before September 2020).
310. Taking these features cumulatively and considering the broader canvas I consider that there is an overwhelming case (to the criminal standard) that Mr Hussain was directly involved in each and all of the steps taken in the name of Mr Artemiou or Kipling and the other steps complained of by the claimants on and after 30 March 2021 (though only those occurring after 7 April 2021 are capable of constituting contempt of court for reasons already given).
311. The features highlighted above clearly call for an explanation. Mr Hussain has, without good reason, chosen not to attend the trial. He has also chosen not to give evidence. It is his right to remain silent. But I infer that he has chosen not to give evidence because he recognises that he is unable to give exonerating evidence, and that cross-examination would further damage his case. This supports and strengthens the conclusions I have already stated.

**The terms of the injunction relied on in the particulars of contempt**

312. The particulars of contempt (as refined at the trial) allege breaches of the following subparagraphs of the Injunction:

i) Paragraph 14(2) (relevant to Counts Two and Six):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... hold out any person other than those persons identified at paragraph 4 above [i.e. Ms Bidel, Mr Speight and Mr Surnam] as being directors of the Issuers”

ii) Paragraph 14(3) (relevant to Counts Two and Six):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... hold out any person other than Target, BNY, Simmons & Simmons LLP or those persons identified at paragraph 4 above [i.e. Ms Bidel, Mr Speight and Mr Surnam] (or cause, procure or permit any other person to do so), as having any authority whatsoever to act on the Issuers’ behalf and/or as having any authority to dispose of or otherwise deal with the Issuers’ assets (whether as receivers, agents, attorneys or otherwise).”

iii) Paragraph 14(5)(a) (relevant to Count Three):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... hold out any person other than BNY as (or cause, procure or permit any other person to be held out as)... a trustee under the terms of any of the Trust Deeds or Deeds of Charge and Assignment.”

[The “Trust Deeds” and “Deeds of Charge and Assignment” are defined at paragraph 5 of the Order as “the Trust Deeds and the Deeds of Charge and Assignment entered into by (inter alios) BMF4, BMF5, BMF6 and BMF7 on (respectively) 12 April 2006, 18 October 2006, 18 May 2007 and 23 November 2007”]

iv) Paragraph 14(7)(a) (relevant to Count One):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... hold out any other person as (or cause, procure or permit any other person to be held out as) taking or purporting to take or to have taken any of the following steps, on the basis that that other person is or is claimed to be a Noteholder (as defined at Schedule 2 below) or Instrumentholder (as defined at Schedule 2 below): a) the signing or passing of any resolution of Noteholders (as defined at Schedule 2 below) or Instrumentholders (as defined at Schedule 2 below).”

[The capitalised words “Instrumentholder” and “Noteholder” are defined in detail in Schedule 2 to the Order, at paragraphs 13 and 19 respectively, with reference to the definitions set out in the Issuers’ respective Master Definitions Schedules]

v) Paragraph 14(9) (relevant to Count Seven):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... hold out any person other than Target as if they are Special Servicer (as defined at Schedule 2 below) or Cash/Bond Administrator (as defined at Schedule 2 below), or as having any authority to act on behalf of the Special Servicer (as defined at Schedule 2 below) or Cash/Bond Administrator (as defined at Schedule 2 below), or cause, procure or permit any other person to do so.”

[The capitalised phrases “Cash/Bond Administrator” and “Special Servicer” are defined in detail in Schedule 2, at paragraphs 8 and 27 respectively, with reference to the definitions set out in the Issuers’ respective Master Definitions Schedules – as, essentially, “Target Servicing Limited”]

vi) Paragraph 14(13)(a) (relevant to Count Three):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... purport to terminate or to have terminated (or to cause, procure or permit any other person to purport to terminate or to have terminated)... the appointment of BNY as trustee under the Trust Deeds or Deeds of Charge and Assignment.”

vii) Paragraph 14(13)(b) (relevant to Counts Two and Six):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... purport to terminate or to have terminated (or to cause, procure or permit any other person to purport to terminate or to have terminated)... the appointment of any directors, company secretaries, agents, receivers or other representatives of the Issuers or of any directors, agents, receivers or other representatives of any other party to any of the transaction documents.”

viii) Paragraph 14(13)(c) (relevant to Count Seven):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... purport to terminate or to have terminated (or to cause, procure or permit any other person to purport to terminate or to have terminated)... the appointment of any person or entity carrying out any function pursuant to the terms of the transaction documents (such as, without limitation, the function of trustee under the terms of the Trust Deeds or Deeds of Charge and Assignment, or the functions of Special Servicer (as defined at Schedule 2 below) or Cash/Bond Administrator (as defined at Schedule 2 below).”

ix) Paragraph 14(14)(a) (relevant to Counts Two and Six):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... purport to appoint or to have appointed (or to cause, procure or permit any other person to purport to appoint or to have appointed)... any director, company secretary, agent, receiver or other representative of any of the Issuers.”

x) Paragraph 14(14)(c) (relevant to Counts Three and Seven):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... purport to appoint or to have appointed (or to cause, procure or permit any other person to purport to appoint or to have appointed)... any person

to carry out any function pursuant to the terms of the transaction documents (such as, without limitation, the function of trustee under the terms of the Trust Deeds or Deeds of Charge and Assignment, or the functions of Special Servicer or Cash/Bond Administrator), or to act on behalf of any person carrying out any such function.”

xi) Paragraph 14(18) (relevant to Count Four):

“[Mr Hussain shall not] (whether acting alone, or in combination with any other individual or entity)... take, or threaten or attempt to take, any step in relation to any of the Issuers’ bank accounts or the bank accounts of any other party to the transaction documents.”

### **Findings in relation to the Committal Application**

313. I now turn to the specific breaches alleged against Mr Hussain.

314. Where I say in the following passages that I am satisfied or not satisfied that an allegation of contempt has been proved, I am applying the criminal standard of proof. Where I say that I am satisfied that an allegation has been proved I mean that each of the elements required or a contempt as summarised in *Kea Investments* at [19] has been established to that standard.

### **Count One**

315. The Issuers contend that Mr Hussain breached paragraph 14(7)(a) of the Injunction when, on 14 May 2021, he made a representation (or caused or procured a representation to be made) that Lark had signed or passed a resolution of Instrumentholders of the Issuers (on the basis that Lark was or was claimed to be an Instrumentholder of the Issuers), specifically by producing and sending himself but in the name of another individual (either with or without their knowledge), or by causing or procuring that other individual to produce and send, the letter in the name of Mr Artemiou dated 14 May 2021 addressed to S&S (Mr Artemiou said to be acting for and on behalf of Kipling, BMF3 and the Issuers).

316. I am not satisfied that this breach has been proved. I am satisfied that Mr Hussain produced this letter alone or in combination with Mr Artemiou and/or caused or procured it. However, although the letter of 14 May 2021 represented that Lark was an Instrumentholder it did not hold out Lark as having signed or passed a resolution of Noteholders. The claimants contend that since the letter was referring to an earlier letter (of 10 May 2021) which took issue with the validity of the purported resolutions of 30 March 2021 that this letter is therefore to be taken as reaffirming Lark’s having passed the resolutions. I do not think that is sufficiently clear. A person will not be held in contempt of court unless the breach of the order is clear.

317. Count One is therefore not proven.

### **Count Two**

318. The Issuers contend that Mr Hussain breached paragraphs 14(2), 14(3), 14(13)(b) and/or 14(14)(a) of the Injunction: (1) by holding out persons other than the true directors of the Issuers as being directors of the Issuers (paragraph 14(2)); (2) by



holding out (or causing or procuring to be held out) various persons other than Target, BNY, S&S or the directors, as having authority to act on behalf of the Issuers (paragraph 14(3)); and/or (3) by purporting to have appointed (or by causing or procuring others to purport to appoint or to have appointed) persons other than the true directors as directors of the Issuers (paragraph 14(14)(a)),

specifically by:

(1) producing or sending a number of letters, or causing or procuring another person to produce or send those letters; or

(2) producing or issuing at Court various Claim Forms, or causing or procuring another person to produce those Claim Forms or issue them at Court,

with each occasion amounting to a separate breach of each of paragraphs 14(2), 14(3) and/or 14(14)(a) of the Injunction.

319. The letters and Claim Forms are particularised in the Particulars of Contempt under Count Two. I shall set out my conclusions under this head by reference to these numbered particulars.
320. (1) The letter from Kipling to Barclays of 9 April 2021: In this letter Mr Andreou Artemiou is held out as having authority to act on behalf of each of the Issuers.
321. Decision: I am satisfied that this is a breach by Mr Hussain of paragraph 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending this letter and/or caused or procured it to be sent. The letter holds out a person other than those specified therein as having authority to act on the Issuers' behalf.
322. (2) The four letters from Mr Artemiou to Barclays of 19 April 2021 (stated to be on behalf of each of the Issuers).
323. Decision: I am satisfied that these letters were a breach by Mr Hussain of paragraph 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letters and/or caused or procured them to be sent. The letters hold out a person other than those specified therein as having authority to act on the Issuers' behalf.
324. (3) The letter from Kipling to CMS of 21 April 2021: In this letter Kipling refers to "our appointment in the various offices... at the behest and direction of the shareholders and investors in the Notes issued by the BMF group of companies... The same is said of Andreou Artemiou who in addition to being an officer of the BMF Companies is an investor in some of the securities issued by some of the BMF Companies."
325. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraphs 14(2), and 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. As to paragraph 14(2), the letter holds out a person other than those specified therein as having authority to act on the Issuers' behalf. As to paragraph 14(3), it holds out a person other than those specified by the provision as having authority to act on the Issuers' behalf.

326. I am not satisfied that this is a breach of paragraph 14(14)(a). The claimants say that the letter involves a statement that the purported shareholders and investors (who are alleged to be ciphers for Mr Hussain) have appointed Kipling and Mr Artemiou as directors of the Issuers. Paragraph 14(14)(a) prohibits Mr Hussain (alone or with others) from purporting to appoint or to have appointed persons as directors or other officers of the Issuers. I do not consider that it is clear that the letter contains a statement that Mr Hussain has purported to appoint the directors whether alone or with others.
327. (4) The 26 April 2021 Claim Form in the Barclays Claim: This Claim Form was issued in the names of BMF3 and the Issuers, the statement of truth being signed, purportedly on behalf of each of the Claimants, by “Charles Hewitt” (described as a “director” of each Claimant).
328. Decision: I am satisfied that this was a breach by Mr Hussain of paragraphs 14(2) and 14(3). I am satisfied that Mr Hussain alone or in collaboration with others caused or procured this Claim Form to be issued and served. This conduct was in breach of paragraph 14(2), since it involves holding out a person other than those identified at paragraph 4 as being a director of the Issuers. It is also in breach of paragraph 14(3), since it is a holding out of a person other than those specified therein as having authority to act on the Issuers’ behalf.
329. (5) The 11 May 2021 Claim Form in the Kipling Claim: This Claim Form was issued in the names of BMF3, the Issuers, BMFH and Kipling, the statement of truth being signed, purportedly on behalf of each of the claimants, by “Oliver Taylor” (described as a “director” of each claimant).
330. Decision: I am satisfied that this was a breach by Mr Hussain of paragraphs 14(2) and 14(3). I am satisfied that Mr Hussain alone or in collaboration with others caused or procured this Claim Form to be issued and served. This conduct was in breach of paragraph 14(2), since it involves holding out a person other than those identified at paragraph 4 of the order as being a director of the Issuers. It is also in breach of paragraph 14(3), since it is a holding out of a person other than those specified therein as having authority to act on the Issuers’ behalf.
331. (6) The 11 May 2021 Claim Form in the S&S Claim: This Claim Form was issued in the names of BMF3, the Issuers, BMFH and Kipling, the statement of truth being signed, purportedly on behalf of each of the claimants, by “Oliver Taylor” (described as a “director” of each claimant).
332. Decision: I am satisfied that this was a breach by Mr Hussain of paragraphs 14(2) and 14(3). I am satisfied that Mr Hussain alone or in collaboration with others caused or procured this Claim Form to be issued and served. This conduct was in breach of paragraph 14(2), since it involves holding out a person other than those identified at paragraph 4 of the order as being a director of the Issuers. It is also in breach of paragraph 14(3), since it is a holding out of a person other than those specified therein as having authority to act on the Issuers’ behalf.
333. (7) The 14 May 2021 letter from Mr Artemiou to S&S, Mr Siddiqui and Ms Hunter-Yeats: This letter, enclosing the sealed Claim Form in the S&S Claim, holds out Mr Artemiou as being authorised to act “for and on behalf of” (among others) the Issuers.

334. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraph 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it. It is a holding out of a person other than those specified by that provision as having authority to act on the Issuers' behalf.
335. (8) The second letter from Mr Artemiou to S&S of 14 May 2021: This letter holds out Mr Artemiou as being authorised to act "for and on behalf of" (among others) the Issuers.
336. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraph 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. It is a holding out of a person other than those specified by that provision as having authority to act on the Issuers' behalf.
337. (9) The three letters from Mr Artemiou of 24 May 2021 (stated to be "on behalf of" BMF5, 6 and 7) to HML: These letters were signed, anonymously (i.e. with a signature given but without a corresponding named signatory), on behalf of each of the Issuers.
338. Decision: I am satisfied that these letters were a breach by Mr Hussain of paragraph 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letters and/or caused or procured them to be sent. They are a holding out of a person other than those specified by that provision as having authority to act on the Issuers' behalf.
339. (10) The two letters from Mr Artemiou of 24 May 2021 (stated to be "on behalf of" BMF4 and BMF6) to Mr Jones of HML: These letters were signed anonymously (i.e. with a signature given but without a corresponding named signatory), on behalf of each of the Issuers.
340. Decision: I am satisfied that these letters were a breach by Mr Hussain of paragraphs 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letters and/or caused or procured them to be sent. They are a holding out of a person other than those specified by that provision as having authority to act on the Issuers' behalf.
341. (11) The 3 June 2021 Particulars of Claim in the Barclays Claim: These Particulars of Claim were settled purportedly on behalf of (among others) each of the Issuers, the statement of truth signed by a "Charles Hewitt" (in his purported capacity as director of, among others, each of the Issuers).
342. Decision: I am satisfied that this was a breach by Mr Hussain of paragraphs 14(2) and 14(3). I am satisfied that Mr Hussain alone or in collaboration with others caused or procured this document to be produced and served. This conduct was in breach of paragraph 14(2), since it involves holding out a person other than those identified at paragraph 4 of the order as being a director of the Issuers. It is also in breach of paragraph 14(3), since it is a holding out of a person other than those specified therein as having authority to act on the Issuers' behalf.
343. (12) The 1 June 2021 Claim Form in the HML Claim (signed by Mr Taylor in the names of each of the Issuers). This Claim Form was issued in the names of BMF3, the Issuers,

BMFH and Kipling, the statement of truth being signed, purportedly on behalf of each of the claimants, by “Oliver Taylor” (described as a “director” of each Claimant).

344. Decision: I am satisfied that this was a breach by Mr Hussain of paragraphs 14(2) and 14(3). I am satisfied that Mr Hussain alone or in collaboration with others caused or procured this Claim Form to be produced and served. This conduct was in breach of paragraph 14(2), since it involves holding out a person other than those identified at paragraph 4 of the order as being a director of the Issuers. It is also in breach of paragraph 14(3), since it is a holding out of a person other than those specified therein as having authority to act on the Issuers’ behalf.
345. (13) The 3 June 2021 letter from Mr Artemiou to HSF and Barclays (purportedly in the names of each of the Issuers): “I, Andreou Artemiou, refer to the Claim [i.e. the Barclays Claim] and write (in my capacity as a director) for and on behalf of the Claimants: Business Mortgage Finance 3 plc; Business Mortgage Finance 4 plc; Business Mortgage Finance 5 plc; Business Mortgage Finance 6 plc and Business Mortgage Finance 7 plc.”
346. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraphs 14(2), and 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. As to paragraph 14(2), the letter holds out a person other than those specified therein as having authority to act on the Issuers’ behalf. As to paragraph 14(3), it holds out a person other than those specified by the provision as having authority to act on the Issuers’ behalf.
347. (14) The 18 June 2021 Particulars of Claim in the Second Barclays Claim: These proceedings are brought against Barclays by Mr Artemiou in his personal capacity. At paragraph 3 the document states that, since 30 March 2021, “the Claimant was an effective and valid director of each Issuer”.
348. Decision: I am satisfied that this was a breach by Mr Hussain of paragraphs 14(2), and 14(3). I am satisfied that Mr Hussain combined with Mr Artemiou in producing the document and/or caused or procured it to be produced. As to paragraph 14(2), the document holds out a person other than those specified in that provision as having authority to act on the Issuers’ behalf. As to paragraph 14(3), it holds out a person other than those specified by that provision as having authority to act on the Issuers’ behalf.
349. (15) The 18 June 2021 Particulars of Claim in the S&S Claim (purportedly signed by “Mr Taylor” in the names of each of the Issuers):
350. Decision: I am satisfied that this was a breach by Mr Hussain of paragraphs 14(2) and 14(3). I am satisfied that Mr Hussain alone or in collaboration with others caused or procured this document to be produced and served. This was in breach of paragraph 14(2), since it involves holding out a person other than those identified at paragraph 4 of the order as being a director of the Issuers. It is also in breach of paragraph 14(3), since it is a holding out of a person other than those specified therein as having authority to act on the Issuers’ behalf.

### **Count Three**

351. The Issuers contend that Mr Hussain breached paragraphs 14(5)(a), 14(13)(a) and/or 14(14)(c) of the Injunction:
- (1) by holding out Mr Andreou Artemiou and Centrum (or by causing or procuring them to be held out) as trustees of each of the Issuers (paragraph 14(5)(a));
  - (2) by purporting to terminate or to have terminated (or by causing or procuring others to purport to terminate or to have terminated) BNY as trustees of each of the Issuers (paragraph 14(13)(a)); and/or
  - (3) by purporting to appoint or to have appointed Mr Artemiou and Centrum (or by causing or procuring others to purport to appoint or to have appointed them) as trustees of each of the Issuers (paragraph 14(14)(c)),  
  
specifically by producing or sending (or causing or procuring another to produce or send) various documents (with each occasion amounting to a separate breach of each of paragraphs 14(5)(a), 14(13)(a) and/or 14(14)(c) of the Injunction).
352. Again I shall address this Count by reference to the specific events relied on in the Particulars of Contempt under Count Three.
353. (1) The Target Replacement Notices dated 8 April 2021: These documents purport to give notice to the Issuers and Barclays, on behalf of Mr Artemiou and Centrum (in their purported capacity as “trustees”), of various matters.
354. Decision: I am satisfied that these Notices were a breach by Mr Hussain of paragraph 14(5)(a). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the notices and/or caused or procured them to be produced and sent. They are a breach of paragraph 14(5)(a) since the documents hold out persons other than BNY (i.e. Mr Artemiou and Centrum) as trustees.
355. (2) The letter from Kipling to Barclays dated 9 April 2021. The letter refers to Mr Artemiou and Centrum as the “Trustees” and encloses the Target Termination Notices.
356. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraph 14(5)(a). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. It is a breach of paragraph 14(5)(a) since it holds out persons other than BNY (i.e. Mr Artemiou and Centrum) as trustees.
357. (3) The letter from Kipling to Barclays dated 21 April 2021: “please be advised that, pursuant to a series of extraordinary resolutions by the Instrumentholders, BNY Mellon Corporate Services Limited (“BNY”) were removed, on 30 March 2021, in all their capacities with respect to each and every Issuer. The removal is effective as they were replaced by, amongst others, a Trust Corporation...”.
358. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraphs 14(13)(a), 14(14)(c) and 14(5)(a). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. This is a breach of paragraph 14(13)(a) since it involves an assertion that BNY’s appointment as trustee has purportedly been terminated. It is a breach of

paragraph 14(14)(c) since it involves an assertion that others have been appointed as trustees in BNY's place. It is a breach of paragraph 14(5)(a) since it involves holding out persons other than BNY as trustee.

359. (4) The Particulars of Claim in the Second Barclays Claim: at paragraph 15 Mr Artemiou avers (supported by a statement of truth) as follows: "Since 30 March 2021, the Claimant [i.e. Mr Artemiou] was an effective and valid trustee of the Issuers pursuant to the relevant trust deeds and deeds of charge dated between April 2005 and May 2007"; and at paragraph 16: "Since 30 March 2021, Centrum Trustees Limited... was an effective and valid trustee of the Issuers pursuant to the relevant trust deeds and deeds of charge dated between April 2005 and May 2007..."
360. Decision: I am satisfied that this document constituted a breach by Mr Hussain of paragraphs 14(14)(c) and 14(5)(a). I am satisfied that Mr Hussain combined with others in producing and sending the document and/or caused or procured it to be sent. It is a breach of paragraph 14(14)(c) since it involves an assertion that others have been appointed as trustees in BNY's place. It is a breach of paragraph 14(5)(a) since it involves holding out persons other than BNY as trustee.

#### **Count Four**

361. The Issuers contend that Mr Hussain breached paragraph 14(18) of the Injunction by taking steps in relation to the Issuers' bank accounts, specifically:
- (1) by producing or sending various letters, or by acting in combination with another to produce or send those letters; or
  - (2) by producing or issuing at Court various Claim Forms and Particulars of Claim, or by acting in combination with another to produce those Claim Forms and Particulars of Claim or issue them at Court,
- with each occasion amounting to a separate breach of paragraph 14(18) of the Injunction.
362. I shall again address this Count by reference to the specific documents relied on in the Particulars of Contempt.
363. (1) The 9 April 2021 letter from Kipling to Barclays at paragraphs 5, 6 and 9.
364. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraph 14(18). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. It takes or attempts to take steps in relation to the Issuers' bank accounts (requiring the provision of bank statements and seeking assurances about certain proposed payments).
365. (2) The four 19 April 2021 letters from Mr Artemiou ("on behalf of" each of the Issuers) to Barclays: The letters re-enclosed the Kipling letter of 9 April 2021 (item (1) above) and reiterated the requests referred to above, threatening "remedial action to mitigate our loss" absent a satisfactory response by 5pm on 23 April 2021.

366. Decision: I am satisfied that these letters were a breach by Mr Hussain of paragraph 14(18). I am satisfied that Mr Hussain combined with Mr Artemiou in producing and sending these letters and/or caused or procured them to be sent. The letters (by reiterating the requests in the letter of 9 April 2021) take or attempt to take steps in relation to the Issuers' bank accounts.
367. (3) The 21 April 2021 letter from Kipling to Barclays: This letter referred to the 19 April 2021 letter and responded to Barclays' response to that letter dated 20 April 2021.
368. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraph 14(18). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. The letter takes or attempts to take steps in relation to the Issuers' bank accounts.
369. (4) The 26 April 2021 Claim Form in the Barclays Claim (signed by Mr Hewitt in the names of each of the Issuers): These proceedings seek damages against Barclays for alleged breach of its contractual obligations under the Issuers' various Bank Agreements and Guaranteed Investment Contracts and/or in negligence.
370. Decision: I am not satisfied that this is a breach by Mr Hussain of paragraph 14(18). I am satisfied that Mr Hussain combined with Mr Artemiou in producing and sending the document and/or caused or procured it to be sent. However the claim is for damages for breach of contract and does not directly seek any order concerning the operation of bank accounts themselves. While it is arguable that this is a step in relation to the bank accounts, I do not think that the breach is sufficiently clear to constitute a contempt of court.
371. (5) The 3 June 2021 letter from Mr Artemiou to HSF and Barclays (purportedly in the names of each of the Issuers): This letter encloses a copy of the Particulars of Claim in the Barclays Claim and asserts that the Notice of Discontinuance in those proceedings was invalid and ineffective and should be disregarded.
372. Decision: I am not satisfied that this is a breach by Mr Hussain of paragraph 14(18). I am satisfied that Mr Hussain combined with Mr Artemiou in producing and sending the document and/or caused or procured it to be sent. However the letter concerns the claim for damages for breach of contract and does not directly seek any order concerning the operation of bank accounts themselves. For reasons given above, I do not think that the breach is sufficiently clear to constitute a contempt of court.
373. (6) The 3 June 2021 Particulars of Claim in the Barclays Claim (purportedly signed by Mr Hewitt in the names of each of the Issuers). This document purported to set out the Issuers' claim against Barclays for £293m in damages plus interest.
374. Decision: I am not satisfied that this is a breach by Mr Hussain of paragraph 14(18). I am satisfied that Mr Hussain combined with Mr Artemiou in producing and sending the document and/or caused or procured it to be sent. However, the claim is for damages for breach of contract and does not directly seek any order concerning the operation of bank accounts themselves. As above, I do not think that the breach is sufficiently clear to constitute a contempt of court.

375. (7) The 18 June 2021 Particulars of Claim in Second Barclays Claim: This document sets out Mr Artemiou's detailed reasons for advancing his claim in negligence, unlawful means conspiracy and so on against Ms Nike Shoge and Mr Martyn Reece, claiming damages in the sum of £4.7m plus interest.
376. Decision: I am not satisfied that this is a breach by Mr Hussain of paragraph 14(18). I am satisfied that Mr Hussain combined with Mr Artemiou in producing and sending the document and/or caused or procured it to be sent. However the claim is for damages for breach of contract and does not directly seek any order concerning the operation of bank accounts themselves. As above, I do not think that the breach is sufficiently clear to constitute a contempt of court.

### **Count Five**

377. Count Five is no longer separately pursued as it largely covers the same ground as Count Two.

### **Count Six**

378. The Issuers contend that Mr Hussain breached paragraph 14(3), by holding out (or causing or procuring to be held out) persons other than Target, BNY, S&S or the Directors, as having authority to act on behalf of the Issuers. The Issuers have not pursued most of the sub-counts under Count Six on the basis that they are repetitious of parts of Count Two.
379. The only sub-count under Count Six which the Issuers pursue separately from Count Two relates to the 17 May 2021 letter from Kipling to HML and Barclays. This document holds out Mr Artemiou as being authorised to act for and on behalf of each of the Issuers (see the footer of the letter in particular).
380. Decision: I am satisfied that this letter was a breach by Mr Hussain of paragraph 14(3). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or caused or procured it to be sent. The letter holds out a person other than those specified by that provision as having authority to act on the Issuers' behalf.

### **Count Seven**

381. The Issuers contend that Mr Hussain breached paragraphs 14(9), 14(13)(c) and/or 14(14)(c) of the Injunction:
- (1) by holding out persons other than Target as if they were the Special Servicer and/or Cash/Bond Administrator in respect of the Issuers (paragraph 14(9));
  - (2) by purporting to terminate or to have terminated (or by causing or procuring others to purport to terminate or to have terminated) the appointment of Target as the Special Servicer and/or Cash/Bond Administrator in respect of the Issuers (paragraph 14(13)(c)); and/or



(3) by purporting to appoint or to have appointed (or by causing or procuring others to purport to appoint or to have appointed) persons other than Target as the Special Servicer and/or Cash/Bond Administrator in respect of the Issuers (paragraph 14(14)(c)),

specifically by producing or sending, or causing or procuring another person to produce or send, various documents (with each occasion amounting to a separate breach of each of paragraphs 14(9), 14(13)(c) and/or 14(14)(c) of the Injunction).

382. I shall again address this Court by reference to the specific documents identified in the Particulars of Contempt.
383. (1) The 8 April 2021 Target Replacement Notices: These notices enclosed copies of the 30 March 2021 Target Termination Notices (see paragraph 4).
384. Decision: I am satisfied that the Target Replacement Notices constitute a breach by Mr Hussain of paragraphs 14(13)(c), 14(14)(c) and 14(9). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the notices and/or that he caused or procured them to be sent. They are a breach of paragraph 14(13)(c) since they assert that Target's appointment as Cash/Bond Administrators and Special Servicer has been terminated. They are a breach of paragraph 14(14)(c), since they assert that Kipling has been appointed as Cash/Bond Administrator and Special Servicer. They are a breach of paragraph 14(9), since they hold out Kipling as being the Issuers' Cash/Bond Administrators and Special Servicer.
385. (2) The 9 April 2021 letter from Kipling to Barclays at paragraph 3.
386. Decision: I am satisfied that para 3 of the letter constitutes a breach by Mr Hussain of paragraphs 14(13)(c), 14(14)(c) and 14(9). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or that he caused or procured it to be sent. The letter is a breach of paragraph 14(13)(c) since it asserts that Target's appointment as Cash/Bond Administrators and Special Servicer has been terminated. It is a breach of paragraph 14(14)(c), since it asserts that Kipling has been appointed as Cash/Bond Administrator and Special Servicer. It is a breach of paragraph 14(9), since it holds out Kipling as being the Issuers' Cash/Bond Administrators and Special Servicer.
387. The four letters dated 19 April 2021 from Mr Artemiou ("on behalf of" each of the Issuers) to Barclays and paragraphs 2 and 3.
388. Decision: I am satisfied that these letters constitute a breach by Mr Hussain of paragraph 14(9). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letters and/or that he caused or procured them to be sent. They are breach of paragraph 14(9), since they hold out Kipling as being the Issuers' Cash/Bond Administrators and Special Servicer.
389. (4) The 21 April 2021 letter from Kipling to Barclays at paragraphs 9 and 11.
390. Decision: I am satisfied that the letter constitutes a breach by Mr Hussain of paragraphs 14(13)(c), and 14(9). I am satisfied that Mr Hussain combined with Kipling/Mr Artemiou in producing and sending the letter and/or that he caused or procured it to be

sent. The letter is a breach of paragraph 14(13)(c) since it asserts that Target's appointment as Cash/Bond Administrators and Special Servicer has been terminated. It is a breach of paragraph 14(9), since it holds out Kipling as being the Issuers' Cash/Bond Administrators and Special Servicer.

391. The three letters from Mr Artemiou (stated to be “on behalf of” BMF5, 6 and 7) to HML dated 24 May 2021. These letters refer, at paragraph 1, to Kipling as “our Company Secretary, Corporate Servicer, Special Servicer and Cash/Bond Administrator”.
392. Decision: I am satisfied that these letters constitute a breach by Mr Hussain of paragraph 14(9). I am satisfied that Mr Hussain combined with Mr Artemiou in producing and sending the letters and/or that he caused or procured them to be sent. They hold out Kipling as being the Issuers' Cash/Bond Administrators and Special Servicer.
393. The 18 June 2021 Particulars of Claim in the Second Barclays Claim: Paragraph 12: “Since 30 March 2021, Kipling... was the effective and valid special servicer and cash/bond administrator of the Issuers...”.
394. Decision: I am satisfied that these Particulars of Claim constitute a breach by Mr Hussain of paragraph 14(9). I am satisfied that Mr Hussain combined with Mr Artemiou in producing and sending the document and/or that he caused or procured it to be produced and sent. The document holds out Kipling as being the Issuers' Cash/Bond Administrators and Special Servicer.

### **Summary of decisions**

395. In summary, I have reached the following conclusions:
- i) Count One: not proved.
  - ii) Count Two: substantially proved; some particulars not proved.
  - iii) Count Three: proved.
  - iv) Count Four: proved in part; not proved in part.
  - v) Count Five: not pursued.
  - vi) Count Six (one sub-count): proved. Otherwise not pursued.
  - vii) Count Seven: proved.
396. I note that a number of the events found to have constituted breaches featured as particulars under more than one Count.
397. There will be a further hearing to determine the appropriate sanction for these contempts of court. Mr Hussain has the right to appeal to the Court of Appeal without permission. The time limit for appealing will be 21 days from the date of the order made at the conclusion of the sanction hearing.