Neutral Citation Number: [2022] EWHC 140 (Ch)

Cases No: FL-2021-000017
FL-2021-000016
FL-2021-000018
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FL-2021-000020
FL-2021-000021

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
FINANCIAL LIST

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

Date: 26 January 2022

Before :

MR JUSTICE MILES

- -

Between :

(1) BMF ASSETS NO. 1 LIMITED
(2) BMF HOLDINGS LIMITED
(3) BUSINESS MORTGAGE FINANCE 3 PLC
(4) BUSINESS MORTGAGE FINANCE 4 PLC
(5) BUSINESS MORTGAGE FINANCE 5 PLC
(6) BUSINESS MORTGAGE FINANCE 6 PLC
(7) BUSINESS MORTGAGE FINANCE 7 PLC
(8) KIPLING FIRS LIMITED
(9) TILMAN HOLDINGS LIMITED

Claimants

- and -

(1) SANNE GROUP PLC
(2) SANNE GROUP (UK) LIMITED
(3) SANNE GROUP SECRETARIES (UK) LIMITED
(4) SANNE TRUSTEE COMPANY UK LIMITED
(5) MARTIN CHARLES SCHNAIER
(6) JASON CHRISTOPHER BINGHAM
(7) BEEJADHURSINGH SURNAM
(8) CORAL SUZANNE BIDEL
(9) MARC SPEIGHT
(10) SIMMONS & SIMMONS LLP
(11) CAROLINE HUNTER-YEATS
(12) ALEXANDER PAUL RIDDIFORD

Defendants

- -

Ms Charlotte Cooke (instructed by **Simmons & Simmons LLP**) for the **First to Ninth Defendants** (and also claiming to act for the **Second to Seventh Claimants and various other defendants in the other listed proceedings**)
Mr James Sharpe (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Tenth to Twelfth Defendants and certain related parties**
The other Claimants did not appear and were not represented

Hearing date: 19 January 2022

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APPROVED JUDGMENT

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Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30 am on 26 January 2022.

Mr Justice Miles :

Introduction

1. This is one of a series of cases about some securitisation structures ("the BMF securitisations"). There have been 26 separate proceedings about these structures, going back to 2019. The principal issue in these cases has been the same: who is authorised to act for the securitisation companies?

2. The courts who have considered these cases have consistently held that the directors of the securitisation companies were Ms Bidel and Mr Speight (and until August 2021, Mr Surnam) and that they have full authority to run the companies.

3. I concluded after a Pt. 8 trial in February 2021 that the steps that had been taken in May to July 2020 were an unlawful interference with the BMF securitisations and granted a wide-ranging injunction in February 2021 intended to prevent further interference.

4. But further steps have been taken against the BMF securitisations since late March 2021 and various third party individuals and entities have claimed to have assumed the authority to run the securitisation companies.

5. Those third party individuals and entities caused new proceedings to be issued, including some in the names of the BMF securitisation companies during the summer of 2021 ("the new claims") seeking damages and injunctive relief designed to prevent Ms Bidel and Mr Speight (referred to below as "the Sanne Directors") from representing the BMF companies and to terminate the retainers of the lawyers (Simmons & Simmons LLP ("S&S") and counsel) who have acted for the BMF companies since 2019. The incoming third parties have also brought proceedings in the names of the BMF companies with a view to seeking the discharge of earlier orders of the court including my injunction of February 2021.

6. The BMF companies acting by the Sanne Directors have applied for the removal of their names as claimants in the new claims on the basis that they were started without the authority of the companies. A number of the defendants to the new claims have also applied to strike out the new claims or for reverse summary judgment on the basis that they disclose no realistic claim or are an abuse of the process.

7. None of the respondents to the applications appeared before me at the hearing.

8. However one of the claimants in some of the new claims, a company called BMF Assets No 1 Ltd ("BMF Assets"), has served three witness statements from Mr Andreou Artemiou (a director) and has said that it opposes the applications on the basis of those statements. Mr Artemiou says that he is authorised by the other respondents and that his position is supported by the other respondents, but he has not explained who has given that authorisation or support on behalf of the other respondents. I shall refer to his evidence below where apposite.

9. I should also mention that although it shares the BMF name, BMF Assets is not part of the securitisation structures (in the sense of being an issuer or holding company). It was only incorporated on 26 May 2021.

10. This hearing has been listed for several months to be heard on 19 January 2022. As I have said none of the respondents appeared before me. However on 17 January 2022 BMF Assets served an application seeking an order that I recuse myself as the docketed judge for all cases concerning the BMF securitisations; alternatively that I should stay all such proceedings pending an appeal to the Court of Appeal on the issue of recusal. The recusal application was supported by a witness statement from Mr Artemiou. The application notice asked that the application be dealt with on the papers and without a hearing. I informed the parties that I would address it at the beginning of the hearing listed for 19 January 2022. I considered that the application concerned the administration of justice and that the other parties (i.e. the parties represented by S&S) were entitled to be heard. BMF Assets then informed the court that it did not intend to appear at the hearing. I heard from counsel (Ms Cooke) who submitted that there was no merit in the recusal application. I dismissed the application and said that I would give my reasons in this judgment. These appear after my judgment on the substantive applications.

The evidence

11. I have read the following witness statements for the applicants: the first witness statement of Ms Coral Suzanne Bidel dated 15 July 2021 ("Bidel 1"); the first witness statement of Mr Andrew Jones, dated 19 July 2021 ("Jones 1"); the first witness statement of Mr Alexander James Bermingham, dated 5 August 2021 ("Bermingham 1"); the first witness statement of Caroline Hunter-Yeats, dated 16 July 2021 ("Hunter-Yeats 1"); and the first witness statement of Eoin O'Shea, dated 16 July 2021 ("O'Shea 1"). I have also read the first, second and third witness statements of Mr Andreou Artemiou dated 26 October 2021, 15 November 2021 and 7 December 2021 ("Artemiou 1, 2 and 3") served on behalf of BMF Assets.

The relevant sets of proceedings

12. The applications before the court have been made in the names of several companies, which I shall collectively call "the BMF Claimants". These are Business Mortgage Finance 3 Plc ("BMF3"), Business Mortgage 4 Plc ("BMF4"), Business Mortgage Finance 5 Plc ("BMF5"), Business Mortgage Finance 6 Plc ("BMF6"), Business Mortgage Finance 7 Plc ("BMF7"), (BMF4, BMF5, BMF6 and BMF7 together being the "Issuers") and BMF Holdings Limited ("BMFH"). The Sanne Directors have authorised these applications and have instructed S&S and Ms Cooke of counsel to act for them. (The respondents of course say that the Sanne Directors are no longer directors of the BMF Claimants and that the current applications are therefore brought without authority; this is one of the principal issues I have to resolve.)

13. The BMF Claimants have been named as claimants in a series of proceedings commenced in 2021 (i.e. the new claims):

    i) Proceedings commenced in the names of the BMF Claimants and Kipling Firs Limited ("Kipling") against (amongst others) Greencoat Investments Limited, with Claim Number CL-2021-000279 (the "Kipling Injunctions Claim");

    ii) Proceedings commenced in the names of the BMF Claimants and Kipling S&S, Caroline Hunter-Yeats and Amer Siddiqui (both partners in S&S and the

BMF Claimants' legal advisors) with Claim Number CL-2021-000274 (the "S&S Claim");

iii) Proceedings commenced in the names of the BMF Claimants and Kipling against Homeloan Management Limited ("HML") and Mr Andrew Jones (a director of HML), with Claim Number CL-2021-000344 (the "HML Claim"); and

iv) Proceedings commenced in the names of the BMF Claimants, together with Kipling, BMF Assets and Tilman Holdings Limited ("Tilman"), with Claim Number CL-2021-000391 (the "Tilman Claim").

14. There are also relevant proceedings where the BMF Parties have not been named as Claimants:

i) Proceedings by BMF Assets and Tilman against S&S, Ms Hunter-Yeats, Ms Kitt and Mr Riddiford, with claim number CL-2021-000420 ("the 2nd S&S Claim").

ii) Proceedings brought by a Mr Jason Fung against Computershare Investments (UK) (No.3) Limited ("CIL") (a wholly owned subsidiary of HML), Mr Jones and Nazir Sarkar, with Claim No. CL-2021-000345 (the "CIL Claim")

15. The various claims were all commenced in the Commercial Court but in August 2021 were ordered to be transferred to the Financial List in the Chancery Division to be listed before me as the docketed judge.

16. S&S and Ms Cooke of counsel are also instructed by a number of the defendants in these proceedings, namely:

i) Sanne Group Plc ("Sanne Group"), Sanne Group (UK) Limited ("Sanne Group (UK)"), Sanne Group Secretaries (UK) Limited ("Sanne Group Secretaries"), Sanne Trustee Company UK Limited ("Sanne Trustee"), Martin Charles Schnaier (the CEO of Sanne Group), Jason Christopher Bingham (Chief Strategy Officer of Sanne Group), Beejadhursingh Surnam, Coral Suzanne Bidel and Marc Speight (the "Sanne Defendants"), being first to ninth defendants to the Tilman Claim;

ii) HML and Andrew Jones, being the defendants to the HML Claim; and

iii) CIL, Mr Jones and Nazir Sarkar, being the defendants in the CIL Claim.

17. S&S and various named partners and Mr Riddiford of counsel (who have all acted for the BMF Claimants in the various earlier proceedings) ("the lawyer defendants") were separately represented before me by CMS Cameron McKenna Nabarro Olswang LLP and Mr Sharpe of counsel. The position of the lawyer defendants is aligned with that of the parties represented by Ms Cooke.

The applications

18. There are four applications, issued in July and August 2021, by the BMF Claimants (through the Sanne Directors) for orders pursuant to CPR r.19.2(3) in relation to the Kipling Injunctions Claim, the S&S Claim, the HML Claim and the Tilman Claim.

19. There are then separate strike-out and summary judgment applications issued by the defendants in respect of the Tilman Claim, the HML Claim and the CIL Claim.

20. Separately the lawyer defendants have applied to strike out or for summary judgment in the Tilman Claim, the S&S Claim and the 2nd S&S Claim.

21. The CPR r.19 applications have been brought on the basis that the BMF Claimants were added as claimants without their authority or knowledge and it is therefore "not desirable" for them to continue to be parties to the Claims.

22. The various strike out or summary judgment applications have been brought on the basis that:

    i) The S&S Claim and HML Claim were commenced without the BMF Claimants' authority and the other claimant, Kipling, has no standing to bring the claim.

    ii) The Tilman Claim was commenced without the BMF Claimants' authority and the other claimants, BMF Assets, Kipling and Tilman, have no standing to bring the claim.

    iii) The claimant in the CIL Claim, Mr Jason Fung, has no standing to bring the claim.

    iv) All of the proceedings are totally without merit, vexatious and disclose no reasonable grounds for being brought.

23. As regards the Kipling Injunctions Claim, the BMF Claimants also say that, if they are removed as parties, the remaining part of the claim is plainly abusive and should not be permitted to continue and that the Court should strike out the remainder of the Kipling Injunctions Claim of its own initiative.

The parties in more detail

24. It is helpful at this stage to say more about the parties. I have drawn in this section and those that follow on the evidence served by the parties and Ms Cooke's helpful skeleton argument.

25. The Issuers (BMF4, BMF5, BMF6, BMF7) and BMF3 issued various classes of notes, as part of the securitisations of commercial mortgages (the "Loan Portfolio") relating to UK properties.

26. In broad outline, the structure of the BMF Securitisations is that the Noteholders, as a class, are represented by and act through a note trustee, which was (in the case of BMF3) and remains (in the case of the Issuers) BNY Mellon Corporate Trustee Services Limited ("BNY" or the "Note Trustee").

27. The Notes were constituted by Trust Deeds entered into by the Note Trustee and each of BMF3 and the Issuers dated 19 July 2005, 12 April 2006, 18 October 2006, 18 May 2007 and 23 November 2007.

28. BMF3 sold its portfolio of assets on 15 February 2018. BMF3 therefore retains only residual, unsecured debts, its Notes having been redeemed.

29. The Issuers still hold their Loan Portfolios and their Notes are currently held in global form, entrusted to a common depository on behalf of Clearstream and Euroclear. The interests of the Issuers' Noteholders are recorded electronically in the books and records of Clearstream and Euroclear.

30. BMFH is the majority shareholder of each of BMF3 and the Issuers, holding 49,999 shares in each of those entities (which amounts to 99.99% of the total share capital of each entity).

31. Kipling is the Seventh Claimant in the Kipling Injunctions Claim, the S&S Claim, and the HML Claim, and the Eighth Claimant in the Tilman Claim. Kipling is an English company, incorporated on 23 March 2021. On Kipling's incorporation, a Mr Glen Watford was registered as its sole director. He was replaced on 24 March 2021 by Andreou Artemiou and Lark Holdings Limited ("Lark") from 30 March 2021. Lark is incorporated in the Marshall Islands. Mr Watford was registered as a person of significant control ("PSC") over Kipling on its incorporation for the period of one day. The current register shows no PSC.

32. BMF Assets, the First Claimant in the Tilman Claim and the 2nd S&S Claim, was incorporated in England and Wales on 26 May 2021. Mr Gary Fung was registered as its sole director and PSC. Andreou Artemiou and Mr Philip Pitcher are now listed as directors.

33. Tilman, named as the Ninth Claimant in the Tilman Claim and the Second Claimant in the 2nd S&S Claim, is incorporated in the Marshall Islands. The applicants' evidence shows that it has not been possible to verify Tilman's company details as such filings in the Marshall Islands are not publicly available. The International Registries' website states that Tilman was "annulled" on 1 November 2019. Mr Artemiou's evidence is that it continues in existence though he does not give any source at all for his knowledge about Tilman and does not claim to be a director of it.

34. S&S have been the legal advisors to the BMF Claimants (acting under the authority of the Sanne Directors), and Ms Hunter-Yeats, Mr Siddiqui and Ms Kirsten Kitt are partners of S&S. Mr Riddiford is a barrister who has been instructed by S&S in the various proceedings.

35. HML is the Mortgage Administrator and Standby Cash/Bond Administrator in respect of the BMF Securitisations. HML is part of the Computershare Limited ("CLS") group of companies, being the wholly owned subsidiary of CIL, which is in turn a wholly owned subsidiary of CLS. Andrew Jones is CEO of Loan Services at CLS and is a director of HML. Nazir Sarkar is a director of CIL. HML is party to contracts with the relevant Issuers.

36. Sanne Group is the parent company of all subsidiaries in the Sanne group of companies. Sanne Group UK is a wholly owned subsidiary of Sanne Group Plc and the provider of corporate and administration services to each of the BMF Claimants. Sanne Group Secretaries is the secretary to each of the BMF Claimants. Sanne Trustee is the trustee of the shares in BMFH (the "BMFH Share Trustee"). The Fifth and Sixth Defendants to the Tilman Claim, Martin Schnaier and Jason Bingham, are respectively the Chief Executive Officer and Chief Strategic Officer of Sanne. The Seventh to Ninth Defendants to the Tilman Claim are Ms Bidel, Mr Surnam and Mr Speight.

37. It is the applicants' case that Ms Bidel and Mr Speight (the "Sanne Directors") remain the only directors of the BMF Claimants. As already noted, this is one of the principal issues raised by the applications. Mr Surman was until 20 August 2021 a director of the BMF Claimants.

Narrative of events and steps taken in respect of the BMF securitisations

38. As already explained, since early 2019 a number of individuals and companies have taken steps to take control of the BMF securitisation structures or the underlying assets. There have been 26 sets of proceedings. The courts have held that these steps were unlawful and have granted appropriate declaratory and injunctive relief. They have also awarded costs, generally on the indemnity basis against the interfering parties, but hardly anything has been recovered. The evidence shows that the BMF Claimants are some £3m out of pocket for such costs.

39. It is the applicants' case that the main protagonist behind these steps was and is Mr Rizwan Hussain. After a number of judgments in their favour the Issuers brought a Part 8 claim against Mr Hussain and a number of connected parties and entities. I heard the trial and on 12 February 2021 granted (i) declarations including that Ms Bidel, Mr Speight and Mr Surnam were the true directors of BMF4, BMF5, BMF6 and BMF7 and (ii) injunctive relief against Mr Hussain and various individuals and entities associated with him, restraining them from taking various steps against the Issuers and connected parties ("the February 2021 Injunction").

40. My reasons for granting that injunction were set out in a judgment entitled *Business Mortgage Finance 4 Plc & Ors v Rizwan Hussain & Ors* [2021] EWHC 171 (Ch). A reader of this judgment who seeks more details should refer to that judgment and the fuller history recited in it.

41. I concluded at [252] that:

> "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 past of two years, in the teeth of earlier orders of the courts and the Claimants' reasoned protests. It must now stop."

42. Since 9 July 2020 Mr Hussain has been subject to a general civil restraint order (the "GCRO") that is currently due to expire on 9 July 2022.

43. At the time of the trial of the Part 8 proceedings Mr Hussain was in prison, serving a sentence for contempt of court in unrelated civil proceedings. Mr Hussain attended the start of the trial by video-link from prison but, having made an unsuccessful application to adjourn the trial, he declined to participate in the trial itself.

44. Mr Hussain was released from prison on or around 9 March 2021.

45. Since 30 March 2021 there have been a number of further steps against the BMF Claimants and various individuals and entities associated with them. These steps have not been taken in the name of Mr Hussain, but by or in the names of others.

46. It is the position of the Sanne Directors that Mr Hussain is behind the taking of these various steps since 30 March 2021. On 28 June 2021 the Issuers (acting by the Sanne Directors) issued an application seeking an order for Mr Hussain's committal for contempt of court (the "Committal Application"), which is due to be heard by me (as the docketed judge) from 2 to 8 February 2022.

47. On 30 March 2021 a letter was received by Sanne Group from Andreou Artemiou making the following points:

    i) Lark (the Marshall Islands company) was an Instrumentholder (as defined) in each of the Issuers and, in that capacity, had made a "written resolution" (the "Written Instrumentholder Resolution") stated to have the effect of: (i) removing Sanne Group Nominees 1 (UK) Limited and Sanne Trustee as trustees of the shares in BMFH; and (ii) transferring the entire share capital of BMFH to Lark.

    ii) Lark had passed various "written ordinary resolutions" of BMFH (in its claimed capacity as BMFH's sole shareholder) to remove Ms Bidel, Mr Speight and Mr Surnam as directors of BMFH (the "BMFH Ordinary Resolutions").

    iii) Lark and BMFH had passed various "written ordinary resolutions" of each of the Issuers (the "Issuer Ordinary Resolutions") to remove Ms Bidel, Mr Speight and Mr Surnam as directors of the Issuers.

    iv) Notice was purportedly given to Sanne Group Secretaries of its removal and termination as secretary of the Issuers and BMFH.

    v) Ms Bidel, Mr Speight and Mr Surnam were told that they must not hold themselves out as a representative, director, secretary or officer of any of the Issuers going forwards.

48. Also on 30 March 2021 further communications followed: (i) from Mr Andreou Artemiou to BNY saying that BNY had been removed as Note Trustee by way of a "written extraordinary resolution" executed by Lark; and (ii) from Mr Andreou

Artemiou and Centrum Trustees Limited ("Centrum"), a Marshall Islands entity, in their claimed capacities as trustees of the Issuers to Target Servicing Limited ("Target") terminating Target's role as Special Servicer and Cash/Bond Administrator.

49. I shall call this series of events the first narrative.

50. The applicants submit that the first narrative is unsubstantiated and could not in any case have had the legal effects alleged by Mr Artemiou for the following reasons:

i) No evidence has ever been tendered that Lark was an Instrumentholder.

ii) In any event, even if Lark was a Noteholder there is still no basis on which it could be properly maintained that any of the steps set out above were valid or effective:

a) Para. 23 of Schedule 5 to the Trust Deed requires an Instrumentholder to hold 75% or more of the Principal Amount Outstanding of the Notes in order to pass a written resolution. Lark did not claim to pass that threshold. Lark claimed only to be the holder of 75% of the most senior class of notes or the holder of 50% of the Principal Amount Outstanding of the Notes as a whole.

b) Even if Lark held 75% or more of the Principal Amount Outstanding of the Notes, the Written Instrument Resolution would still not be effective, as Instrumentholders do not have the power to pass a written resolution to remove the BMFH Share Trustee (the process for which is set out in clause 16 of a Declaration of Trust dated 24 February 2004 and section 36 of the Trustee Act 1925 (which would only allow a change to be made by the person nominated in the trust instrument, which in this case is the existing BMFH Share Trustee)).

c) Nor would Lark have the power to transfer the entire issued share capital of BMFH from Sanne Trustee to Lark. By clause 16.2(D) of the Declaration of Trust, new trustees shall not be appointed without the prior written consent of BMFH. BMFH did not consent to the appointment of Lark as share trustee.

d) There is no evidence that there was ever a transfer of the shares in BMFH to Lark (which would require a stock transfer form and changes to the register of members of BMFH).

iii) It is unclear on what basis any authority was asserted in respect of BMF3, as no purported ordinary resolution of BMF3 (analogous to the Issuer Ordinary Resolutions) has been provided (though the other legal obstacles would arise in any event.

51. I accept these submissions. For each of the reasons set out above, the steps comprising the first narrative were legally ineffective to change either the shareholdings of BMFH or the identity of the directors of BMFH or of the Issuers or BMF3.

52. Despite this a number of unauthorised filings were made at Companies House in respect of the various BMF Claimants and Kipling. The attempts to change the registers of BMF4, BMF5, BMF6 and BM7 were not accepted by Companies House, since those entities were named in the February 2021 Injunction. Companies House, however, processed the filings for BMF3, BMFH and Kipling (which were not named in the February 2021 Injunction).

53. BMFH and BMF3 (acting by the Sanne Directors) then issued an application for relief under sections 790V and 1096 of the Companies Act 2006 rectifying the register (the "Rectification Claim"). ICC Judge Jones granted the relief sought by BMF3 and BMFH and on 2 July 2021 made declarations that Ms Bidel, Mr Speight and Mr Surnam were the true directors of those entities. He found that the person who had made the unauthorised filings which formed the subject matter of the Rectification Claim had no right to do so, that it was right to describe the filing as unauthorised and the material showed that these actions were erroneous and misleading and that "there is an argument that it is fraudulent" though there was no need to go that far. On 9 August 2021 Chief ICC Judge Briggs dismissed Kipling's application to set aside that decision. There has been no appeal against the decision or the declarations.

54. The conclusion I have reached, that the events compromising the first narrative had no legal effect, is consistent with and supported by the decision of ICC Judge Jones concerning BMFH and BMF3. The same logic applies to the alleged changes regarding the Issuers: the various changes said to have been made to the directors of the Issuers assume that the directors of BMFH had been changed; and since, as ICC Judge Jones has declared, there was no change in the directors of BMFH none of the further steps taken in respect of the Issuers had any legal effect.

55. More recently Mr Artemiou on behalf of BMF Assets has advanced a different version of events which he claims have led to changes in the control of BMFH and the Issuers. This has emerged in the following way.

56. On 2 August 2021 Particulars of Claim ("PoC") in the Tilman Claim dated 30 July 2021 were sent to the defendants to those proceedings.

57. The Tilman PoC did not refer to Lark or Lark's alleged holding of Notes or the Lark Written Instrumentholder Resolution or the BMFH Ordinary Resolutions. Rather, the PoC alleged a different set of steps ("the second narrative"). It alleged that on 30 March 2021:

    i) Four new (but at that stage unnamed) directors, defined as the De Facto Directors, "assumed the status, functions and role of directors" of the BMF Claimants ([23] of the PoC);

    ii) The process by which the De Facto Directors are said to have taken the roles of directors of the BMF Claimants was not explained, though it was averred that they did so "at the behest of certain investors in the Notes, or otherwise" ([23]);

    iii) The De Facto Directors then "validly revoked…, with immediate effect, all delegated executive powers, authorities, and discretions, away from the Sanne Directors, as well as irrevocably terminating all agreements, retainers and

> engagements with the Sanne Parties, Simmons Parties and Riddiford (to the extent that there were ever any proper, valid and subsisting agreements, engagements or retainers)" ([25]).

58. The second narrative is not consistent with the first narrative. It alleges that people (the De Facto Directors) were appointed as directors of the BMF Claimants; the legal mechanism by which they were appointed differed; and other steps are said to have been taken to remove the Sanne Directors and denude them of authority.

59. The second narrative has since been fleshed out. On 24 September 2021 Mr Andreou Artemiou applied for an adjournment of a CMC that had been listed for 27 September 2021 in the Committal Application against Mr Hussain. He relied on his own witness statement and that of a "Mr Usman Ahmad"; and written submissions signed by Mr Artemiou.

60. The statement of Mr Usman Ahmad identified the four De Facto Directors as Mr Ahmad and three Marshall Islands entities called Blue Side Services S.A. ("Blue Side"), Cherry Services Ltd ("Cherry Services") and Corelli Capital AG ("Corelli Capital"). Those three Marshall Island entities were said to be holders of "an ultimate beneficial interest in the Notes" ([13]). No documents were exhibited showing that any of these entities had an interest in the Notes. The statement said that on 1 April 2021 those three entities by a "series of delivered written letter instruments" ([13]) (which were not exhibited), took a number of steps including directing Sanne Group (and others) to formally appoint the De Facto Directors. The statement also said that all of the Issuers' assets had now been sold to Tilman (the "Trade Sales"), that transaction having completed on 30 June 2021.

61. None of Mr Artemiou, Mr Ahmad or Mr Hussain appeared at the hearing of the CMC in the Committal Application. I rejected the request for an adjournment of the CMC and gave directions for the service of evidence and other steps.

62. On 26 October 2021 an application notice was issued by BMF Assets in the Tilman Claim for an interim injunction (the "Interim Injunction Application") seeking an order that:

> "The respondents (including in the case of those respondents which are corporate persons rather than natural persons, whether acting by their directors, servants, employees or agents) shall not (whether acting alone or in combination with any other individual or entity) take or purport to take or to have taken (or cause, procure or permit) any other person to hold them out as if they are taking or have taken (or cause or procure anyone else to take) any step or action whatsoever to obstruct, prevent, impede or otherwise frustrate the discharge of any of the securities issued by the fourth to seventh claimants through the release, utilisation or application of the funds held by the applicant on behalf of the fourth to seventh claimants or otherwise until trial or further order of this court."

63. Artemiou 1, filed in support of the Interim Injunction Application, set out substantially the same history as in Mr Ahmad's 24 September 2021 witness statement. He also exhibited some supporting documents, including evidence of the

purported holdings of Blue Side, Cherry Services and Corelli Capital as Noteholders. These documents appear to be screenshots from an unspecified system.

64. As already explained, the Issuers' Notes are held in global form, the only holder of Notes themselves being BNY as Note Trustee and common depository.

65. In a judgment dated 31 July 2019 in proceedings concerning BMF6 (*BMF6 v Greencoat Investments Limited & Ors* [2019] EWHC 2128 (Ch)) Zacaroli J held that:

    i) the term "Instrumentholder" (which includes Noteholders) is to be construed by reference to the definition in the Master Definitions Schedule, which states that it "shall be deemed to include references to the holders of the beneficial interests in such Instruments as relevant" (at [33]);

    ii) since the Notes are held by BNY in global form, the legally relevant question is whether the person claiming to be a Noteholder is a holder of the beneficial interest in the Notes (at [34]);

    iii) for that purpose, Instrumentholders are "only those persons in whose name the Notes are held in the records of the clearing systems (i.e. the account holders at Clearstream and Euroclear)" (at [35]); and

    iv) accordingly, the persons claiming at the time to be Noteholders would be restrained from holding themselves out such unless they could demonstrate their holding to the satisfaction of BNY as Note Trustee.

66. On 27 October 2021 S&S provided BNY's solicitors (Allen & Overy LLP ("A&O")) with a copy of the documents exhibited to Artemiou 1 and asked whether BNY was satisfied that the three Marshall Islands entities are Noteholders. A&O said that the Trustee's position was that it had received no proof of holding from a recognised clearing system – such a proof of holding from, for example, Euroclear or Clearstream would generally contain the system's name and account details. There was therefore no means to say whether or not these supposed positions were accurate or have simply been produced for the purposes of the application. As such, the Trustee was not satisfied that the attachment was accurate. The Trustee would review the position if presented with a position statement or confirmation from Euroclear or Clearstream.

67. The applicants submit and I accept that there is therefore no credible evidence that these three entities are Instrumentholders. Mr Artemiou says in his witness statement that BNY could have taken further steps to assist in obtaining the appropriate evidence from Euroclear or Clearstream. I reject that. It is for parties who assert to be Instrumentholders to provide satisfactory evidence of their status.

68. In any event there are basic and fatal legal flaws in Mr Artemiou's case that, under the second narrative, the De Facto Directors became directors of BMFH or the Issuers or BMF3.

69. First, the only lawful ways for directors to be appointed are under Articles 70 and 71 of the Issuers' Articles of Association, i.e. either by shareholder ordinary resolutions or by the directors themselves. I reached this conclusion in my judgment of February

2021. Birss J had already decided the same point in previous proceedings in July 2020, confirming that "the noteholders do not have the power to act in this way" and appoint directors: see *Oyekoya v BMF4 plc* [2020] EWHC 1910 at [49].

70. Secondly, the case that there has been a change in the directors of the various BMF Claimants is based on "Notices of Consent and Willingness to Act" under which the De Facto Directors said that they were willing to assume the position of directors.

71. I considered this argument at some length in the 19 November hearing and concluded at [48] to [50] of my judgment on the Interim Injunction Application (reported at [2021] EWHC 3306 (Ch)) that it is legally misconceived:

> "48. … there is no serious issue that the four persons or entities who describe themselves as de facto directors in fact became directors of the Issuers or Holdings.
>
> 49. The concept of a de facto director is one that is used in law for a person who actually acts as a director and participates at the relevant level in the governing structure of a company. It is a label used when seeking to establish the liability against such a person, notwithstanding that that person has not, strictly speaking and formally, been appointed as a director. Although some of the case law talks of persons assuming the position of a director, that is only part of a multifactorial test which requires the court to look at what has actually happened, whether that person has been allowed access to information, whether he or she has been allowed to take part in meetings or decision making in relation to the company, how that person has been presented by the company, and so forth. The aim is to determine whether in substance and reality the person is to be regarded as a director.
>
> 50. What is entirely clear is that people cannot make themselves directors of a company simply by saying that they are prepared to assume that position. It is legally nonsensical to think that a stranger to a company could – by a unilateral act of saying they are prepared to assume the position - become a director of a company. It would mean that anyone could become a director of any company simply by saying so, regardless of the constitutional, regulatory and corporate governance requirements. That is legally absurd. What it seems to me has happened here is that the four de facto directors, as they call themselves, are corporate cuckoos, trying to push themselves into the Issuers and Holdings and forcing out the true directors. There is no basis in law for that."

72. The same conclusion was reached by HH Judge Matthews in rejecting a similar argument in *Mansard Mortgages v Beyat Holdings Ltd* [2021] EWHC 3355 (Ch) at [64] to [67]. As he said at [67] "a person does not become a de facto director merely by "muscling in" in the administration of the company, against the wishes of the other directors". (I note in passing that in that case Mr Hussain claimed to be the director of one of the relevant companies involved in the dispute).

73. For these reasons I accept counsel's submission that none of the steps comprising the second narrative replaced the Sanne Directors or undermined their authority to act on behalf of the BMF Claimants.

74. I dismissed the Interim Injunction Application on 19 November 2021 (see [2021] EWHC 3306 (Ch)). I concluded that there was no serious issue that the events comprising the new narrative had led to a change of control of the BMF Claimants. I also concluded that any Trade Sale to Tilman would have been made without any authority on the part of the Issuers and BMF3. I concluded specifically that:

    i) There was no serious issue that there was an agreement with Tilman in circumstances where: there was no admissible evidence before the court about the sale (Mr Artemiou not claiming to be a director of Tilman and the witness statement in that name not providing the required sources of information and no copy of any sale agreement to Tilman having been produced) (at [36]).

    ii) There was no evidence of the receipt of the sale proceeds, said to amount to £550m (at [37]).

    iii) The assets alleged to have been sold to Tilman are in any event subject to a deed of charge in favour of the Note Trustee, making it difficult if not impossible for any sale to have taken place (at [38]).

    iv) There was no evidence of any negotiations or due diligence concerning the alleged sale (at [40]).

    v) Such evidence as there is about Tilman shows that its registration has been "annulled" under the laws of the Marshall Islands. There is no evidence about the source of the funds it is said to have already paid to the Issuers, though these amount (on the second narrative) to over half a billion pounds (at [39]).

75. Those conclusions were expressed in the terms of the test for an injunction, namely, whether there was a serious issue to be tried. I have carefully considered the evidence on this application and have concluded for the same reasons that there is simply no credible case that carries any conviction that Tilman acquired the assets under the Trade Sale.

76. I also concluded that BMF Assets, the applicant, had no standing to seek an injunction. It was not a Noteholder and (in any case) Noteholders are required to act collectively and have no right to bring individual proceedings ([43]).

77. I also concluded that the proceedings had been brought on the legally erroneous footing that individual beneficial owners of Notes issued by the Issuers are able to assert fiduciary duties against the directors of the Issuers and BMFH, which was not seriously arguable ([44]). I have reconsidered the witness statements of Mr Artemiou and have reached the same conclusions about this issue for the purposes of the present application. I also note that HHJ Matthews reached a similar conclusion in *Mansard Mortgages* at [69] to [73]. I agree entirely with his reasoning.

78. I should also note for completeness that since the Interim Injunction Application Artemiou 3 has been filed. That statement addresses a point about Mr Artemiou's identity but otherwise says that reliance will be placed on Artemiou 2 and Artemiou 1 (the evidence filed in support of the Interim Injunction Application).

79. To summarise, the applicants have satisfied me to the strike out or summary judgment standard (whether there is a realistic case or a real prospect of the claims succeeding) of the conclusions as I reached on the Interim Injunction Application: namely, that there has been no change in the identity of the directors of the BMF Claimants; the Sanne Directors remain the only true directors of those companies; any Trade Sale to Tilman would have been made without authority; in any event there is no real prospect of the respondents establishing in the proceedings that there was a valid Trade Sale to Tilman; BMF Assets has no realistic case that it has standing or legal basis for seeking injunctive or other relief against any of the defendants.

80. It also follows from these conclusions that various of the claims with which the present applications are concerned were issued and pursued in the names of but without the authority of the BMF Claimants.

Further details of the underlying proceedings

81. It is helpful at this stage to give more details of the proceedings with which the current applications are concerned.

82. The Kipling Injunctions Claim, issued in the names of the BMF Claimants and Kipling, seeks to vary, set aside or rescind the following orders:

    i) My orders dated 3 February 2021 and 12 February 2021 in: Claim No. FL-2020-0000023 brought by the Issuers and seeking various declarations and final injunctive relief against nine of the defendants, including Mr Hussain (the "Injunctions Claim"); and Claim No. CR-2020-003605 brought by BMFH and the Issuers in which BMFH and the Issuers sought various orders pursuant to section 790V and 1096 of the Companies Act 2006 requiring the Registrar of Companies to rectify the registers of the Issuers (the "BMFH Claim").

    ii) The order of Zacaroli J dated 31 July 2019 in Claim No. FL-2019-0000005 issued by BMF6 against parties including Greencoat Investments Limited ("GIL") (the "GIL Claim").

    iii) The order of Nugee J dated 22 October 2019 in proceedings with Claim No. FL-2019-000013 issued by BMF6 against Roundstone seeking various declarations and final injunctive relief against Roundstone Technologies Limited (the "Roundstone Claim").

83. With some unexplained omissions, the defendants to the Kipling Injunctions Claim are the defendants to the Injunctions Claim, BMFH Claim, GIL Claim and Roundstone Claim and were all named defendants on one or more of the various orders for injunctive relief dated 12 February 2021, 31 July 2019 and 22 October 2019 (with each of them being among the parties injuncted under one or more of those orders).

84. The basis for the Kipling Injunctions Claim is said to be that the above orders (the "Previous Orders") were all obtained by fraud and/or that there was material non-disclosure as to the authority of the parties at the time of seeking the judgments and orders purportedly in the names of the claimants and/or that new events have occurred since the making of the orders which invalidate or vitiate the basis on which they

were made or unjustly interfere with the rights of the claimants and their members, creditors and other stakeholders.

85. The S&S Claim, issued in the names of the BMF Claimants and Kipling, seeks the following relief:

i) A declaration that the defendants (i.e. S&S, Ms Hunter-Yeats and Mr Siddiqui) do not act on behalf of the claimants, their subsidiaries, affiliates, or any of their assets.

ii) An injunction that the defendants shall not (among other things) take any step whatsoever in relation to the affairs of the claimants (or their assets), including without limitation making any announcements, statements or representations concerning the affairs of the claimants, or issue or otherwise commence any claim, application or other court proceedings concerning the claimants.

86. On 21 June 2021 Particulars of Claim in the S&S Claim (the "S&S PoC") were sent by email from Mr Artemiou to S&S. That document pleads the first narrative (i.e. the contention that at the end of March 2021 Lark became the holder of the shares in BMFH and then changed the directors of that company and the Issuers and BMF3). The S&S PoC then bases the relief sought on the following correspondence:

i) On 6 April 2021, a letter was sent to S&S on the headed notepaper of Mr Artemiou (in his purported capacity as director of BMF3, the Issuers and BMFH) stating that those parties had terminated all engagements and relationships with S&S and that S&S was no longer authorised to act;

ii) On 10 May 2021, S&S wrote to Mr Artemiou, Kipling, Lark and Centrum on behalf of the BMF Claimants and the Sanne Directors (amongst others) to confirm that they continue to act for the BMF Claimants and the Sanne Directors and informing the recipients that each and every step taken by them adverse to the BMF Claimants (and individuals and entities associated with them) since 30 March 2021 has been unauthorised, illegal and invalid;

iii) A further letter was sent to S&S on the headed notepaper of Mr Artemiou, in his purported capacity as director of the "BMFH companies" dated 14 May 2021 in which it was stated that S&S's "refusal to accept [its] lack of standing has now forced the BMF Companies to incur further expenses and use of the Courts time in seeking declaratory and injunctive relief…"

87. The HML Claim was issued in the names of the BMF Claimants and Kipling, and seeks damages:

i) Against HML for breach, non-performance and/or default of its contractual obligations and duties pursuant to the Mortgage Administration Agreement and related transaction documents, each entered into between HML and the Issuers and BMF3 in July 2005 and November 2007; and/or

ii) As against Mr Jones for the tort of inducing or procuring a breach of contract by one or more of all the Issuers and BMF3.

88. The amount claimed as stated on the Claim Form is £47,510,000.

89. There are no particulars of claim.

90. Though not stated in the Claim Form, from correspondence sent by Mr Artemiou it appears that the damages sought are in respect of an alleged breach of contract by HML for declining to act on requests made in those letters, in particular, that HML terminate and cease all use of the Issuers' collection accounts with Barclays and procure that all payments were made to a "New Collection Account" going forward.

91. The CIL Claim was issued in the name of Jason Fung against CIL and two of its individuals (Mr Jones and Mr Sarkar) for unlawful means conspiracy and/or causing loss by unlawful means, with respect to Mr Fung's alleged interests in the securities issued by the Issuers. The amount claimed, as stated on the Claim Form, is £377,250,000. No further details of the claim are set out and there have been no particulars of claim.

92. The Tilman Claim was issued in the name of the BMF Claimants, BMF Assets, Kipling and Tilman. The defendants are the various Sanne parties (including the Sanne Directors), S&S, Ms Hunter-Yeats and Riddiford. The claimants principally seek:

    i) Damages for "i) causing loss by unlawful means and, or in the alternative, ii) unlawful means conspiracy";

    ii) Declarations that (i) none of the Defendants is an advisor, solicitor, agent, counsel, secretary, director or officer of any of the Claimants; (ii) none of the defendants is authorised to deal with the rights, interests, benefits, assets and holdings of the Claimants; and (iii) every step taken by the Defendants in their purported capacities on or after 30 March 2021 was without authority and is void and of no effect; and

    iii) Orders and injunctions against the Defendants preventing them from (i) taking any steps in relation to the affairs of the Claimants or (ii) holding themselves out as director, solicitor, counsel, advisor or agent of the Claimants or holding themselves out as having any authority to deal with the assets of the Claimants.

93. The amount claimed is £149,250,000.

94. As already explained, the particulars of claim for this case rely on the second narrative (i.e. that the De Facto Directors became directors of the BMF Claimants on 30 March 2021 and then sold the underlying assets to Tilman under the alleged Trade Sale).

95. The alleged conspiracy by the defendants consists essentially of (a) the Sanne parties having taken the earlier proceedings in 2019-21 to establish the invalidity of the various steps taken by Mr Hussain and other outsiders in relation to the securitisations; (b) the Sanne parties continuing to deny the validity of the steps taken by the De Facto Directors and others since 30 March 2021 or to acknowledge and

give effect to the Trade Sales; and (c) the steps taken by S&S and counsel in acting for the BMF Claimants on the authority of the Sanne Directors.

96. The 2nd S&S Claim was issued in the names of BMF Assets and Tilman against S&S, Ms Hunter-Yeats, Ms Kitt and Mr Riddiford. It claims "relief arising out of certain directions or instructions given to" Barclays Bank held in the name of the Issuers and BMF3 which were delivered as a consequence of fraudulent misrepresentation or without authority or in breach of fiduciary duty. There have been no particulars of claim.

The applications under CPR 19

97. As already explained, the applications under CPR 19.2(3) are made on the basis that the BMF Claimants were added as claimant parties to each of the Kipling Injunction Claim, the S&S Claim, the HML Claim and the Tilman Claim without their authority (or indeed knowledge), and it is therefore not desirable for them to continue to be parties to these claims.

98. The claim forms in relation to the four claims to which the CPR 19 applications relate have been signed by Mr Oliver Taylor, purportedly on behalf of the BMF Claimants and Kipling, for the Kipling Injunctions Claim, the S&S Claim and the HML Claim; and Mr Philip Pitcher, purportedly on behalf of the BMF Claimants, BMF Assets, Kipling and Tilman for the Tilman Claim.

99. For the reasons already given I have concluded that the only directors entitled to act for the BMF Claimants are the Sanne Directors. None of the events comprising the first narrative and the second narrative changed the directors of those companies or affected the authority of the Sanne Directors to act for the BMF Claimants. I am satisfied that Mr Taylor and Mr Pitcher are strangers to the BMF Claimants and lack and have at all material times lacked any authority to act for them.

100. I conclude that the BMF Claimants were added as claimants to each of the Kipling Injunction Claim, the S&S Claim, the HML Claim and the Tilman Claim without their authority (or indeed knowledge).

101. I am also satisfied for the same reasons that S&S and counsel (including Mr Riddiford on earlier hearings and Ms Cooke on the current application) have been and are properly authorised to represent the BMF Claimants.

102. I therefore consider that the BMF Claimants should be removed as claimants from these four sets of proceedings.

103. In the Kipling Injunctions Claim, the sole remaining claimant is therefore Kipling. Since none of the parties represented by S&S and Ms Cooke are defendants to that claim they do not directly apply to strike out the claims by Kipling. However they are clearly affected by the claim as the BMF Claimants are the beneficiaries of the various earlier orders made by the court which these proceedings now seek to set aside. Ms Bidel explained in her first witness statement served on 15 July 2021 that the court would be invited to strike out the remaining proceedings of its own initiative. There has been no response to that suggestion in the three witness statements of Mr Artemiou. Kipling has not appeared at this hearing.

104. The court has power to strike out a claim of its own initiative under CPR 3.4 and 3.3. Rule 3.3 contains provisions for the court, where appropriate, to notify affected parties where it proposes to act of its own initiative. This case is rather unusual because Ms Bidel raised the suggestion as long ago as July 2021 and Kipling has had the opportunity to respond to it and has not done so. Moreover there has been a hearing at which Kipling could have made representations and it did not appear.

105. I consider that there would be nothing unfair in deciding this point now without a further hearing. Nonetheless, it seems to me that the case falls within r.3.3(4) and (5) so that (if I decide to strike out under the court's own initiative) any party affected may apply to set aside the order under CPR 3.3(5).

106. I consider that the court should strike out the remaining claim by Kipling in the Kipling Injunction Claim of its own initiative. The claim seeks the setting aside of various orders obtained by various of the BMF Claimants in three sets of earlier proceedings. I have decided that those earlier proceedings were brought under the authority of the true directors of the relevant BMF Claimants. The BMF Claimants naturally wish to be able to rely on the relief they obtained in those three cases, which includes injunctive and declaratory relief. Kipling was not a party to any of three earlier cases. It was only incorporated in March 2021, which was after the relevant orders had been made. There is no legally intelligible basis on which Kipling could apply to set aside orders in earlier cases which were properly constituted and to which it was not even a party. It is a stranger to the earlier proceedings and I consider that any claim by Kipling to seek to set aside the earlier orders is legally unsustainable and would be frivolous and vexatious and should be dismissed. I also consider that the claim of Kipling in these proceedings is totally without merit. I shall therefore strike out the remaining claims in this action by Kipling.

Applications to strike out or for summary judgment

107. The court may strike out a statement of case if it appears that there are "no reasonable grounds for bringing…the claim" (CPR r.4(2)(a)). The Court may also strike out a statement of case if it is an abuse of the court's process (CPR r.3.4(2)(b)).

108. The court may grant summary judgment against a claimant or defendant who has "no real prospect of succeeding" (CPR 24.2(a)), and if there is no other compelling reason for a trial (CPR 24.2(b)).

109. A realistic claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.

110. In the present context there is no practical difference between the strike out and summary judgment tests. The question is whether there are realistic claims (in the sense explained above). I shall refer to the applications together as "the dismissal applications".

111. The starting point is that the BMF Claimants must be removed from the various proceedings where they have been named, for the reasons already given. The applicants say that the other claimants have no standing to bring the claims and/or that the claims are not realistic ones and/or are frivolous and vexatious.

112. Starting with the Tilman Claim, Ms Cooke submitted that the case is wholly vexatious and abusive, forming part of a wider campaign of unlawful interference with the BMF Securitisations. The BMF Claimants must be removed. But Kipling, Tilman and BMF Assets have no standing to bring the Claim.

113. I accept these submissions. I am satisfied that:

i) Kipling, Tilman and BMF Assets have no affiliation or connection with or role in relation to the BMF Claimants and are all strangers to the BMF Securitisations.

ii) None of the Sanne Defendants owe any duties to Kipling, Tilman or BMF Assets having no legal relationship or connection with them.

iii) There is no realistic case that loss has been suffered by BMF Assets, Kipling nor Tilman by unlawful means conspiracy or otherwise. In essence the case advanced appears to be that the Sanne Defendants should have accepted the claims of the various disparate parties who have sought to intervene in the affairs of BMF companies and should also have accepted the validity of the alleged Trade Sale of the underlying assets to Tilman. For the reasons already given, this case is not a realistic one. The Sanne Defendants have done no more than to continue to contend that the Sanne Directors have at the material times been the only true directors of the various BMF companies and that the various acts taken by the respondents and others were unauthorised and of no legal effect. I consider it to be clear that the Sanne parties (including the Sanne Directors) have been entirely justified in taking that position and that it is not realistically arguable that by doing so they have acted tortiously.

iv) The claims against the S&S parties and Mr Riddiford are hopeless. They owe no duties to Tilman, Kipling or BMF Assets and have done no more than act on the instructions of the Sanne Directors in conducting the litigation. There is no realistic claim that in doing so they have acted tortiously.

v) Moreover the declarations and injunctions sought by the Tilman Claim are without any merit. They allege that the Sanne Defendants and the lawyer defendants do not have authority to act on behalf of the BMF Claimants, when they do have such authority (for all the reasons explained above). The injunctions sought are also without any basis.

114. For these reasons I am satisfied that the Tilman Claim should be dismissed.

115. I turn next to the HML Claim. Once the BMF Claimants are removed, the only remaining claimant is Kipling.

116. Ms Cooke submitted that Kipling is a stranger to the BMF securitisations and has no standing to bring the claim.

117. I accept this submission:

i) The claims are based ultimately on the allegation that HML has breached its contractual obligations. HML is the Standby Cash/Bond Administrator and

Mortgage Administrator in each of the BMF securitisations. It holds these positions under contracts with the Issuers and BMF3.

ii) The claim that HML has breached its contracts with the Issuers depends on the unsustainable contention that the control and direction of the Issuers has passed from the Sanne Directors to others (either under the first narrative or the second narrative). The case appears to be that HML should have acted on the instructions of Kipling and/or Mr Artemiou or others associated with them purportedly issued on behalf of the Issuers and BMF3. I have explained that the Sanne Directors have retained the authority to act for the Issuers and that the various interloping parties (including Kipling and Mr Artemiou) never had any such authority.

118. For these reasons the HML Claim must be dismissed.

119. I turn to the CIL Claim. The Claimant is named as Mr Fung. The applicants have raised doubts as to his existence. These have not been addressed in the evidence. Mr Fung has not appeared and is not represented.

120. Ms Cooke submitted that Mr Fung (if he exists) has no standing to bring the CIL Claim as there is no evidence that he holds any interest in any securities of any of the Issuers and is a stranger to the BMF securitisations. Moreover no intelligible claim is set out in the Claim Form and there are no particulars of claim.

121. I accept these submissions:

i) As explained in para 48 of Jones 1, Mr Fung has failed to provide any documentary evidence for his alleged interests as stated in the Claim Form in the CIL Claim (as requested in S&S's letter dated 15 June 2021, to which he has not responded). No case carrying any conviction has been advanced that Mr Fung has any relevant interest.

ii) But even if he could show that he had some interest as a Noteholder, no intelligible basis has been advanced for alleging that any duties were owed to Mr Fung by CIL, Mr Sarkar or Mr Jones. Under securitisation structures of the present kind there is a careful allocation of responsibilities and rights. There are collective action clauses which prevent claims by individual noteholders and nothing in the Claim Form explains how Mr Fung could, as an individual noteholder, bring these claims.

iii) No intelligible case has been advanced for the claim of £377,250,000 or how this has been caused to Mr Fung.

122. For these reasons the CIL Claim must be dismissed.

123. Finally there is the 2nd S&S Claim. This is by BMF Assets and Tilman against S&S, Ms Hunter-Yeats, Ms Kitt and Mr Riddiford. There are no particulars of claim so one has to do the best one can with the Claim Form. Mr Sharpe submitted that it should be dismissed. He said that there was simply no intelligible claim against the lawyer defendants.

124. I accept these submissions:

i) The claim refers to "certain directions" to Barclays in respect of the Issuers and BMF3's bank accounts which are said to have been issued as a consequence of fraudulent misrepresentations or without authority or in breach of fiduciary duty.

ii) This is not intelligible. It is not said what directions were given or why they were dishonest or without authority etc. This is not an acceptable way of advancing a case of serious wrongdoing. As I say, there are no particulars of claim to elucidate and nothing in the evidence served by Mr Artemiou assists.

iii) At any rate the underlying idea is that the lawyers gave instructions on behalf of the Issuers and BMF3 without authority and in breach of duty. I have already explained that it is clear beyond argument the Sanne Directors have at all material times been entitled to act for the Issuers and BMF3, and that the lawyer defendants have acted on their instructions. Ms Bidel has confirmed in evidence that the lawyers have acted on instructions throughout. There is no realistic basis for BMF Assets or Tilman to claim that the lawyers have acted without authority or contrary to their duties. It is also clear that the lawyers owed no duties to BMF Assets or Tilman to act on their instructions.

125. For these reasons the 2nd S&S Claim must be dismissed.

Declaratory relief

126. In the application notices the BMF Claimants also sought declarations that:

i) The directors of BMF3, BMF4, BMF5, BMF6, BMF7 and BMFH are and remain Ms Bidel and Mr Speight;

ii) The Kipling Injunctions Claim, the S&S Claim, the HML Claim and the Tilman Claim have been issued in the names of BMF3, BMF4, BMF5, BMF6, BMF7 and BMFH without the authority or consent of those companies and without the knowledge, authority or consent of Mr Surnam, Ms Bidel and Mr Speight;

iii) The purported sales of assets belonging to BMF3, BMF4, BMF5, BMF6 and BMF7 to Tilman, by way of purported sale and purchase agreements dated 5 April 2021, were unauthorised by BMF3, BMF4, BMF5, BMF6 and BMF7 and are a nullity, void ab initio and of no effect.

127. The Court's power to make declarations is discretionary. The matters to be taken into account by the court in considering the exercise of the discretion were summarised by Marcus Smith J in *Bank of New York Mellon, London Branch v Essar Steel India Ltd* [2018] EWHC Ch 3177 (Ch) at [21].

128. In my judgment it would be appropriate and just for the court to exercise its discretion to make the declarations sought. They follow from the conclusions already reached earlier in this judgment. They will serve the useful purpose of putting beyond doubt who is in control of the BMF Claimants and that the directors did not authorise the

purported Trade Sales to Tilman. I also consider it is appropriate to declare that the various proceedings have been brought without authority in the names of the BMF Claimants.

129. I note that the Issuers' Notes continue to be publicly traded. The various assaults on the BMF securitisations since 2019 have been the subject of regulatory news releases and specialist media reporting. It appears to me to be crucial that the true directors should be able to explain to the market clearly and unequivocally that the court has determined that the various proceedings brought in the names of the BMF Claimants and the alleged Trade Sales to Tilman were never properly authorised.

The recusal application

130. I am the docketed judge for cases concerning the BMF securitisations.

131. The substantive applications I have addressed above had been listed for some months to be heard in a floating window from 19 to 24 January 2022.

132. The trial of the Committal Application against Mr Hussain is listed to be heard by me over five days from 2 February 2022.

133. On 17 January 2022, two days before the 19 January hearing, BMF Assets issued an application notice asking that I recuse myself from the Tilman Claim and "all connected proceedings" or alternatively in the event that I refuse to recuse myself to stay all the proceedings pending an appeal to the Court of Appeal.

134. The application notice invited the court to determine it without a hearing. It was supported by a 38 page witness statement of Andreou Artemiou dated 14 January 2022 and long written submissions of BMF Assets dated 17 January 2022 and signed by Andreou Artemiou.

135. I directed that the application should be heard at the beginning of the hearing on 19 January 2022. BMF Assets sent a letter to the court in which it said it would not appear and that it had already asked for the application to be dealt with on paper. It is of course a matter for the court and not the applicant to decide how to deal with an application justly. I took the view that the substantive applicants had a substantial interest in the recusal application and should be allowed to be heard. I also considered that the application was concerned with the administration of justice since it concerned allegations of apparent bias. Ms Cooke opposed the application and submitted that it was misconceived. Counsel for the S&S Defendants did not make any submissions as the S&S Defendants did not have a position. BMF Assets made no appearance.

136. I have carefully considered the written submissions of BMF Assets ("Submissions") and the fourth witness statement of Artemiou ("Artemiou 4") and shall address them as appropriate below.

137. The application is brought on the basis of apparent bias not actual bias.

138. The legal principles were summarised in *Bubbles & Wine Ltd v Lusha* [2018] EWCA Civ 468 at [17]-[19] and I shall not repeat the whole passage. The ultimate question is

whether the fair-minded observer and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. The fair-minded and informed observer is not unduly sensitive and suspicious but neither is he or she complacent. The facts and context are critical to any recusal application. The fair minded and informed observer is not to be confused with the person raising the complaint of apparent bias and the test ensures that there is this measure of detachment.

139. I also note the observation of Floyd LJ in *Zuma's Choice Pet Products Ltd v Azumi* [2017] EWCA Civ 2133 at [29] that the mere fact that a judge has decided applications in the past adversely to a litigant is not generally a reason for that judge to recuse himself at further hearings. If that were the case the same judge could not make two successive interim decisions in a case without risking accusations of bias. It would make it impossible for there to be a designated judge assigned to complex cases with multiple interim applications. The fair minded and informed observer does not assume that because a judge has taken an adverse view of a previous application or applications, that he or she will have pre-judged, or will not fairly deal with, all future applications.

140. Ms Cooke also referred me to *Miley v Friends Life Ltd* [2017] EWHC 1583 (QB) at [27] where Turner J cited *Baker v Quantum Clothing Group* [2009] EWCA Civ 566 for the proposition that recusal applications should be made promptly and may be dismissed if there is inordinate and inexcusable delay in raising the point; such applications go to the heart of the administration of justice and must be raised as soon as reasonably practicable.

141. Here the complaint concerns judgments or hearings on 3 February 2021, 27 September 2021 and 19 November 2021. The application was not issued until 17 January 2022, almost a year after the first of the judgments and two months after the last of them. This was shortly before the hearing listed for 19 January 2022, which had been in the diary for some months. There is no explanation in the witness statement for the delay.

142. Applications of this kind should be made as soon as possible as they affect the administration of justice. This case is apt example. The 19 January 2021 hearing had been in the court's diary for some months. It concerned an important application concerning six sets of proceedings. Making the recusal application two days before the hearing would, had it succeeded, have disrupted the hearing. It would have been very difficult to find a replacement judge in time. The same is true of the imminent trial of the committal proceedings which have been in the court's diary for some months. In my judgment the delay in making the application is inordinate and it is entirely unexplained. This is in my judgment sufficient basis for disposing of the application.

143. In case I am wrong I shall address the merits of the application.

144. I start with some general observations about the application and the context.

145. First, the matters complained about must be seen in the forensic context. The BMF securitisations have been addressed in a large number of judgments of my own and other judges. As explained in the substantive part of this judgment there have been 26

separate cases about the BMF securitisations. Since 2019 there have been numerous steps taken by third parties, all of whom have been found to be strangers to the structures, to interfere with their business and affairs.

146. In every case to date the Sanne Directors have been successful in establishing that the third parties have acted without any lawful authority. In July 2020 Birss J gave judgment in the *Oyekoya* case [2020] EWHC 1910 (Ch) striking out numerous cases brought against the Sanne Parties and others and described them as totally without merit. He used appropriately robust language at [53]: "This is part of a long-running, absurd series of actions by Mr Hussain, Mr Oyekoya and their associates, relating to the Issuers. It appears to have no merit at all and to have caused an enormous amount of costs and trouble to the defendants. I gather that a very large amount of costs have been run up dealing with these individuals, none of which has been paid."

147. I conducted a full review of the steps taken against the BMF securitisations by early 2021 and summarised the history thus far in a passage of my February 2021 judgment titled *Business Mortgage Finance 4 Plc & Ors v Rizwan Hussain & Ors* [2021] EWHC 171 (Ch) at [252]:

> "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 past of two years, in the teeth of earlier orders of the courts and the Claimants' reasoned protests. It must now stop…."

148. As will be apparent from my substantive judgment above (which needs to be read to understand what follows) things have not ceased. There have been a series of further attempts to interfere with the business and affairs of the BMF securitisations. I have again concluded that none of the steps taken has any legal validity. The main argument relied on by Mr Artemiou and his related parties is that the De Facto Directors became directors by serving notices saying that they were willing to act as and assume the responsibility of directors. That is, as I have explained, legally absurd.

149. The evidence shows that the companies have unrecovered costs of £3m, which will fall ultimately on noteholders.

150. It is a theme of the Submissions that I have conflated the pre-February 2021 events (concerning Mr Hussain) with the later events and have simply assumed (on the basis of prejudice) that the later events must be invalid. That is wrong. I have considered the later events separately and on their own merits. The fact that I have once again concluded that the later events do not affect the ability of the Sanne Directors to conduct the affairs of the BMF companies does not mean that I reached that conclusion as a result of a biased or prejudiced attitude. Nonetheless any judge is

bound to notice that the later events cannot be taken in isolation from the history since 2019.

151. Secondly, a large number of the complaints in the Submissions concern what is said to be my approach to the credibility of witnesses. I shall return to the detail below. But it should be observed that none of the hearings about which complaint is made involved oral witness evidence. The 3 February 2021 hearing was part of a Part 8 claim where there was no live evidence. The second hearing in September 2021 was a directions hearing concerning the committal proceedings. The third hearing in November 2021 was the application BMF Assets made for an interim injunction.

152. I also note that even in a case where a judge had made adverse findings about a litigant's credibility (on a committal application) he was not recused from hearing the trial (see *Zuma's Choice* at [29]). But that is not this case.

153. As a related point, the Submissions at [21] and [22] say that the judge must avoid being over-interventionist as this may give the appearance of entering the arena. The cases cited show that there is a difference between the court's often proactive approach to submissions on the one hand and the course of oral evidence on the other.

154. Thirdly, I note that the application and Submissions have been submitted by BMF Assets. But the application seeks wide ranging relief, concerning all connected proceedings. There is no application by any of the other parties to the proceedings I have addressed in the substantive judgment above. The Submissions state at [2] that it is supported by the BMF Claimants. However for the detailed reasons given in the substantive judgment above the true directors of those companies are and have at the material times been the Sanne Directors. They oppose the recusal application. It follows that the application should be treated as being made by BMF Assets alone. Nobody from BMF Assets or any of the other entities appeared to support it. Nor did Mr Hussain.

155. I turn to the complaints made in the Submissions (supported by Artemiou 4).

156. Para 8 of the Submissions sets out what are called Six Critical Questions. This appears to be the Applicant's favoured way of expressing the substantive issues. I have addressed the principal points raised by these issues in the substantive judgment above to the extent that they require to be answered. Para [9] contends that the court must answer the six critical questions raised by the applicant. I do not accept that this is necessarily so. Courts adjudicate on the issues necessary to resolve the particular disputes before them and do not undertake a more general inquiry. I do not for instance accept that there is any reason to consider the points about the identity of the directors stated in the original prospectuses concerning the Issuers or BMF3. The Sanne Directors do not claim to have been directors of the BMF companies from the outset. They say were appointed later. I declared in my orders of February 2021 that the Sanne Directors were the true directors of the Issuers at that date. That order has not been appealed. That decision was consistent with and applied the reasoning in an earlier judgment of Mr Justice Birss of July 2020 (*Oyekoya* [2020] EWHC 1910 (Ch) at [44] to [51]).

157. Paras 10 to 23 set out the legal principles concerning recusal consistently with the summary I have given above.

158. Para 24 of the Submissions says that the application is submitted under three overlapping limbs. Limb 1 says that the proceedings and connected proceedings involve deciding on the credibility of the directors, shareholders, officers and agents of the BMF Claimants and that I have already rejected the evidence of the various people or entities said to have assumed those roles in such outspoken terms as to throw doubt on my ability to approach the evidence of those people or entities with an open mind. Limb 2 is that I have "either expressly or impliedly" expressed views in such extreme and unbalanced terms about the six critical questions as to throw doubt on my ability to try the issues with an objective judicial mind. Limb 3 brings together a large number of complaints and is not very easy to follow. Doing the best I can it sets out other reasons or factors why there are said to be real grounds of doubting my ability to ignore "extraneous considerations related to" actual or alleged events before February 2021 and/or the alleged or actual involvement of Mr Hussain and/or my findings at the first hearing in February 2021; that I have prejudices that the people or entities said by Mr Artemiou to be officers of the BMF companies are connected with the earlier events or are involved with or guided by controlled by Mr Hussain; and/or that I have predilections towards the opposing parties (i.e. the Sanne Directors and S&S) in connection with the earlier proceedings and the almost unanimous findings in their favour; and/or that I have favoured the attempts of the BMF parties (under the direction of the Sanne Directors) to elevate the importance of the expedited committal hearing rather than addressing properly the six critical questions in relation to the due authority of the issuers; and/or that I have failed to bring an objective judgment to bear on the issues.

159. Paragraph 25 addresses Limb 1. Sub-para 25.a. concerns (as I read it) the events of 18 January 2021. This was the first day of the Pt. 8 trial in cases FL-2020-000023 and CR-2020-003605. Mr Hussain was in prison serving a sentence for contempt of court. He sought an adjournment of the entire trial until a date after his release (in March 2021). I refused that application and gave detailed reasons in [108] to [121]. A reader of this judgment is assumed to be familiar with those passages (reported at [2022] EWHC 171 (Ch)). My explanation to Mr Hussain that he should be brief at that stage was (as the context shows) merely to explain that he was not expected at that stage to address the full merits of his defence, and he understood this. He then made fairly substantial submissions in support of his application for an adjournment. He did not suggest that he had been rushed or unable to make all the points he wished to make. I addressed them in detail in my judgment. The passage now highlighted in italics (concerning the historical appointment of the directors) is described as "an incredible statement to make". I am unable to agree with this. Birss J had already decided in the Oyekoya case in July 2020 that the attempt to assert that the Sanne Directors had been replaced by new directors was not only unsustainable but was totally without merit and had described the actions of Mr Hussain as absurd. Moreover the Sanne Directors had been conducting the business of the BMF companies for years and were recorded as the only directors at Companies House. There was no realistic basis on which it could be argued that they had not been properly appointed. The real complaint appears to me to be that I decided against Mr Hussain on the merits.

160. The next complaint is that I had formed a view about the credibility of the evidence before hearing the trial. This is based on a misunderstanding. The trial was conducted under Pt.8 and there was no substantial factual issue or need to reach a conclusion about the credibility of any witness. It turned instead on the interpretation and

application of the constitutional documents of the BMF companies and the securitisations in events which had happened. That was the same approach as Birss J took in July 2020 before reaching the robust conclusion that the Sanne Directors were the true directors of the companies and that the contrary argument was totally without merit.

161. Sub-para 25.b. concerns the hearing of 27 September 2021. That was part of the CMC in the committal proceedings against Mr Hussain. The BMF companies (acting by the Sanne Directors) had brought committal proceedings contending (in broad terms) that Mr Hussain had caused or procured steps to be taken in respect of the BMF securitisations from 30 March 2021 which amounted to a breach of the February 2021 Injunction. Kipling applied shortly before the CMC for the adjournment of the committal proceedings, on the basis of that the Sanne Directors were no longer entitled to conduct the affairs of the Issuers or to bring or authorise proceedings in their name. Kipling did not appear at the hearing but I considered the evidence filed by it in support of the application. I also considered the submissions of counsel for the applicants in the committal proceedings.

162. The view I reached and expressed in the quoted passage was that (on the basis of that material) there was no coherent legal or factual basis for the assertion that the Sanne Directors no longer had authority to bring the committal proceedings. I have indeed reached the same view in the substantive application addressed earlier in this judgment. It appears to me that the arguments on which Kipling relied (that the De Facto Directors had assumed the position of directors by serving a notice of willingness to act) was and is legally incoherent.

163. I note that in the *Mansard* case (cited in the substantive judgment above), HHJ Matthews reached the same view. As he said at [65] it would be "absurd" to suppose that the person who had no connection with the company, but merely asserted that he or she was a director and assumed the responsibility of a director, thereby became a director of the company for the purposes of exercising the powers of directors of the particular company served by that company.

164. I reached the same firm view and (like HHJ Matthews) have expressed it in appropriately robust terms. I do not consider that the fair-minded and informed observer would conclude that I was unable to address later applications impartially.

165. The further complaints in sub-para 25.b. are essentially a debate about the merits of the issue or the language used. A judge to reach a firm view is entitled to use clear and robust language. Again see the language used by HHJ Matthews in Mansard and the decision of Birss J that a similar argument was totally without merit and indeed "absurd". I cannot detect anything in the cited paragraphs that goes beyond an expression of a firm view.

166. The same applies to the passages set out in sub-para 25.c., which concern the hearing of the Interim Injunction Application on 19 November 2021. These are taken from the parts of my judgment which recorded my concerns about the quality of the evidence put forward by the applicant, BMF Assets. The passages need to be read in context and I refer to the full decision reported at [2021] EWHC 3306 (Ch), specifically [28] to [41].

167. The first concern was about the identity of Andreou Artemiou. His identity had been put directly in issue by the respondents to the application. I explained what had happened at the hearing at [18] to [20]. Although Mr Artemiou had submitted witness statements and signed extensive written submissions he did not respond to the evidence about his identity. Moreover though he signed the written submissions for the hearing, which included detailed and lengthy arguments about fiduciary duties and de facto directors, he was unable to provide any assistance at all when I asked about those arguments and declined to do so when asked.

168. Secondly, Mr Artemiou's witness statements, which were relied upon by BMF Assets in support of the Interim Injunction Application, were seriously defective in that they failed to state the sources of the information which Mr Artemiou set out. This was not just a technical defect. The witness statements included assertions that Tilman, a Marshall Islands company, had bought the underlying assets of the BMF companies for £550 million and had paid the money to the order of BMF Assets. But there was no documentary evidence of any contract or any payments being made or received. Mr Artemiou did not claim to be an officer of Tilman and did not set out the basis of his statements about the alleged agreement.

169. As I explained in my judgment there were other circumstances which would have made any such agreement a remarkable one, including that there was no evidence of any due diligence or negotiations leading up to an agreement for the payment of £550m; Tilman was described as having been "annulled"; there was no evidence as to its source of funding; and the assets allegedly sold to Tilman had been charged in favour of the Noteholders so that Tilman would appear on Mr Artemiou's case to have bought the assets subject to a legal charge.

170. It is also important to remember that this was an application by BMF Assets for an interlocutory injunction. When I said in my judgment that I was unwilling to give the evidence any weight I was taking a routine approach to evidence provided by an applicant for an injunction which fails to comply with the requirements of CPR to state the sources of information or provide proper supporting documentary evidence.

171. There is also a complaint that I referred to "purported inconsistencies". There were in fact real and obvious inconsistencies between the two narratives that have been advanced. I listed these in [32] of the judgment and the Submissions do not seek to explain why that is wrong. The fact that the applicant for the injunction had advanced two entirely inconsistent cases was relevant to the question whether there was a serious issue to be tried.

172. Mr Artemiou says in the Submissions that this is a "blunt criticism". I do not agree. It is said that there was evidence in black-and-white about the sale agreement. I have addressed this above. No source was provided for Mr Artemio's assertion about the sale agreement, the contract was not produced, and no evidence was provided showing the source of any payments or where they had been made to.

173. As to [8] of the 19 November 2021 judgment, that was part of an introductory passage explaining the position of the parties and the lawyers acting for them. I also concluded later in the judgment that there was no serious case that the Sanne Directors were not the only true directors of the BMF companies. So [8] is consistent with and reflects the rest of the judgment.

174. Sub-para 25.d. says that I have mocked or derided the materials provided by the various parties who have claimed to be interested in the BMF securitisations. I do not accept the complaint. The cited comments were made at the September 2021 hearing in relation to documents submitted by Kipling. That company is not a party to the committal proceedings. It was and remains entirely unclear what role or standing Kipling Firs claims to have in relation to the committal proceedings, which are against Mr Hussain. It appeared to me at the time that its case was that the Sanne Directors no longer had authority to act for the BMF companies and could therefore not pursue the committal claim. Mr Artemiou had not previously appeared in the proceedings and indeed he did not attend court at the hearing in September. I was justified in expressing doubts about the quality and cogency of the material that had been put before the court.

175. In sub-para 25.d. it is also suggested that the court attempted to embarrass or belittle Mr Artemiou with unnecessary and pointless questions expressly to addressed to him about the written submissions. This is a complaint about the 19 November 2021 hearing. I am unable to accept it. Mr Artemiou had signed a long and detailed document which made legal submissions concerning (among other things) fiduciary duties and the role and legal status of the alleged De Facto Directors. Those arguments had naturally been contested by the respondents to the application. I had serious doubts about the cogency and legal coherence of the arguments and asked Mr Artemiou for his assistance about the alleged fiduciary duties and the basis for saying that various people or entities has become de facto directors. It was quickly apparent that Mr Artemiou lacked any understanding at all of the document that had been submitted in his name. He declined to answer any questions about it. Where a representative of the party puts forward a skeleton argument or written submissions the court may fairly expect to test the document with its author. It was clear that the submissions must have been written by somebody else and I recorded that in the judgment. There was no belittling of Mr Artemiou in the judgment or otherwise. There appears to be a separate complaint about my description of the written submissions as a skeleton argument but that is no more than a matter of terminology.

176. Paragraph [26] of the Submissions moves on to Limb 2. The first point (in sub-para 26.a.) concerns the January 2021 hearing. Again it is necessary to read the words complained of in their context – see the judgment of 3 February 2021 at [110] which explains that Mr Hussain claimed that he had sent a summary of his evidence to S&S but it had not arrived. He also outlined (again see [110]) what he would have wished to raise by way of evidence. I addressed his application for an adjournment in the section running from [110] to [121]. I explained in [116] that there was nothing in Mr Hussain's summary of the evidence that would affect matters.

177. It is important to recall that the Pt. 8 claim was essentially concerned with the question of who had <u>authority</u> to act on behalf of the BMF companies: was it the Sanne Directors or somebody else? The proceedings were not the vehicle for a free-wheeling or inquiry investigation into the <u>performance</u> of the Sanne Directors or any of the other parties such as the special servicer, Target. Nobody had raised those issues in the witness statements (which governed the scope of the proceedings). As with any proceedings, the court will only admit evidence which is admissible and relevant to the issues in dispute.

178. I explained in my February 2021 judgment there had already been repeated decisions of the Courts confirming the status of the Sanne Directors as the directors. These included the decision of Birss J of July 2020. There was of course an issue as to whether they remained the directors but the earlier history, predating the events or May 2020 to July 2020 relied on by Mr Hussain as leading to a replacement of the Sanne Directors by others, was irrelevant. So too was the other evidence which Mr Hussain said he wanted to give. I made that point in the penultimate sentence of [116]. The Submission also omits the important sentence that followed namely: "What Mr Hussain did not offer was anything new or different to justify the steps taken by him and his associates between May 2020 and July 2020." That was the issue in the Pt. 8 claim and Mr Hussain did not suggest that there was any further evidential material to be given.

179. When assessing this aspect of the recusal application it is also material to note the conclusion I reached in [121] of the same judgment. I ruled that I was not prepared to halt the trial at the threshold but, importantly, this was on the basis that it would be open to Mr Hussain to seek to satisfy me that he was unable fairly to address particular parts of the case against him or specific aspects of the relief claimed. That would include the case where Mr Hussain did not understand the legal issues on a specific point or where he could not address the point fairly because of a lack of documents. I was therefore prepared to continue to entertain specific arguments about the fairness of the process on particular issues as the trial progressed. After I had ruled that I would conduct the trial on that basis Mr Hussain decided to take no part in the trial, even as an observer. He thereby disabled himself from making legal submissions on the points of substance. I do not think that a fair-minded and informed observer would conclude that I was not prepared to approach the issues impartially.

180. Sub-para 26.b. complains that I did not revisit earlier decisions with an impartial frame of mind. I do not accept this: it is evident that the passages relied on record, first, my conclusions as at February 2021 and then, separately, set out my conclusions about events since the end of March 2021. I concluded in the 19 November 2021 judgment that nothing that had happened since the end of March 2021 had changed the position from that I had declared in February 2021: namely, that the Sanne Directors remained the true directors of the BMF Companies and that there was no serious issue to the contrary. The multifactorial test I referred to in my 19 November 2021 judgment concerned the contention that various parties by serving a notice of willingness to act had become de facto directors of the company. I applied the legal test and concluded that the argument advanced by the applicant was legally without merit. I have already addressed this point above all - it is the same contention that HHJ Matthews described as legally absurd in the *Mansard* case.

181. The passage quoted at sub-para 26.c concerns consequential directions made after my reasoned judgment that the steps asserted by BMF Assets as changing the directorships of the BMF companies did not raise even a serious issue to be tried. I regarded the two sets of steps that BMF Assets relied upon (i.e. the first narrative and the second narrative) as an unmeritorious assault on the BMF securitisations. That description was justified. My decision was that third parties with no authority to act had purported to assume control of the BMF securitisations and dispose of their entire assets. Each of the various challenges to the BMF securitisations has led to the need for expensive court proceedings, which will (to the extent they cannot be recovered)

ultimately be borne by the noteholders and are £3m or so to date. Moreover the court's resources have been heavily deployed in addressing and adjudicated the various (unmeritorious) challenges. I considered that, having concluded that the case advanced by BMF Assets lacked any legal basis at all, I was entitled to refer to an entirely unmeritorious series of assaults. I do not think that a fair-minded observer knowing the history would consider the language to be anything other than fair. Indeed the Submissions describe it as "muscular". There has been no predetermination of future matters in this or any connected proceedings. The language I have used has been about my conclusions in the existing proceedings. It is no different in tone or substance from language used by other judges.

182. Paragraph [27] turns to Limb 3. At this point the Submissions become less temperate, referring to "the stark, extraordinary and unquestionable failures in law and construction," said to be made in favour of the other parties. The first complaint appears to be that I explicitly or implicitly acceded to the request that I should be involved in all the proceedings. There is nothing in this. All Financial List cases are docketed to particular judges. The BMF-related proceedings were docketed to me before the February 2021 trial. There are good reasons for such cases to be docketed to judges who can become familiar with them, and are able to deal with them far more efficiently and expeditiously. This is particularly so where there is a large number of proceedings and applications, as in this case. The authorities show that it cannot be a reason for refusal that a docketed judge has found against a party or parties on more than one occasion, or that the judge has done so in firm or robust terms. There has been no question of one of the parties being allowed to choose their judge as is alleged.

183. Turning to the next complaint, for the reasons already given, there is no merit in the suggestion that I have already reached decisions about the credibility of witnesses. I have not adjudicated on the credibility of any of the witnesses or had occasion to do so. I repeat that my comments in the November 2021 judgment about the quality of the evidence submitted by the applicant concerned the lack of the identification of sources, the inconsistencies, and the absence of exhibited documents that one would have expected to see provided. There is no reasonable basis for suggesting that a fair minded and informed observer would consider based on those observations (which were routine in the context of an injunction application) that I had prejudged the issues.

184. Sub-para 27.c. refers to alleged hostility and resentment and animosity exhibited towards Mr Artemiou. I have re-read the transcript of the hearing of the application for the interim injunction and have concluded that a fair minded and informed observer would not conclude that I was hostile or resentful towards him.

185. There were various stages to the hearing. At the start, it was important to establish which (if any) of the claimant parties he was in a position to represent. The general rule is that only legal representatives may represent parties, but the court may, in the exercise of its discretion, allow a director of a company to make submissions on its behalf. I had to determine which of the claimant companies in the proceedings (which include the Issuers, BMF3, BFMH Kipling, BMF Assets and Tilman) Mr Artemiou claimed to be able to represent. I therefore started the hearing by asking Mr Artemiou about this. He said at one point that he was a director of the Issuers and BMF3 and at another that he had a contractual right as an employee to represent them. He then

clarified that he was a director of BMF Assets. I decided to allow him to make representations on behalf of BMF Assets in the exercise of my discretion.

186. Mr Artemiou then read out, without interruption, a long prepared statement as a supplement to his written submissions. I then asked him about the content of the written submissions he had signed, specifically about the allegations that various individuals and entities owed fiduciary duties and about the allegations concerning de facto directorships. He declined to answer. He did not have a copy of the written submissions he had signed or of the evidence served in the application. I was naturally concerned that a representative of an applicant for an interim injunction was unable or unwilling to engage in any debate or further explanation of its case. I nonetheless pragmatically allowed him to represent the applicant.

187. I also asked him whether he wished to make any comment on the uncontested evidence that had been served by the respondents putting in issue his identity. Mr Artemiou did not wish to take that opportunity. The respondents then produced a copy of a passport appearing to show that he was in fact called Artemakis Artemiou. That was potentially significant as the respondents had submitted uncontroverted evidence that Mr Artemakis Artemiou had met Mr Hussain in prison. I gave Mr Artemiou the chance to comment on these issues at the hearing. These events are recited at [18] to [21] of my 19 November 2021 judgment ([2021] EWHC 3306 (Ch)). In the event the issue of Mr Artemiou's identity was not determinative of the Interim Injunction Application, which I decided on different grounds.

188. I do not consider that a fair minded and informed observer would view the conduct of the 19 November 2021 hearing as anything other than fair. It was for the applicant to justify the injunction and, beyond the written submissions and prepared statement, Mr Artemiou did nothing to support the application. It will also be noted that in my judgment I addressed all of the arguments individually before ultimately deciding that the application was flawed and without merit.

189. Sub-para 27.c. complains that I have failed to consider and deal with one or more of the six critical questions at the three hearings. The first and second hearings were procedural. I certainly addressed the relevant issues in some detail in my February 2021 judgment and 19 November 2021 judgment. As already explained the fact that I did not address the issues in the order or terms now advanced by the applicant cannot be a proper basis of complaint. Judged deal with the real issues that need be decided on the applications before them, and I have done just that. This appears really to be a complaint about the merits of my judgments rather than a matter going to impartiality. The same may be said about the complaint that the judgments I have given involved clear and obvious errors as to construction or law. The complaint is expressed more tendentiously later in the same subparagraph, but I do not think the substance of the point raised is different.

190. I should also address a point made in Artemiou 4 at [18]-[25]. It is said that an appearance of bias arises from the fact that my February 2021 judgment did not specifically address Article 23(c) of the Articles of Association of the Issuers. The argument (which had been referred to in earlier correspondence) concerns the steps taken by Mr Hussain and others to procure the alleged sale of the shares in the Issuers to Highbury in July 2020. The alleged sale depended on the supposed incoming directors of Issuers (Mr Hussain, Mr Kalia, Mr Oyekoya, Mr Singh, CSEL and PLL,

see [56] of the February 2021 judgment) taking steps to forfeit the Issuer's shares and then dispose of them to Highbury (*ibid.* at [72]–[73]) (thereby displacing BMFH). Artemiou 4 appears to contend that: (a) there was a valid statutory declaration signed by one of the (alleged) new directors (Mr Kalia), and (b) where there such a declaration, title to forfeited shares cannot affected by an irregularity or invalidity of the proceedings connected with the forfeiture or disposal.

191. I did not expressly refer to Art 23(c) in my February 2021 judgment. A judge is not required to address every conceivable point that has ever been raised, however groundless it may be. It will also be remembered that Highbury, which was a defendant to the Part 8 claim, did not appear at the trial. Nor did Mr Kalia. None of the defendants appeared (save for Mr Hussain who made an unsuccessful application to adjourn). So none of the defendants came to court to advance this point.

192. But in my judgment the argument is unfounded. It cannot be the case that an utter outsider, with no standing or authority to act as a director of a company - who is indeed in legal terms a complete stranger to it - can sign a statutory declaration which will have effect pursuant to Art 23(c). That article allows an actual director or secretary to provide a statutory declaration, which then has the consequence that a buyer of the shares is not affected by internal irregularities or invalidities in the proceedings by which the shares were forfeited. It is to my mind clear that the article cannot sensibly be read as applying where the forfeiture and disposal is procured and carried out by complete strangers to the company, acting without any authority or status from the company. To do so would (absurdly) allow a shareholder to be displaced and disenfranchised by acts of third parties who have nothing to do with the company. I found in my February judgment that Mr Kalia (like the other incomers) was a legal stranger to the Issuers and that he had never been made a director. He had no right or authority to act for the Issuers and therefore had no authority to make a statutory declaration as a director.

193. Hence, there are two answers to this complaint: nobody appeared at the trial to advance a submission based on Art 32(c); and the argument is groundless. The fact that I did not expressly refer to it in the judgement would not lead a fair-minded and informed observer to think I was biased.

194. I have already addressed the point in sub-para 27.d. earlier in this judgment. I do not think it has any substance for this recusal application.

195. Sub-para 27.e. contends that I assisted in "the wild and capricious whims of one or more of the Defendants (or those acting on their behalf) no matter how irrational, bizarre or as they delicately put it 'novel'". Even ignoring the florid language, I cannot agree. I consider that a fair minded and informed observer would conclude that I had properly weighed and assessed the arguments advanced by the applicant. As to the earlier proceedings involving Mr Hussain, I considered and took account of the points and argument he and his associated parties had made in correspondence notwithstanding his decision not to participate in the Pt. 8 trial.

196. As to Mr Artemiou being asked to provide the proper address for service of documents, the evidence before the court in November showed that the address provided by BMF Assets had been no more than a shared accommodation address and that documents attempted to be served there had been returned. It was in the

circumstances quite proper for the opposing parties to seek an address for service. The allegation that the defendants have used a derogatory and offensive epithet to describe Mr Artemiou is directed at the defendants rather than the court. I do not in any case consider it justified.

197. As to the order I made in November 2021 concerning the need for applicants or claimants in new proceedings to provide evidence about their identity, it should be noted that I actually declined to make the order in the form sought by the BMF parties represented by S&S on the footing that it might unduly fetter access to justice. They had sought an order requiring the court to sanction new applications or proceedings in advance and I declined to do that. The order I made was a modest one requiring that any applicant or claimant in the proceedings should provide evidence of their identity. It will be understood from the history that the identity of the various parties who have made claims or interventions in respect of the BMF securitisations is an important and continuing issue and the order I made is intended to protect the integrity of the court process. I do not consider it was based on "paranoid utterances or inexplicable quibbles from one or more of the defendants". I also note that there has been no appeal against it.

198. Sub-para 27.f. concerns the issue of Mr Artemiou's identity. I have already addressed this above.

199. Sub-paras 27.g. and h. contain a list of colourful but pejorative descriptions of the judgments I have given and the hearings I have conducted, but with little detail. The one specific point one can identify is that the skeleton argument presented by Ms Cooke for the substantive hearing on 19 January 2022 largely rehearses points already made and relies on conclusions reached at the 19 November 2021 hearing. To my mind there is nothing surprising in that since many of the same issues arise and the evidence served by BMF Assets has not materially changed. It is then said that the skeleton argument does not address the critical questions. This again appears to me to miss the point that the court decides the important issues raised on an application. But in any case these are criticisms of the presentation of the case by the BMF companies and the Sanne parties and not complaints about the way I have conducted the case. They are not relevant to recusal.

200. Sub-para 27.i. refers to the invocation by Mr Artemiou of the privilege against self-incrimination at the hearing of 19 November 2021. Mr Artemiou did not give evidence at the November hearing. He appeared as the representative and advocate for BMF Assets. He invoked the privilege when I asked him questions concerning the merits of the case for an interim injunction and at other stages in the hearing. I did not draw any adverse inferences from that for the purpose of reaching my decision whether to grant an interim injunction. I refused the injunction because (among other things) there was no serious issue to be tried. That was in essence because the steps relied upon by Mr Artemiou, Lark and the De Facto Directors had been taken without any lawful authority and were indeed legally absurd.

201. Sub-para 27.j. contends that I have accepted without question "the obviously tendentious, conceited, self-serving and prejudiced chimera of events pedalled to the court by one or more of the Defendants". This appears to be a repetition of the complaint that in various judgments I have reached decisions against the various third parties who have sought to involve themselves in the affairs of the BMF

securitisations, including Mr Hussain and his associates and more latterly, Mr Artemiou, BMF Assets, Kipling, Tilman, the De Facto Directors and Lark. I have reached these decisions on the basis of the constitutional documents concerning the BMF companies and the securitisations, and have given full reasons for these decisions. None of these decisions has to my knowledge been appealed. This again appears to me to be a colourfully worded complaint about my decisions on the merits.

202. A similar point may be made about sub-para 27.k, which describes the position of the defendants as an "absurd, wholly unprecedented and plainly visible comedy". I am unable to recognise this description. It appears to me that the BMF companies (acting by the Sanne Directors) have taken or defended legal proceedings and have sought orders intending to establish and confirm that the Sanne Directors are in control of the companies. On each separate occasion I have considered the arguments and applied the constitutional documents of those companies and the securitisations and have concluded that the Sanne Directors are the true directors. The other issues that arise are largely derivative from this central conclusion. The applicant may disagree with that conclusion but it has been properly and fairly reached on a due assessment of the facts and law.

203. Sub-para 27.l. suggests that I have mischaracterised a document described as "the Information" which is said to have been filed on behalf of the Crown serious criminal proceedings against one or more of the defendants. The context of this point is fully explained in the decision reported as [2021] EWHC 2766 (Ch) at [15] to [27], to which I refer the reader of this judgment. That decision concerned an application by the BMF parties (acting by the Sanne Directors) for retrospective permission to rely on various recordings which had been made without prior court permission by court transcribers to enable them to prepare transcripts of the hearings. The document described as the Information appears to have been compiled by Kipling. It accused Ms Hunter-Yeats and the other lawyers of serious criminal offences connected with the unauthorised recordings. There was evidence before the court. I decided at [20] that as far as S&S and their lay clients were concerned the unauthorised recording was entirely inadvertent: they did not know that the recording had taken place. At [26] I referred to the charge-sheet or Information. The evidence before the court showed that no criminal proceedings had in fact been instituted. Certainly there had been no process by which Magistrates had considered or assessed the merits of the allegations. I concluded that the suggestion that Ms Hunter-Yeats or other solicitors at S&S had been guilty of criminal offences concerning the unauthorised recordings was wholly unmeritorious and considered it right to record this. There has been no appeal from that decision and I consider it to be justified. In any case the comment I made there was confined to the particular application I was addressing, and it has had no bearing on any subsequent applications.

204. A similar conclusion should be drawn about my observation at the committal CMC that I had seen nothing to date to suggest that it was improper for the lawyers acting for the BMF parties to continue acting in that application. I was expressly invited to consider this point at the CMC and was invited to state whether I considered that the lawyers acting for the BMF parties should not be allowed to proceed. What I said in that regard is described in the Submissions as a "stunning comment". I do not think a fair minded, informed, person would agree. I had and have indeed seen nothing that would render it improper for the lawyers to continue acting.

205. The next point relied on is the resignation of Mr Surnam as one of the directors of the companies. That does not appear to me to have any bearing on the issues I have had to decide.

206. The Submissions then refer to Mr John Barbour as "the primary accused". I repeat a point made earlier. The court has to address the issues which are properly before it on particular applications. None of the issues on which I have had to adjudicate to date have involved the conduct of Mr Barbour. The court decides the issues properly before it; its function is not to conduct a general free-wheeling inquiry.

207. The next submission repeats the suggestion that Ms Hunter-Yeats was guilty of criminal conduct concerning the recording by Epiq of hearings for the purpose of producing transcripts. It is suggested that I showed a lack of impartiality by reaching a conclusion that there was no criminal conduct on her part. I cannot accept this. The retrospective permission application was served on all the parties to the hearings at which the recordings had taken place. None of them appeared at the hearing to oppose the application. It is impossible to conceive what Ms Hunter-Yeats or S&S could have gained by deliberately failing to obtain advance permission for the recordings, which were made and held by Epiq for the sole purpose of producing transcripts. As soon as S&S discovered that no permission had been obtained they applied for permission and reported themselves to the SRA. I concluded that this course of conduct does not amount to criminal wrongdoing. I continue to consider that the charge sheet was an entirely frivolous and vexatious document. The court is entitled to use trenchant language when fanciful allegations of criminality are advanced.

208. Sub-para 27.m contends that I have shown favouritism towards Ms Hunter-Yeats and her evidence. I am unable to accept this. As I have explained, at none of hearings has any witness given oral evidence. I have assessed the written materials objectively against the framework of the constitutional documents of the companies in the securitisations and reached the appropriate legal conclusions.

209. Sub-para 27.n. is essentially a complaint about the views I have reached on the merits to date. The conclusions I have reached have been based on the constitutional documents of the companies and the securitisations in events which happened. In any event the bare assertion that the Ultimate Account Holders are unanimously in favour of the claimants has not been supported by proper documentary evidence. In the substantive judgment given above I have recited an earlier decision of Zacaroli J in this matter which set out the evidential requirements for any person claiming to be an "Instrumentholder" to satisfy the Note Trustee of this. An Instrumentholder is required to show a holding in an account in the records of Euroclear or Clearstream. This has not been done.

210. Moreover, the BMF securitisation structures contain clauses stipulating that the noteholders may only act collectively. The documents set out the processes that have to be followed and these processes cannot be short-circuited. These requirements are commonplace in securitisation structures of this kind. It is for the noteholders to take those steps and provide the necessary information in accordance with those instructions. The passages set out in sub-para 27.n. do not to my mind satisfy these requirements. I also observe that this is not a complaint concerning my conduct of the case.

211. Sub-para 27.o. concerns the relationship between the so-called six critical questions and the committal proceedings. I have already dealt with the approach to the critical questions several times above. The court's function is to resolve the material issues necessary for the resolution of the matter before it and I have done this on each occasion. As to the committal proceedings, the ability of the various BMF companies to bring the proceedings depends on the identity of the true directors of those companies. I have decided and declared both in February 2021 and again by the substantive judgment above that the Sanne Directors are the true directors of the BMF companies. I have reached this decision by applying the constitutional documents for those companies to the events which have happened.

212. I have not at any stage "elevated" the importance of the Committal Application over other questions. It is always important to ensure that committal applications take place as expeditiously as possible consistently with a fair process being followed. That has happened in the Committal Application against Mr Hussain. The passage quoted from [17] of my 19 November 2021 decision concerned a different point: that, if granted, the injunction sought would have the consequence of halting the committal proceedings. The BMF companies would also have been prevented from pursuing the application to strike out addressed in my substantive judgment above. The injunction sought would therefore have the significant consequence of bringing to an end these various proceedings or applications, against the wishes of the Sanne Directors, who I had found to be the true directors.

213. I did not ignore the submissions made by the BMF Assets that the purpose of the injunction was to enable the notes to be redeemed in full. Instead I rejected it. I concluded that, on the evidence, there was no serious issue that there had been any Trade Sales to Tilman or payment of £550m by Tilman to BMF Assets. I also concluded for a number of other reasons that there had been no proper process leading to a right to redeem the notes. I therefore rejected the contention of BMF Assets that the injunction should be granted to enable the Issuers to redeem the notes. There has been no appeal from my decision, which was based on a judicial assessment of the evidence and the legal arguments.

214. Sub-para 27.p. is again expressed in such general (and colourful) language as to be difficult to respond to but for completeness I do not consider it raises a realistic basis for recusal.

215. Sub-para 27.q. contends that I have implied that everyone who is not related to the Sanne Directors in some way is a stranger to the securitisations. No fair minded observer would reach that view. I have assessed on each occasion the claims of those other parties to have a legitimate role but have rejected those claims. In the February 2021 decision I addressed the various steps taken by Mr Hussain and his associates in relation to the securitisations in May to July 2020 and decided that they were strangers and had no authority to act for on behalf of the BMF companies. In the 19 November 2021 decision I decided that the various events that have taken place since the end of March 2021 have not operated to displace the status authority of the Sanne Directors as directors of the BMF companies. I further decided that those people who have contended since the end of March 2021 that they have or had authority to act for the BMF companies, whether by selling the underlying assets or bringing court proceedings, have acted unlawfully and without authority.

216. I have reached these decisions on the basis of the constitutional documents and in the light of the evidence advanced by those parties on the basis of which they assert their entitlement to act for or in respect of the BMF companies. I have done so without any preconception or prejudice. On the other hand the court cannot properly blinker the full context and history when assessing and adjudicating on the various steps and events. There is no doubt that since 2019 there has been a series of attempts by third parties to assert that they have legitimate roles in the BMF securitisations which the courts have consistently rejected. Similar arguments have been made by different numerous individuals and entities to seek to justify their claims.

217. The conclusion reached in [50] of the decision of 19 November 2021 concerns specifically what I have called "the second narrative" in the substantive judgment above.

218. Sub-para 27.r. complains that I relied on the decision of ICC Judge Jones. I consider the complaint to be without foundation. ICC Judge Jones granted a declaration that the Sanne Directors are the true directors of BMFH and BMF3. In doing so he considered what I have called the first narrative. His reasoning is at least persuasive and I was entitled to follow it unless I considered it to be wrong. His decision has not been appealed.

219. Sub-para 27.s. reverts to the consequential directions made after the 19 November 2021 hearing. The point had been raised in advance and it was not unexpected. I gave Mr Artemiou the opportunity to make his submissions. I have already addressed the substance of the order I made (this is the order requiring any party who brings new proceedings or applications in respect of the BMF securitisations to provide evidence of their identity at the same time). I have already explained that there have already been some 26 actions in respect of the securitisations. The identity of some of the claimants and applicants has been an issue in the proceedings. The court is entitled to seek so far as possible to protect its own process and avoid the excessive use of resources. One way of doing this is to ensure that new claimants and applicants provide proper evidence of their identity when they bring claims or make applications. As explained above, I did not accede to the more stringent application advanced by the BMF companies and Sanne parties that any new claimant or applicant would have to obtain the permission of the court before issuing the proceedings or application.

220. Sub-paras 27.t and u complain that at the November 2021 hearing I raised potential legal points which had not been raised by the defendants' counsel. I made an observation about the ability of a chargor of assets to sell those assets without the consent of the chargee; and noted a point about the proper interpretation of the securitisation documents. It is perfectly proper for a judge to raise potential legal issues at a hearing. The court should always proceed on an accurate and full legal basis. These were further potential legal issues which were closely related to those already before the court. I ventilated the issues with the parties. The applicant did not seek an adjournment to address them. I also note that while these points were relevant to the judgment I reached but were not decisive in the sense that I would have declined to grant an injunction in any event - on the straightforward basis that the applicant had not raised a serious issue that the Sanne Directors were no longer the true directors of the Issuers. A judge should not be prevented from raising legal issues with the parties for fear that this amounts to partiality. It is indeed a key part of the

judicial function to reach the right legal outcome. A fair minded observer would consider there to be nothing in this complaint.

221. Para 28 of the Submissions draw the threads together and refers to the number, nature and consistency of the complaints across the various hearings. I have now addressed the various complaints and do not consider that taken individually or together they would lead a fair minded and informed observer to conclude that I have exhibited any bias in my conduct of the case or in the judgments I have delivered. I would also observe that it cannot be right that by making a large number of complaints a complainant can improve its case if they are individually without merit.

222. For these various reasons I decided that I should not recuse myself from the hearing took place on 19 January 2022 (which I have addressed in the substantive judgment above) or from future hearings.

223. I should also record that I regard the recusal application as being totally without merit.

224. I do not think there is any real prospect of the Court of Appeal reaching a different view on the question of recusal and I therefore decline to impose a stay pending any application to the Court of Appeal for permission to appeal.

Outcome

225. The applications to remove the names of the BMF Claimants from the proceedings issued in their names are allowed. The various proceedings listed in the heading to this judgment are dismissed. I will also grant declarations.

226. The recusal application is dismissed on the grounds of inordinate and unexplained delay. I would in any event have dismissed it as totally without merit. I decline to stay these or connected proceedings pending a possible appeal to the Court of Appeal.