



Neutral Citation Number: [2024] EWHC 50 (Ch)

Claim No: BL-2022-MAN-000067

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 17 January 2024

Before:

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

Between:

SAEED AKBAR

Claimant

- and -

(1) MOHAMMED SAJEAD GHAFFAR
(2) SAIRAH KANWAL SHAH

Defendants

Stephen Connolly (instructed by **Pannone Corporate LLP**) for the Claimant
The Defendants were not present or represented

Hearing date: 20 December 2023

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.00 am on Wednesday 17 January 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

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HHJ CAWSON KC:

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Introduction

1. I am presently concerned with whether the Defence of the Defendants, Mohammed Sajeed Ghaffar (“**Mr Ghaffar**”) and Sairah Kanwal Shah (“**Mrs Shah**”), ought to be struck out as a result of their failure to comply with CPR 16.5 in respect of the contents thereof.
2. By his application dated 25 May 2023 (“**the Application**”), the Claimant, Saeed Akbar (“**Mr Akbar**”), sought an order that unless the Defendants served a Defence that was compliant with CPR 16.5 within 14 days, then their Defence be struck out and judgment be entered for Mr Akbar against them. However, in consequence of a direction contained in paragraph 8 of my Order dated 6 June 2023, and in the events that have occurred, it is Mr Akbar’s case that I should now strike out the Defence and allow judgment to be entered in favour of Mr Akbar in respect of the proprietary claims brought in the present proceedings in the terms of a revised draft order that has been produced without first making an “*unless order*”.
3. After a number of delays that I will return to, I heard the application remotely on 20 December 2023, when Mr Akbar was represented, as he has been throughout, by Mr Stephen Connolly, of Counsel. In the circumstances that I will return to, neither Mr Ghaffar nor Mrs Shah attended the hearing on 20 December 2023, and they were not represented thereat. I determined that I should proceed notwithstanding the Defendants’ absence and I heard submissions from Mr Connolly over the course of a morning. During the course thereof, I sought to put to Mr Connolly such points as I considered might have been open to the Defendants to take in opposition to the Application. I then reserved judgment.

Background and procedural history

4. Mr Akbar and Mr Ghaffar are cousins, and Mrs Shah is Mr Ghaffar's wife.
5. It is Mr Akbar's case that he and Mr Ghaffar have, historically, enjoyed an extremely close relationship, and that from time to time Mr Ghaffar would borrow money from Mr Akbar and invite him to enter into investment opportunities with him. It is Mr Akbar's case that, in 2019 and following his exit from a family business, he was able to raise the sum of £3.5 million by way of loan from a company of which he is the sole beneficial owner.
6. It is Mr Akbar's case that, thereafter, he entrusted the Defendants with sums of money in excess of £4 million for the purposes of identified and specified investments. It is his case that only a very small proportion thereof has been returned to him, and that he is the victim of a fraud at the hands of the Defendants, and in particular Mr Ghaffar, involving the misapplication and/or misappropriation of his monies in the manner now alleged in his Particulars of Claim dated 9 December 2022.
7. In summary, the sums alleged to have been so entrusted and alleged to have been so misapplied and/or misappropriated include the following:
 - i) The sum of £380,000 paid by the Mr Akbar to Mr Ghaffar in December 2019, of which a sum, believed to be £284,000, was applied as a 50% contribution to an investment in Flat 30 Thackery Court, Hanger Vale Lane, London ("**Thackery Court**"). It is alleged that the Defendants sold Thackery Court in March 2023 for £650,000, without informing Mr Akbar and without accounting to Mr Akbar for his share thereof, or indeed any part of the proceeds of sale. (See paragraphs 12 to 37 of the Particulars of Claim);
 - ii) The sum of £90,000 paid by Mr Akbar to Mr Ghaffar in March 2020 in respect Flat 21 Bramerton, 213-215 Willesden Lane, London ("**Flat 21 Bramerton**"). It is alleged that the Defendants have failed to sell Flat 21 Bramerton in accordance with the terms of an agreement between Mr Akbar and the Defendants under which, on sale, Mr Akbar was to receive back his £90,000 together with £60,000 out of the profit on sale, and in respect of which it is also alleged that the Defendants have failed to fully and properly account to Mr Akbar for rental income received. (See paragraphs 38 to 44 of the Particulars of Claim);
 - iii) The sum of £310,000 paid by Mr Akbar to Mr Ghaffar in Spring 2020 for the purpose of contributing to the purchase of an unidentified commercial property in London ("**the London Commercial Property Investment**"), which such purchase never proceeded. It is alleged that Mr Ghaffar has only returned the sum of £137,350 to Mr Akbar, leaving the sum of £172,650 outstanding. (See paragraphs 45 to 56 of the Particulars of Claim);
 - iv) The sum of £1 million and the further sum of £833,000 alleged to have been entrusted by Mr Akbar to Mr Ghaffar for the purpose of investment in or with Richmond Point Capital ("**RPC**"). As to the £1 million, it is alleged that this sum was paid by Mr Ghaffar to RPC, but without any reference being made to Mr Akbar as the investor, and then, on or about 21 September 2020, paid away

by RPC to a person or persons unknown. As to the £833,000, it is alleged that this has been paid and applied otherwise than to RPC and misappropriated and/or misapplied by Mr Ghaffar otherwise than for the benefit of Mr Akbar. (See paragraphs 57 to 88 of the Particulars of Claim);

- v) The total sum of £975,000 paid by Mr Akbar to Mr Ghaffar in February 2021 for the purpose of purchasing shares in three companies, namely: NextSource Materials Inc (“**NextSource**”) (for which was paid £200,000), Pluto Digital Assets Plc (“**Pluto**”) (for which was paid £400,000) and 786 London Plc (“**786 London**”) (for which was paid £375,000). It is alleged that, contrary to the basis upon which these monies were provided, Mr Akbar has received neither share certificates nor the return of his money, and that Mr Ghaffar has misappropriated and/or misapplied the relevant monies and provided inconsistent explanations in respect thereof. (See paragraphs 89 to 104, 105 to 121 and 122 to 139 respectively of the Particulars of Claim);
 - vi) The sum of £315,000 entrusted by Mr Akbar to Mr Ghaffar between January and April 2021 for the purpose of investment in gold dealing (“**Gold Dealing**”). It is alleged that this sum has been applied by Mr Ghaffar other than pursuant to the terms on which it was entrusted to him. (See paragraphs 140 to 155 of the Particulars of Claim);
 - vii) The sum of £100,000 (representing the substantial part of the proceeds of sale of gold bars provided by Mr Akbar to Mr Ghaffar for sale on his behalf, and sold in January 2022), entrusted by Mr Akbar to Mr Ghaffar for the purpose of investment into a soft drinks business (“**Soft Drinks Business**”). It is alleged that this sum has been applied by Mr Ghaffar other than on the terms pursuant to which it was entrusted to him. (See paragraphs 156 to 171 of the Particulars of Claim).
8. The present proceedings were commenced on 10 August 2022. Mr Akbar applied to me for a worldwide freezing order and proprietary injunction on a without notice basis on 11 August 2022. The application was supported by Mr Akbar’s first affidavit dated 5 August 2022. On that application, I made a worldwide freezing order, and granted a proprietary injunction against the Defendants by my Order dated 11 August 2022 (“**the Injunction Order**”). The relief that I granted was subsequently extended, albeit with some variations, by consent, on 25 August 2022, 12 September 2022, 14 October 2022, 4 November 2022 and 8 December 2022.
9. Paragraph 16 of the Order that I made on 4 November 2022 provided that the Defendants had liberty to apply to discharge the Injunction Order, provided that any such application was filed and served by 4pm on 18 November 2022. In the event, by application dated 18 November 2022 (“**the Discharge Application**”) the Defendants applied to discharge the Injunction Order: *“as a result of the Claimant’s deliberate and material breach of his duty of full and frank disclosure.”* I heard the Discharge Application on 24 April 2023, and on 30 April 2023 handed down judgment dismissing the same – see [2023] EWHC 1275 (Ch).
10. It is to be noted that, in the usual way in the case of a freezing order and proprietary injunction, the Injunction Order, at paragraph 11 thereof, provided for the Defendants to make and file affidavits as to their means, and as to what had become of the monies

alleged to have been misapplied/misappropriated and in respect of which a proprietary claim was maintained. In purported compliance therewith, Mr Ghaffar and Mrs Shah each made and filed affidavits dated 1 September 2022 and 18 November 2022. The affidavits made by Mr Ghaffar are of relevance for present purposes because there are pleaded allegations in the Particulars of Claim in respect of the contents thereof, and in particular as to what are said to be inconsistencies therein with regard to explanations that Mr Ghaffar has given with regard to what has become of certain of the monies alleged to have been misapplied/misappropriated, which Mr Akbar alleges that the Defence fails (in breach of CPR 16.5) to respond to.

11. The Particulars of Claim were filed and served on 9 December 2022 after the time for serving the same had been extended. A defence was due to be filed and served on 6 January 2023, but the time for doing so was extended by consent to 17 February 2023. On 16 February 2023, the Defendants issued an application seeking a further extension of time. The Defendants had, up to this point, been represented by Addleshaw Goddard, Solicitors, but the latter came off the record as acting for the Defendants in February 2023, a matter relied upon in support of the Defendant's application for an extension of time. On 14 March 2023, Mr Akbar issued his own application for judgment in default of defence pursuant to CPR 12.3(2) and CPR 12.4(3)(a). The application for default judgment was limited as specified within the application essentially to the claims for proprietary relief, and it was expressed to be without prejudice to Mr Akbar's entitlement to pursue claims and relief in respect of which default judgment was not sought (including but not limited to his entitlement to seek further relief in respect of non-proprietary claims, which claims and entitlements were expressly reserved).
12. On 20 March 2023, HHJ Pearce made an unless order providing that unless the Defendants' defence was filed and served by 4 PM on 31 March 2023, then there would be judgment in favour of Mr Akbar in accordance with the terms of his application for judgment in default, and that Mr Akbar should be at liberty to file and obtain "*a sealed Order in the terms set out in Appendix A to this Order without further reference to the Defendants.*"
13. On 31 March 2023, and within time, the Defendants filed and served the Defence, settled by Direct Access Counsel.
14. Mr Akbar filed and served a Reply on 17 April 2023. Paragraph 46 thereof comprised a summary in which it was alleged that the Defence:
 - “46.1. is wholly devoid of necessary particulars and non-compliant with the mandatory rules of the Court;
 - 46.2. favours placing misconceived and undue criticism upon the Particulars over providing a cogent and substantive response to the claim;
 - 46.3. is startling for the extent to which it contradicts multiple prior accounts given by way of sworn affidavits and/or statements of truth; and

- 46.4. in the circumstances, is liable to be struck out in whole or in part and/or attract summary judgment in favour of the Claimant.”
15. The (present) Application was issued on 25 May 2023, supported by the third witness statement of Mr Akbar’s Solicitor, Paul Daniel Jonson (“**Mr Jonson**”). The Application sought an order that unless the Defendant served a defence that was compliant with CPR 16.5 within 14 days, then the Defence should be struck out and judgment entered, and that Mr Akbar be at liberty to file and obtain a sealed order in the form set out in the draft order attached to the Application. The draft order attached to the Application essentially replicated that that had been attached to HHJ Pearce’s Order dated 20 March 2023.
16. The Application came before me on 6 June 2023 when the present claim was listed for a Costs and Case Management Conference (“**CCMC**”), as well as to deal with a number of other outstanding applications and issues. At this hearing, Mr Connolly appeared on behalf of Mr Akbar, and Mr Ghaffar appeared in person on behalf of himself and Mrs Shah. Mr Ghaffar informed me that, without legal representation and given certain health issues to which I will return, he would need some three months in order to address outstanding issues.
17. Whilst persuaded that there were certain deficiencies with the Defence so far as compliance with CPR 16.5 was concerned, I was not persuaded that it was appropriate that I should make an unless order, and I considered that before the matter was finally determined, Mr Akbar should particularise the paragraphs of the Defence that he maintained were non-compliant. Consequently, by paragraphs 6 to 9 of my Order dated 6 June 2023, I directed as follows:
- “6. The Claimant shall by 4 pm on 20 June 2023 serve a schedule on the Defendants which sets out those paragraphs of the Particulars of Claim dated 9 December 2023 (“**the Particulars of Claim**”) which he asserts the Defence dated 31 March 2023 (“**the Defence**”) does not adequately address as required by CPR 16.5 (“**the Non-Compliance Schedule**”).
7. The Defendants shall by 4 pm on 18 July 2023 file and serve an amended (or replacement) defence which is compliant with the provisions of CPR 16.5 and which, so far as they consider the same to be required, addresses each of the items set out in the Non-Compliance Schedule (“**the Amended Defence**”).
8. Thereafter, at the hearing to be listed under paragraph 19 below, the Court will, so far as required, consider (1) any remaining matters in respect of which the Claimant complains in relation to the Non-Compliance Schedule and/or the Amended Defence and (2), insofar as any complaints are upheld, the appropriate relief (if any) to grant against the Defendants in relation to such complaints including the striking out of any non-compliant parts of the Amended Defence.

9. The Claimant shall file and serve a note 2 clear days before the hearing to be listed under paragraph 19 below identifying in brief terms (1) any remaining matters in respect of which he complains in relation to the Non-Compliance Schedule and/or the Amended Defence and (2) the relief that he will invite the Court to grant in relation to any such remaining matters.”
18. Paragraph 19 of the Order dated 6 June 2023 provided for various matters to be listed for a hearing in the week commencing 24 July 2023, namely any further required consideration of the Application as directed by paragraph 8 of the Order dated 6 June 2023, the cross-examination of Mr Ghaffar as directed by paragraph 11 of the Order dated 6 June 2023 on his affidavits referred to in paragraph 10 above and the Defence, and the adjourned CCMC. Ultimately, the relevant hearing was listed on 1 and 2 August 2023.
19. On 20 June 2023, Mr Akbar served on each of the Defendants the Non-Compliance Schedule provided for by paragraph 6 of the Order dated 6 June 2023 identifying the paragraphs of the Particulars of Claim that it was alleged that the Defendants had failed to comply with CPR 16.5 in responding to, but not providing any particulars as to non-compliance. However, the Defendants did not respond to this, whether by serving an Amended Defence or in any other way.
20. On 25 July 2023, and in advance of the hearing listed on 1 and 2 August 2023, Mr Akbar served a note, as provided by paragraph 9 of the Order dated 6 June 2023, identifying that:
- i) He continued his complaint in respect of all matters identified in the Non-Compliance Schedule; and
 - ii) He would be inviting the Court to strike out the Defence and to grant relief substantially in the terms sought in the Application.
21. Mr Ghaffar did not attend Court on 1 August 2023. He did attend on 2 August 2023 after I had made an order on 1 August 2023 endorsed with a penal notice requiring attendance. However, the whole of 2 August 2023 was spent dealing with the cross examination of Mr Ghaffar as provided for by paragraph 11 of my Order dated 6 June 2023. Cross examination was not completed that day, and it was necessary to adjourn the cross examination, and the other matters that were due to be dealt with at this hearing, including the adjourned CCMC and the Application, to 15 and 16 August 2023.
22. Again, Mr Ghaffar did not attend the hearing on 15 August 2023, but he did attend remotely on 16 August 2023 when his cross examination was continued. The cross examination could not be completed on 16 August 2023, and was adjourned part heard to 7 September 2023. I also ordered on 16 August 2023, by paragraph 3 of my Order of that date, that other outstanding matters, namely the adjourned CCMC and the Application, be listed on the first open date after 1 October 2023 with a time estimate of one day.
23. Mr Ghaffar had given as his reasons for not attending the hearings on 1 August 2023 and 15 August 2023, a requirement to attend medical appointments and a medical condition which was alleged to hinder his ability to deal with matters. By paragraph 4

of my Order dated 16 August 2023, I directed that if Mr Ghaffar wished to rely upon any evidence (be it medical or otherwise) as to the manner in which the Court should conduct the hearing provided for by paragraph 3 thereof and/or should deal with any of the matters that might arise at that hearing, he should file and serve any such evidence not later than 4 PM on 14 September 2023.

24. The hearing directed by paragraph 3 of my Order dated 16 August 2023 was ultimately listed to be heard on 20 October 2023.
25. At 4.01 PM on 14 September 2023, Mr Ghaffar CE filed, but did not serve on Mr Akbar, an unsigned witness statement dealing with what was said to be his medical condition. The gist of Mr Ghaffar’s position can be gathered from the following paragraphs of the unsigned witness statement:

“1.3 My anxiety a core part of the mental health issues I have, is an overarching term, but underneath it, sits many different types of anxiety disorder and factors. My GP has diagnosed this as chronic fatigue syndrome/Long COVID causing the functional neurological symptoms.

...

“3.1 My Chronic fatigue syndrome is characterized by profound tiredness, drive and ability to u retake [sic] tasks. Symptoms often worsen with physical or mental activity. In addition to severe fatigue, my symptoms include light sensitivity, headache, muscle and joint pain, difficulty concentrating, mood swings, and depression.

...

3.5 I’ve had the most profound symptoms of Long COVID and CFS in the form of anxiety, lethargy, headaches, chest tightness, dizziness, mood swings, poor drive and concentration with sleep deprivation since 2019 which had appointments, imaging, consultation and blood tests until the present day.

...

3.7 My anxiety is heightened since the onset of this case because it brings:

Inability to defend the case properly to the fore because it causes panicked thinking becomes overloaded, solutions or clarity is lost in the myriad of thoughts causing headaches and restlessness which in turn increases my heart rate and I panic about the inevitabilities a be the anxiety kicks causing suppression that I can’t control. This triggers my immune responses to rush causes my IBS, stomach cramping,

overwhelming need to go to the toilet, this all makes me very anxious.”

26. The unsigned witness statement exhibited a letter from Mr Ghaffar’s doctor, Dr G Mason (“**Dr Mason**”), dated 4 September 2023, confirming that Mr Ghaffar is registered at the Nelson Medical practice in Kingston. This letter stated as follows:

“He has long covid symptoms which have persisted over around 36 months. These include lethargy, sleep deprivation, dizziness, headaches and anxiety. These symptoms have affected his concentration and his ability to engage with complex tasks. He has had investigations including extensive blood tests and is awaiting neuro-imaging with an MRI scan

He has recently been reviewed by the neurology team who has made a provisional diagnosis of a functional neurological symptoms in the context of probable chronic fatigue syndrome/long covid. Mr Ghaffar has limited ability to work.

These symptoms have affected his ability to engage with court proceedings and asks that they be taken into consideration by the court.

It is difficult to predict when symptoms may improve and although full recovery is possible it is not clear when this might occur, his current diagnosis is provisional pending the results of his imaging.”

27. At the hearing on 20 October 2023, I dealt with all the other outstanding issues, including the substantive CCMC, but through lack of time adjourned the Application to be heard over a one day hearing on 20 November 2023. At this hearing on 20 October 2023, I considered Mr Ghaffar’s unsigned witness statement, which I understand he did in fact sign at this point, and Dr Mason’s letter dated 4 September 2023. Observing that the evidence fell well short of the sort of medical or other evidence that might be required to obtain an adjournment, and that Dr Mason’s letter provided no real assistance as to the extent to which the medical condition referred to affected Mr Ghaffar’s ability to deal with the present proceedings, I considered this evidence in the context of the potential application of CPR PD1A relating to participation of vulnerable parties or witnesses. I concluded that no adjustments, save for a short breaks during the course of the morning and afternoon of a hearing, were required for Mr Ghaffar to be able to fully participate in the hearing. An additional consideration was that at Mr Ghaffar’s request I had directed that interlocutory procedural hearings at least could proceed on a remote basis to enable Mr Ghaffar to attend from home remotely and avoid the need to travel to Manchester. I have sought to keep under review the potential application of CPR PD1A as the case has subsequently progressed.
28. In his Skeleton Argument dated 17 October 2023 prepared for the hearing on 20 October 2023, Mr Connolly set out, at paragraph 31 thereof, that it was Mr Akbar’s position, in the light of the events that had occurred, that the Application, as it now came before the court, no longer sought relief simply on unless terms, the Defendants having already been given the opportunity of remedy by my Order dated 6 June 2023. This was consistent with the position taken in the note dated 25 July 2023 referred to

in paragraph 20 above. On this basis, Mr Akbar sought the immediate strikeout of the Defence, and entry of judgment consequential thereupon.

29. Further, Mr Connolly attached to his Skeleton Argument dated 17 October 2023 a table setting out, by reference to relevant paragraphs of the Particulars of Claim and the Defence, what were described as: “*Highlighted matters of complaint*”.
30. By my Order dated 20 October 2023, I directed that Mr Akbar should by 15 November 2023: “*re-file and exchange the table that accompanied his skeleton argument dated 17 October 2023 with an additional column headed Judge’s Comments and, if so advised, with further details as to the matters in respect of which he complains.*” Such a revised table was duly filed and served on or before 15 November 2023 (“**The Breaches Table**”).
31. In anticipation of the hearing on 20 November 2023, the Defendants, on 15 November 2023, CE filed a Skeleton Argument, which named at the end thereof both Mr Ghaffar and Mrs Shah. I have considered and taken into account the contents of this Skeleton Argument which I refer to further below.
32. Unfortunately, I was taken ill with Covid on 20 November 2023, and the hearing of the Application was unable to proceed on that day. The matter was relisted on 7 December 2023, but, unfortunately, on the day prior to this hearing, Mr Ghaffar produced a positive Covid test, together with a description of symptoms consistent therewith, and so the Application required to be further adjourned to 20 December 2023.
33. Mr Ghaffar raised that he had Covid in an email to the Court dated 6 December 2023 that was copied into me. An exchange of emails then took place during the course of which 20 December 2023 was established to be a convenient date for an adjournment, and I asked the parties to proceed on the basis that the matter would be relisted on 20 December 2023. It is generally the practice of the Court, in a situation such as this, when relisting a matter in the Court diary, to send out a notification in respect of the hearing to the parties. This was, unfortunately, not done on this occasion. However, as I have said, the parties were asked to proceed on the basis that the adjourned hearing would be relisted on 20 December 2023.
34. On the day prior to the hearing, Mr Akbar’s Solicitors sent to Mr Ghaffar a Statement of Costs for the hearing. Further, on the morning of the hearing itself, an MS Teams invitation was sent to Mr Ghaffar’s usual email address from which he had communicated with the Court on numerous occasion prior thereto, but Mr Ghaffar did not respond thereto. Following the hearing on 20 December 2023 I requested that Mr Akbar’s Solicitors write to Mr Ghaffar informing him that the hearing had gone ahead on 20 December 2023 and that I had reserved judgment. I have since received confirmation via Mr Connolly that his Instructing Solicitors emailed Mr Ghaffar at this email address during the course of the hearing to inform him about it, and subsequently, after the hearing on 20 December, wrote to both Defendants by email informing them as to the position. I am told that they have received no response, and my own enquiries are to the effect that there has been no subsequent communication from either of the Defendants with the Court notwithstanding the circulation of a draft of this judgment to them by email. I am informed that email from the Court sending the draft judgment to Mr Ghaffar was rejected on the basis that the mailbox of his usual email address was full, but a further copy of the draft judgment was subsequently sent to another email

address which he has used in communication with the Court of Appeal. In addition, a draft of this judgment was sent by email to Mrs Shah's email address.

35. It was in the above circumstances that I decided that it was appropriate to proceed with the hearing on 20 December 2023 in the Defendants' absence, and subsequently to hand down this judgment. At earlier hearings, Mr Ghaffar had confirmed that he was appearing on behalf of himself and Mrs Shah, his wife. Further, as I have said, the Skeleton Argument filed on 15 November 2023 was expressed to be that of both Mr Ghaffar and Mrs Shah.

Basis of the application to strike out

Jurisdiction

36. Mr Akbar seeks to strike out the Defence pursuant to CPR 3.4(2)(b) and (c), namely on the grounds that the Defence is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings, and that there has been failure to comply with a rule, practice direction or court order.
37. The rule identified in respect of which there is said to be a failure to comply is CPR 16.5 regarding the contents of a defence. This provides, so far as is relevant, as follows:
- “(1) In the defence, the defendant must deal with every allegation in the particulars of claim, stating—
- (a) which of the allegations are denied;
 - (b) which allegations they are unable to admit or deny, but which they require the claimant to prove; and
 - (c) which allegations they admit.
- (2) Where the defendant denies an allegation—
- (a) they must state their reasons for doing so; and
 - (b) if they intend to put forward a different version of events from that given by the claimant, they must state their own version.
- (3) If a defendant—
- (a) fails to deal with an allegation; but
 - (b) sets out in the defence the nature of their case in relation to the issue to which that allegation is relevant,
- the claimant is required to prove the allegation.

...

(5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation.”

38. Mr Connolly submits that although CPR 16.5, in CPR 16.5(3) and (5), specifies consequences of failing to comply with CPR 16.5(1) and (2), that does not exclude the possibility of invoking CPR 3.4(2)(c) (or (b)) in an appropriate case. He points to the fact that this was the premise at least of the decision of the Court of Appeal in *SPI North Ltd v Swiss Post International (UK) Ltd* [2019] EWCA Civ 7, [2019] 1 WLR 2863, albeit that the actual decision turned on whether there had been a breach of CPR 16.5(1)(b), and he submits that support for CPR 3.4(2)(b) and/or (c) being potentially engaged where there is a breach of CPR 16.5 is provided by the commentary in Bullen and Leake, 1st Supplement to the 19th Edn, at paragraph 1.19. He also points to other instances in the CPR where consequences of a failure to comply are provided for, but without also excluding an application to strike out, e.g. CPR 31.21 and 32.10.
39. Mr Connolly thus submits that if breach of a rule is established, then the usual question for the Court to ask in respect of that failure to comply is what would be a reasonable and proportionate sanction for that breach – see *Biguzzi v Rank Leisure Limited* [1999] 1 WLR 1926, 1933A to D and *Candy v Holyoake* [2017] EWHC 373(QB) at [31]. In the present instance that ranges from strike out (with or without unless conditionality) through to no remedy beyond that provided for within CPR 16.5 itself.
40. Mr Connolly submits that in addressing the question of reasonable or proportionate sanction on an application for strike out for non-compliance under CPR 3.4(2)(c), the principles laid down in *Mitchell v News Group Newspapers Limited* [2013] EWCA Civ 1537, [2014] 1 WLR 795, as subsequently restated in *Denton v TH White Limited* [2014] EWCA Civ 906, [2014] 1 WLR 3926, relating to relief from sanction are “relevant and important” – see *Walsham Chalet Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607, [2015] C.P. Rep. 15 at [44]. On this basis it is submitted that in considering the Application, the Court should have regard to the seriousness of the non-compliance, whether there is any good reason for it, and all the circumstances of the case.
41. In *Walsham Chalet Park Ltd v Tallington Lakes Ltd* (supra) at [44], David Richards LJ (as he then was) did identify this as being the correct approach on the basis that the factors referred to in CPR 3.9, including in particular the need to enforce compliance with court orders, are reflected in the overriding objective in CPR 1.1 to which the court must seek to give effect in exercising its power in relation to an application under CPR 3.4 to strike out for non-compliance with a court order. However, he went on to qualify this by saying that:

“It must be stressed, however, that the ultimate question for the court in deciding whether to impose the sanction of strike-out is materially different from that in deciding whether to grant relief from a sanction that has already been imposed. In a strike-out application under rule 3.4 the proportionality of the sanction itself is in issue, whereas an application under rule 3.9 for relief from sanction has to proceed on the basis that the sanction was properly imposed (see *Mitchell*, paragraphs 44-45). The importance of that distinction is particularly obvious where the sanction being sought is as fundamental as a strike-out.”

It is plainly necessary to bear this in mind.

42. The Application is brought on the basis that the Defence fails in material respects to provide a comprehensive response to the Particulars of Claim. It is submitted on behalf of Mr Ghaffar that the consequence of such failure is that:
- i) The Defence is in breach of CPR 16.5(1), which requires that the defendant must deal with every allegation, and is liable to be struck out pursuant to CPR 3.4(2)(c); and
 - ii) The matters that are pleaded are, in consequence of such material omissions, unreasonably vague or incoherent and amount to an abuse of process and/or obstruct the just disposal of the case, and thus are liable also to be struck out pursuant to CPR 3.4(2)(b) - see *Towler v Wills* [2010] EWHC 1209 (Comm) at [16]-[18].

Breaches of CPR 16.5 alleged

43. The Particulars of Claim comprise a lengthy document running to some 54 pages. The essential complaint is that the Defence largely fails to deal with individual allegations in the Particulars of Claim by either denying them (whether with reasons for doing so or at all), identifying those allegations which the Defendants are unable to admit or deny, and which they require Mr Akbar to prove, or by admitting them. This is said to be the case in respect of a number of key allegations in the Particulars of Claim. Further, whilst it might be said in respect of a number of the allegations that the Defendants have set out the nature of their case in relation to allegations pleaded in the Particulars of Claim, thus potentially engaging CPR 16.5(3), the responses provided are so generalised and unparticularised as to provide no answer to the overall case as to breach of CPR 16.5.
44. I have summarised the sums alleged to have been entrusted to the Defendants, and to have been misapplied and/or misappropriated in paragraph 7 above. For reasons that I explain below, I consider that the allegations concerning Thackery Court and Flat 21 Bramerton require to be dealt with on a somewhat different basis. So far as the other allegations are concerned, the essential complaint in each case is that the sum or sums of money in question were entrusted to Mr Ghaffar on a particular basis so as to give rise to a *Quistclose* or purpose trust, which Mr Ghaffar failed to carry into effect so as to give rise to a proprietary claim in respect of the monies in question when they were misapplied and/or misappropriated. In most cases, an alternative case is pleaded in contract, and deceit. However, the principal allegation in each case is breach of the purpose trust, and remedies are sought consistent therewith, including for an account and enquiry and for restoration of the relevant trust fund.

RPC

45. The most significant allegations against Mr Ghaffar relates to RPC, and the investments or supposed investments in relation thereto totalling £1,833,000. On Mr Akbar's case, the breaches of CPR 16.5 that are alleged are at their most serious in relation to these allegations. I therefore consider Mr Akbar's case in relation thereto in somewhat more detail than the other allegations and alleged breaches which, on Mr Akbar's case, follow a similar pattern.

46. The case in relation to the RPC monies is pleaded in paragraphs 57 to 58 of the Particulars of Claim. The gist of the case as pleaded is as follows:
- i) In or around June 2020, there were discussions between Mr Akbar and Mr Ghaffar, during the course of which Mr Ghaffar introduced RPC as an investment opportunity offering extraordinarily high returns on a risk-free basis as the capital invested remained within the control of the investor. There were further discussions in which Mr Ghaffar reported back the discussions he was having with the directors of RPC – paragraphs 57-59.
 - ii) On 4 September 2020, Mr Ghaffar forwarded to Mr Akbar an email purportedly sent to him by Mr Roger Crowe of RPC, the contents of which was described in paragraph 60. This referred, amongst other things, to payment being made via Mr Ghaffar, confirmation that the £1 million would at all times remain within the ownership and control of Mr Akbar, a projected return on investment of 70% per week, and the need to pay RPC the amount of £1 million before they could do anything more. In paragraph 61, it is pleaded that Mr Akbar believes that the email dated 4 September 2020 was a forgery created by Mr Ghaffar to induce Mr Akbar to pay him the monies in question.
 - iii) In paragraph 62, it is pleaded that, in reliance upon what he had been told by Mr Ghaffar and the assurance in the email dated 4 September 2020 that the £1 million pounds would at all times remain within his ownership and control, Mr Akbar paid the £1 million to Mr Ghaffar on or about 4 September 2020 in anticipation of an investment on the basis referred to in this email.
 - iv) In paragraphs 63 and 64, an express, alternatively a resulting trust, is alleged under which the £1 million was paid to Mr Ghaffar for the purpose only of applying the same for the purpose of investment with RPC consistent with the terms of the email dated 4 September 2020 under which ownership and control was to remain with Mr Akbar, defined in paragraph 64 as “*the £1 Million Trust*”.
 - v) In paragraph 65 it is alleged that in his position as trustee of the £1 Million Trust, Mr Ghaffar owed Mr Akbar a fiduciary duty of loyalty which gave rise to certain specific duties as set out therein.
 - vi) In paragraph 66, a further or in the alternative case is pleaded in contract to the effect that there was a joint venture between Mr Akbar and Mr Ghaffar governed by a contract under which there was a relationship of trust and confidence that gave rise to fiduciary duties, or duties akin to those owed by one partner to another.
 - vii) In paragraph 67, it is alleged that contrary to the £1 Million Trust and/or the above contract, on 8 September 2020, Mr Ghaffar paid the £1 million to RPC on terms recorded in a document of that date signed by Mr Ghaffar and Mr Anthony Littlejohn (“**Mr Littlejohn**”) on behalf of RPC, defined as “*the £1 Million Transfer Document*”. It is alleged that the latter provided for the payment of the £1 million to have been made on behalf of Mr Ghaffar and not Mr Akbar, with there being no reference to Mr Akbar therein.

- viii) In paragraph 68, it is pleaded that Mr Akbar understands that on 21 September 2020 RPC paid away £940,822.28 of the £1 million to a person or persons unknown. The basis of this understanding is said to be a text message dated 29 September 2020 from Mr Littlejohn to Mr Ghaffar, a copy of which was provided by Mr Ghaffar to Mr Akbar's Solicitors on 19 January 2022, referring to "*outgoing SEPA Payments*" of £940,822.28 on 21 September 2020.
- ix) In paragraphs 69 and 70, it is pleaded that on or about 6 October 2020, and unaware of the above matters, and in anticipation that he was providing the same on the same basis and terms as the £1 Million Trust, Mr Akbar paid the further sum of £833,000 to Mr Ghaffar upon an express, alternatively a resulting, purpose trust under which Mr Ghaffar was subject to like fiduciary duties as the £1 Million Trust.
- x) In paragraph 71, a further or alternative case in contract in like terms to that alleged in respect of the £1 million, is alleged in respect of £833,000.
- xi) In paragraph 72 it is alleged that by an email dated 15 October 2020, Mr Ghaffar sent Mr Akbar what purported to be a joint venture agreement between RPC and Mr Ghaffar (as agent for Mr Akbar) in relation to RPC's small cap trade placement programme defined therein as "*the Purported Joint Venture Agreement*". It is alleged that this document referred to the sums totalling £1.833 million that Mr Akbar had paid, to anticipated returns of in excess of £90 million and to the agreement being conditional upon RPC procuring a guarantee for £100 million from HSBC plc. Paragraph 73 goes on to plead that as no such guarantee has been procured, even if the Purported Joint Venture Agreement was genuine, it can never have come into effect.
- xii) In paragraph 74 it is alleged that contrary to the terms of the relevant trust and/or contract relating thereto, Mr Ghaffar has paid away the whole of the £833,000 otherwise than to RPC, as Mr Akbar had believed and as Mr Ghaffar had told him it would be paid, Mr Ghaffar paying the same away to a large number of different sources.
- xiii) In paragraph 75, it is alleged that Mr Akbar has sought, without success, to recover the £1.833 million and that, in the course of doing so, his Solicitors wrote to RPC on 8 February 2022 seeking the return thereof. Reference is then made to a reply from RPC dated 14 February 2022 in which it was alleged by RPC that:
 - a) It had no knowledge of and had had no dealings with Mr Akbar;
 - b) It had received £1 million from Mr Ghaffar and had paid the same away on instructions from Mr Ghaffar including a payment back to him of £38,450 under the reference "*Dominic Builders*";
 - c) It had not received and had no knowledge of any further payment of £833,000; and
 - d) The Purported Joint Venture Agreement was a forgery, and that it had not executed that document.

- xiv) In paragraph 76 it is alleged that, on 15 October 2020, Mr Ghaffar had sent Mr Akbar an email which purported to be from a Mr Charles Proctor of Fladgate, Solicitors, the purpose of which was to seek to reinforce the bone fide is of RPC, and the payment of the £1.833 million to Mr Ghaffar. It is alleged that this email was a forgery prepared, so Mr Akbar believes, by Mr Ghaffar, and that Mr Proctor had had no dealings with RPC in relation to Mr Akbar's £1.833 million.
- xv) Paragraphs 77 to 80 plead a number of versions of events that Mr Ghaffar had previously provided as to what he had done with the £833,000:
- a) In paragraph 77 reference is made to Mr Ghaffar having emailed Mr Akbar's Solicitors on 31 January 2022 with regard to the contents of a letter to be sent to RPC, being that in fact sent on 8 February 2022. By this email, Mr Ghaffar suggested wording for the letter to RPC referring to the fact that he had paid the £833,000 to a Swiss lawyer called Mr Hoffer at the direction of RPC. It is alleged that Mr Ghaffar knew this to be false.
 - b) Paragraph 78 refers to Mr Ghaffar's affidavit dated 1 September 2022 having stated that he had converted the £833,000 into foreign currency and, at the direction of Mr Akbar, had paid the same to a number of companies of which he had no material knowledge. It is alleged that this evidence was false.
 - c) Paragraph 79 refers to Mr Ghaffar having provided a further different explanation in his affidavit dated 18 November 2022 in which he had said that he had paid away the whole of the £833,000 to a large number of sources including those therein referred to. This included: "*Over £507,000 via Fair FX to an account in his name with an organisation called Atlantic Partners Asia based in Singapore ("APA")*". Paragraph 80 then goes on to allege that in respect of the payments to APA, Mr Ghaffar had alleged that the whole of the sum in question had been paid to a "*Crypto Wallet*" of which he had no knowledge, details or access. Again, it is alleged that this is all false.
- xvi) Paragraph 81 sets out that Mr Akbar seeks "*the following primary relief against the First and Second Defendants*". However, I note that no basis for a claim against Mrs Shah is contained in the relevant paragraphs of the Particulars of Claim in respect of the RPC monies, or indeed other heads of claim apart from the claims in respect of Thackery Court and Flat 21 Bramerton where Mrs Shah held the relevant properties as trustee. The relief sought is an account and enquiry as to what has become of the £1.833 million, an account and enquiry as to the use made by Mr Ghaffar and Mrs Shah of the £1.833 million, and of the benefits obtained from such use and as to the whereabouts of the monies and/or their substitutes, and an order that Mr Ghaffar and Mrs Shah account to Mr Akbar for all such sums, benefits and substitutes. By paragraph 82, Mr Akbar seeks, further or in the alternative, an order requiring Mr Ghaffar to reinstate and restore the trusts relating to the £1 million and the £833,000, on the basis that they had been applied contrary to the purpose for which they were provided to Mr Ghaffar, including that they remained within the ownership and control of Mr Akbar.

- xvii) Paragraphs 83 and 84 plead a further or alternative case of breach of contract, and for damages in the amount wrongly paid away and for an amount equal to the loss and damage suffered by Mr Akbar consequent upon him being kept out of his money.
- xviii) Paragraphs 85 to 88 then plead a case of fraudulent misrepresentation based upon the matters referred to in paragraphs 57 to 60 of the Particulars of Claim, and for damages in respect thereof.

47. In Mr Akbar's Breaches Table, the following matters are identified in respect of the RPC allegations (the wording in red having been added to the final version provided on 15 November 2023):

- Initial discussions between C and D1 at §§57 to 59 of PoC not pleaded to
- The defence does not address the content of the email of 4/9/20 §60 of PoC
- Circumstances and basis of payment of £1 million not addressed §62 of PoC
- Case as to terms on which payment of £1 million made and trust that gave rise to is not addressed §63 and 64 of PoC – at best D1 says in §43.3 of the Defence “Insofar as a trust relationship existed”
- Duties not addressed at §65 of PoC
- £1 Million Contract not addressed at §66 of PoC
- £1 Million Transfer Document not addressed at §67 of PoC and §7 ii) of Jonson 3
- Payment away of £940,822.28 not addressed
- Circumstances and basis of payment of £833,000 not addressed
- Case as to terms on which payment of £833k made and trust that gave rise to is not addressed §69 of PoC – at best D1 says in §43.3 of the Defence “Insofar as a trust relationship existed”
- Duties not addressed
- £833k Contract not addressed at §69 of PoC
- Email of 15/10/20 and Purported Joint Venture Agreement not addressed
- Neither the correspondence from RPC nor the correspondence from Fladgate Solicitors is addressed
- Falsity of assertion that £833,000 was paid to a Swiss lawyer is not addressed

- Allegations of falsity and inconsistency in relation to earlier accounts of events not addressed **and §7 iii) of Jonson 3**
- Unparticularised allegation of payment of whole of £833,000 to RPC
- Relief sought by C not addressed
- Claim in deceit not addressed **at §§84 to 88 of PoC**

48. The key points identified by Mr Connolly in submissions were that:

- i) The Defence makes no reference at all to:
 - a) The £1 Million Transfer Document referred to in paragraph 67 of the Particulars of Claim;
 - b) The purported joint venture agreement referred to in paragraph 72 of the Particulars of Claim; or
 - c) The letter dated 14 February 2022 from RPC referred to in paragraph 75 of the Particulars of Claim.
- ii) Thus, so it is submitted, by such omission, the Defence fails entirely to deal with three central pillars of Mr Akbar's claim in fraud as concerns RPC, in that it fails to address or adequately to address Mr Akbar's allegations that:
 - a) The £1 million was sent to RPC for and in the name of Mr Ghaffar himself;
 - b) RPC have never heard or dealt with Mr Akbar (directly or via Mr Ghaffar) ; and
 - c) The documents which Mr Ghaffar has alleged forms the basis of Mr Akbar's investment relationship with RPC is a forgery at the hands of Mr Ghaffar;
- iii) As concerns the claim in respect of the £833,000, the Defence fails to address the inconsistent accounts previously given (as identified in paragraphs 77 to 80 of the Particulars of Claim), and makes a bare allegation at paragraph 43.2 of the Defence that the £1,833,000 was paid to RPC on a date and in circumstances that are wholly unexplained. It is submitted that the inadequacy of the bare allegation is compounded by the failure of the Defence to address that part of RPC's letter dated 14 February 2022 which denies, expressly, that RPC received any part of the £833,000.

London Commercial Property

49. I summarise the allegations in question in paragraph 7(iii) above, which are contained in paragraphs 45 to 56 of the Particulars of Claim.

50. The Defence responded thereto by paragraph 30 thereof which, in one comparatively short paragraph, admits that Mr Akbar and Mr Ghaffar discussed a potential investment in a London commercial property, that Mr Akbar paid the sum of £310,000 to Mr Ghaffar in respect thereof, and that the investment did not go ahead. However, it is alleged, by way of defence, that Mr Ghaffar paid the £310,000 back to Mr Akbar: “*by way of a transfer from the First Defendant’s personal HSBC account to the Claimant’s HSBC account.*” No further particulars are provided in respect thereof, and in paragraph 21.4 of the Reply it is alleged that this explanation of repayment in full by way of a transfer between bank accounts is inconsistent with explanations given in paragraph 13 of Mr Ghaffar’s affidavit dated 1 September 2022, and paragraph 25 of Mr Ghaffar’s affidavit dated 18 November 2022.
51. In Mr Akbar’s Breaches Table, the following matters are identified in respect of alleged breach of CPR 16.5:

- **Mortgage free agreement and Quistclose purpose** terms of payment and trust arising not addressed
- Duties not addressed
- Partnership, Joint Venture and Contract not addressed
- Allegations of falsity and inconsistency in relation to earlier accounts of events not addressed **§53 of PoC and §7 i) of Jonson 3**
- Unparticularised allegation of repayment of whole of £310,000
- **Particulars of breach of trust and breach of contract, and loss alleged to have been caused thereby at §§55 and 56 of PoC, not pleaded to**

NextSource, Pluto and 786 London

52. I have summarised the allegations in respect of these investments in paragraph 7(v) above and they are dealt with in paragraphs 92-104, 105-121 and 126-139 of the Particulars of Claim.
53. The NextSource allegations are dealt with at paragraphs 52-57 of the Defence. Paragraph 52 comprises an admission that Mr Akbar paid the £200,000 in question to Mr Ghaffar and that it was agreed that beneficial ownership in the money would remain with Mr Akbar “*until it was paid to the sources required by the Claimant, pursuant to a Quistclose Trust*”. It is then alleged, in short, that £100,000 was set aside for investment in NextSource, but that this did not proceed, and that the monies were returned to Mr Akbar. As to the balance, it is alleged that £100,000 was paid into Mr Ghaffar’s APA account, with APA subsequently paying the same into a crypto wallet that is now empty. It is said that it appears that Mr Akbar has been defrauded either by APA or a third party, but not Mr Ghaffar.
54. The Pluto allegations are dealt with in paragraphs 58 to 61 of the Defence. In essence, it is admitted that Mr Akbar and Mr Ghaffar discussed investing a proportion of Mr Akbar’s money in Pluto, a Dubai-based entity, but on the basis that Mr Ghaffar was not

Mr Akbar’s financial adviser, and that the investment was at Mr Akbar’s own risk, Mr Akbar being invited to undertake his own due diligence. It is admitted that Mr Akbar did pay £400,000 to Mr Ghaffar to invest in Pluto, and it is alleged that on Mr Akbar’s instructions the monies were converted into foreign currency and invested with Mirador FZE, the trading name/entity of Pluto. It is then alleged that “*the amounts*”, under guidance from Mirador, were paid to “*mixed sources*”, with the £400,000 being placed “*through various FIAT currency denominations*”. It is then asserted that insofar as Mr Ghaffar owed any fiduciary duties to Mr Akbar, these were predicated on a *Quistclose* trust, and that Mr Ghaffar’s duties were “*fulfilled*”, with any action that Mr Akbar might have now being against Mirador.

55. The allegations in respect of 786 London are dealt with in paragraphs 45 to 51 of the Defence. In essence, it is admitted that it was agreed that Mr Akbar and Mr Ghaffar would each provide £375,000 (total £750,000) to be lent to 786 London on terms providing for repayment and the issue of 5% of the issued share capital of 786 London to each of Mr Akbar and Mr Ghaffar. The Defence alleges that the monies were to be repaid after the relevant platform had traded for four months rather than that, as alleged by Mr Akbar, the monies were to be lent for a period of four months. The Defence alleges that the £750,000 was paid to a Mr MD Thompson who later credited the monies to a bank account of 786 London “*once created*”, and that a promissory note was provided to Mr Ghaffar, payable after the platform traded for four months. It is further alleged that another company now holds “*the Claimant’s shares in 786 [London] on trust for him.*” It is accepted that there was a *Quistclose* trust for Mr Akbar but asserted that Mr Ghaffar “*successfully discharged his fiduciary duties*” once the monies were transferred to Mr MD Thompson and then on to 786 London. The Defence thus pleads that the issue as to shares in 786 London is something be taken up with the company holding the same on trust for Mr Akbar, and that 786 London has not been able to repay the loan because it has yet to trade.
56. The Breaches Table sets out the following alleged breaches of CPR 16.5 in respect of the above allegations concerning NextSource, Pluto and 786 London:

NextSource
<ul style="list-style-type: none">• Duties not addressed at §92 of the PoC;• Allegations of falsity and inconsistency in relation to earlier accounts of events not addressed at §§94 to 96 of the PoC;• Relief at §§97 to 100 of the PoC not addressed• Claim in deceit not addressed at §§101 to 104 of the PoC and §7 iv) of Jonson 3

Pluto
<ul style="list-style-type: none">• Trust not addressed – see qualified wording at §61 of the Defence• Duties not addressed;

- Contract not addressed;
- £500k investment and declaration of trust not addressed;
- Allegations of falsity and inconsistency in relation to earlier accounts of events not addressed;
- Account at §113 of PoC not addressed
- Relief not addressed at §§114 to 117 of the PoC
- Claim in deceit not addressed at §§118 to 121 of the PoC

786 London

- Duties at §126 of PoC not addressed;
- Contract at §127 of PoC not addressed;
- Circumstances and timings of the incorporation of 786 London not addressed; absence of any reference to any payments being made to it by either C or D1 at §128 of PoC
- Loan agreement with 786 Card Limited, dormancy and D2 ownership not addressed at §129 of PoC and §7 v) of Jonson 3;
- Payments allegedly made by D1 and/or his company not addressed at §130 of PoC;
- Relief at §§132 to 135 of PoC not addressed
- Claim in deceit at §§136 to 139 of the PoC not addressed.

Gold Dealing

57. The allegations in respect of monies for gold dealing are summarised in paragraph 7(vi) above and dealt with in paragraphs 140 to 155 of the Particulars of Claim. It is to be noted that significant reliance is placed therein upon previous explanations given by Mr Ghaffar as to how he has applied the £315,000, in particular the allegation in paragraph 145 of the Particulars of Claim that in his first affidavit dated 1 September 2022, Mr Ghaffar asserted that he had repaid the £315,000 by way of cash payments drawn from a Tide Bank account, an assertion alleged by Mr Akbar to be false. Further, reliance is placed upon Mr Ghaffar's second affidavit dated 18 November 2022 in which Mr Ghaffar:

- i) Accepted that none of the £315,000 had been used for gold dealing;
- ii) Alleged that £239,000 thereof had been paid to APA and subsequently paid into a crypto wallet, and that £91,000 had been paid to a company belonging to Mr Ghaffar (Pamona), with other sums being paid to third parties;

- iii) Further, asserted that the whole £315,000 been repaid to Mr Akbar “*in incremental payments via electronic payments*” which Mr Ghaffar had been unable to identify.
58. The gold dealing monies allegation is dealt with at paragraphs 61-66 of the Defence. In essence, it is there alleged that Mr Ghaffar bought gold in volume at lower than market price and sold the same in smaller volumes at the market price. It is alleged that the company that the gold was being sold to, namely The Gold Souk, required trade financing such that, having been purchased with Mr Akbar’s monies, the gold was provided to The Gold Souk on consignment on the basis that the latter would then sell the gold itself, and once paid would pay Mr Ghaffar. However, it is alleged that The Gold Souk ran into financial difficulties and was unable to pay for the gold supplied to it. It is the Defendants’ case that Mr Ghaffar discharged any fiduciary duties by purchasing the gold and providing it to The Gold Souk on consignment, and that if any trust relationship did arise, it is between Mr Akbar and The Gold Souk. Misappropriation is denied.
59. The Breaches Table asserts the following alleged breaches of CPR 16.5 so far as concerns the allegations relating to the gold dealing monies:

- Quistclose purpose trust at §142 of PoC not addressed – at best refers to trust on terms in §66 of Defence “If any trust arrangement has arisen”
- Bare contract denial at §63 of Defence
- Allegations of falsity and inconsistency in relation to earlier accounts of events not addressed at §§145 to 147 of PoC not addressed
- Remedies at §147 to 151 of the PoC not addressed
- Claim in deceit not addressed at §§152 to 155 of PoC not addressed

Soft Drinks Business

60. The allegations in relation to the monies said to have been entrusted to Mr Ghaffar for the purpose of investment into a soft drinks business are summarised in paragraph 7(vii) above and dealt with in paragraphs 156 to 171 of the Particulars of Claim. It is to be noted that the allegations relate to the sum of £100,000 representing the proceeds of the sale of gold, it being alleged that Mr Ghaffar recommended and promised to Mr Akbar that these monies would be invested in a soft drinks business so as to result in a return of between 12% and 18% per month. Again, the case is pleaded in terms of a *Quistclose* trust, and also on the basis of contract and fraudulent misrepresentation. In paragraph 163 of the Particulars of Claim, reference is made to Mr Ghaffar having explained in his second affidavit dated 18 November 2022 that none of the £100,000 had been invested in a soft drinks business, but rather had been otherwise applied with a payment of £5,852 his company, Pomona, a payment of £5,545 to Mrs Shah, payments in respect of other personal expenditure, and a payment of £65,252 to a Spanish civil engineering company. The same sort of relief is claimed as in the case of other allegations.

61. These allegations are dealt with in paragraphs 67 to 69 of the Defence. In essence, it is simply alleged that Mr Akbar asked Mr Ghaffar to invest the £100,000, that represented the balance of monies received from the sale of gold, in a high energy drinks company trading as “*Dublin Vintners*”, which Mr Ghaffar did. It is alleged that Mr Akbar negotiated the deal, and that any fiduciary duties owed to Mr Akbar were discharged when Mr Ghaffar paid the relevant monies to “*an associate of Dublin Vintners as per Claimant’s instruction.*”
62. The Breaches Table asserts the following alleged breaches of CPR 16.5 so far as concerns the allegations relating to investment in a soft drinks business:

- Inconsistent account at §163 of PoC not addressed
- Relief at §§164 to 167 of PoC not addressed
- Claim in deceit at §§168 to 171 of PoC not addressed

Thackery Court

63. The allegations Thackery Court are summarised in paragraph 7(i) above and dealt with in paragraphs 12 to 37 of the Particulars of Claim.
64. It is necessary for me to set out the allegations in the Particulars of Claim in respect of Thackery Court in a little more detail as follows:
- i) In paragraph 12 it is alleged that in or around November 2019, Mr Ghaffar propose to Mr Akbar that they purchase on a joint venture 50/50 mortgage free basis, Thackery Court, Mr Ghaffar having represented that Thackery Court was available at a very cheap price and that it provided an opportunity to undertake minor cosmetics works and to then resell the same almost immediately at a substantial profit.
 - ii) Paragraph 13 pleads an email dated 4 November 2019 in which Mr Ghaffar set out the proposed terms of the joint venture, namely:
 - a) Thackery Court would be purchased mortgage free for £517,000, with the price and costs of purchase being split 50/50 between Mr Ghaffar and Mr Akbar;
 - b) Cosmetic works would be carried out, following which Thackery Court will be sold as soon as reasonably possible for as close to £725,000 as possible;
 - c) The proceeds of sale would be used to repay Mr Ghaffar’s and Mr Akbar’s respective contributions to the purchase price, and the profit from the sale would be divided equally between them;
 - d) Thackery Court would be purchased in Mrs Shah’s name, and she would hold the same on trust for Mr Ghaffar and Mr Akbar.
 - iii) In paragraph 14 it is pleaded that in reliance on “*those representations*”, an apparent reference back to the email dated 4 November 2019, Mr Akbar agreed

to purchase Thackery Court as a joint venture, pursuant to which he paid Mr Ghaffar the sum of £250,000 on 2 December 2019, and the further sum of £130,000 on 4 December 2019. Of these sums, it is said that Mr Akbar believes that £284,000 was used as a contribution towards the purchase of Thackery Court, with the balance being retained for an unrelated further proposed property purchase which did not proceed.

- iv) In paragraph 15 it is pleaded that, on 9 January 2020, Thackery Court was purchased by Mrs Shah on behalf of and as trustee for Mr Ghaffar and Mr Akbar.
- v) In paragraph 16 it is pleaded that given the terms of the joint venture and the contribution made by Mr Ghaffar, Mrs Shah held Thackery Court on an express trust, alternatively a constructive trust, on the terms of the joint venture. During the course of submissions, Mr Connolly accepted that this can only be a constructive trust given the absence of writing sufficient to satisfy s. 53(1)(b) of the Law of Property Act 1925.
- vi) In Paragraph 17, it is alleged that as trustee of Thackery Court, Mrs Shah owed a number of fiduciary duties to Mr Akbar as set out therein.
- vii) In paragraph 18, it is alleged that “*independently of*” any trust, the joint venture gave rise to a partnership between Mr Ghaffar and Mr Akbar. Paragraph 19 then alleges that this partnership gave rise to a relationship of utmost good faith that was fiduciary in nature, and to fiduciary duties as set out therein.
- viii) Paragraph 20 alleges a joint venture contract giving rise to a relationship of trust and confidence, with the parties thereto being subject to fiduciary duties.
- ix) In paragraphs 21 and 22 it is pleaded that that notwithstanding the terms of the joint venture, Mr Ghaffar and/or Mrs Shah failed to resell Thackery Court or market it for sale, but rather let it to tenants without accounting to Mr Akbar for his entitlement to 50% of the rent received.
- x) In paragraph 23, it is alleged that, in March 2021, without Mr Akbar’s knowledge or agreement, Mrs Shah granted a first legal charge over Thackery Court as security for borrowings presumed to be those of Mr Ghaffar and/or Mrs Shah.
- xi) In paragraph 24, it is alleged that from Official Copy Entries obtained by Mr Akbar from HM Land Registry in June 2022, Mr Akbar discovered that Mrs Shah had sold Thackery Court on 23 March 2022 for a price of £650,000. It is alleged that Mrs Shah did so without the knowledge or agreement of Mr Akbar and in circumstances where neither of the Defendants has accounted to Mr Akbar for any part of the proceeds of sale. It is further pleaded in paragraph 24 that in their affidavits sworn on 18 November 2022, Mr Ghaffar and Mrs Shah depose to having paid away the whole of the proceeds of sale as set out therein, with £440,700 being paid to the charge holder, and £224,508.02 to Mr Ghaffar, which he has further paid and applied otherwise than for the benefit of Mr Akbar as set out in paragraph 24(iii).

- xii) By paragraph 25, Mr Akbar seeks “*the following primary relief*” against the Defendants as set out therein, namely accounts and inquiries as to the sums due to Mr Akbar, as to the rental income generated, and as to the use made by the Defendants of the proceeds of sale and rental income, together with an order that the Defendants account to Mr Akbar in relation thereto.
 - xiii) In paragraph 26 it is alleged that, based upon a completion statement that has been exhibited by the Defendants to their affidavits dated 18 November 2022, Mr Akbar estimates that he should have received no less than £312,604 on the sale of Thackery Court.
 - xiv) By paragraph 27, Mr Akbar seeks, further or in the alternative, an order requiring Mrs Shah to reinstate and restore the relevant trust fund by repaying all sums that have been paid from the gross proceeds of sale of Thackery Court, save for proper and legitimate costs of sale.
 - xv) In paragraph 28, it is alleged, further or in the alternative, that Mrs Shah has acted in breach of trust, and that Mr Ghaffar has acted in breach of the terms of the partnership alleged in paragraphs 18 and 19, and in breach of the contract alleged in paragraph 20 as particularised under paragraph 28.
 - xvi) Paragraph 29 pleads Mr Akbar’s claim as to loss and damage.
 - xvii) In paragraph 30 et seq, it is alleged that Mr Ghaffar and Mrs Shah have each knowingly and dishonestly assisted each other to act in breach of their respective fiduciary duties, and to have done so in circumstances in which Mr Akbar has suffered loss and damage in consequence thereof and that he is therefore entitled to equitable compensation or damages from each of the Defendants.
65. The Defence pleads to the allegations in respect of Thackery Court in paragraphs 12 to 19 thereof:
- i) In paragraphs 12 and 13, it is accepted that Mr Akbar and the Defendants entered into an agreement to pool their resources for the purposes of developing Thackery Court on an informal joint venture basis, with the basis thereof being outlined in the email dated 4 November 2019, as well as other discussions as set out in paragraph 13. However, in paragraph 14 it is denied that the purchase was to be on a mortgage free basis, with Mr Ghaffar’s contribution always having been intended to be leveraged by secured borrowing. Paragraph 15 went on to deny that a partnership was ever intended, or that a contract had been entered into.
 - ii) In paragraph 16 it was alleged that Thackery Court was purchased for £520,000 in the name of Mrs Shah, with Mr Ghaffar contributing £300,000 via secured lending, and Mr Akbar contributing the balance of £220,000. It is alleged that the Defendants paid additional expenses in connection with the purchase, including stamp duty, totalling £28,018.15. It is then alleged that Mr Ghaffar contributed a further £65,000 to pay for renovation works. On this basis, it is alleged that the additional costs borne by the Defendants totalled £93,018.15, meaning that the total amount contributed by the parties was £610,018.15 (£520,000 + £93,018.15). On this basis, Mr Akbar’s contribution of £220,000

represented 36%, meaning that Mr Akbar acquired a 36% share and interest in Thackery Court and its proceeds of sale.

- iii) In paragraphs 16 and 17, it is alleged that the sale of Thackery Court was delayed by the Covid pandemic, and that Thackery Court was quite reasonably let in the meantime to produce income, which was properly accounted for to Mr Akbar, at least until the Injunction Order obtained in August 2022 frustrated this.
- iv) In paragraph 18 it is accepted that Thackery Court was sold for £650,000 on 23 March 2022, and that the Defendants need to account to Mr Akbar “*for his proceeds from the sale*”. It is alleged that the profit from the sale was £39,981.85, of which Mr Akbar is entitled to 36% for the above reasons, namely £14,393.47, plus the return of his investment (£220,000), i.e. a total of £234,393.47.
- v) In paragraph 19:
 - a) Paragraph 26 of the Particulars of Claim is denied, and it is asserted that Mr Akbar is only entitled to a pro rata share of the profits from the sale, being the sale price, less costs and expenses.
 - b) Paragraph 27 of the Particulars of Claim is denied, and it is asserted that it would be impossible to reinstate and restore Thackery Court, the property now belonging to third party.
 - c) In paragraph 28, it is admitted that the Defendants have not immediately repaid Mr Akbar the proceeds of sale of Thackery Court, and that they need to do so.
 - d) Mrs Shah denies that she is liable for knowing and dishonest assistance on the basis that Thackery Court was in her name because she had a better credit rating, and that her involvement in and knowledge of discussions between Mr Ghaffar and Akbar was “*close to zero*.”. The allegation of knowing and dishonest assistance as against Mr Ghaffar is not responded to.

66. The breaches of CPR 16.5 alleged in respect of the Thackery Court allegations as set out in the Breaches Table are as follows:

PofC	Def	
17-20	§15	<ul style="list-style-type: none">• §15.1 of the Defence pleads only to the constructive trust allegation and does not plead to the express trust allegation• §15.2 of the Defence pleads an ambiguous and partial acceptance, with an unparticularised caveat that D2 ‘<i>owed the Claimant the ordinary fiduciary duties that attach to constructive trusteeship, but no broader</i>’;

		<ul style="list-style-type: none">• §15.3 of the Defence constitutes a bare denial of partnership that is not readily consistent with the admission (at §12 of the Defence) that purchase would be on a joint venture basis; similar position for bare denial of contract at §15.3 of Defence
25	§18.2	Fails to plead adequately to Cs entitlement to an account and enquiry, and to an order requiring Ds to account for trust property
27	§19.2	Fails to plead adequately to C’s entitlement to reinstatement and restoration of the Flat 30 Trust, notwithstanding that Ds (i) admit (by §15.1 of the Defence) a constructive trusteeship and (ii) do not (save by the general denial at §3 of the Defence) deny that sale of Thackery Court was done without the knowledge or agreement of C
28-37	§§19.3-19.4	<ul style="list-style-type: none">• Particulars of breach of trust and breach of contract, and loss alleged to have been caused thereby at §28 and 29 of PoC, not pleaded to• allegation of failure to account for unpaid rental income is not adequately addressed, but is pleaded to only by way of (i) a general and unparticularised averment (at §16.7) that C was paid a proportionate and pro rata share of an unspecified rental income (noting that Ds’ case advanced at §16.4 is that C is entitled to 36% of the equity in the property) and (ii) inconsistently, by the unparticularised averment at §17.2 payments constituting 50% of the rental income less costs were made ‘entirely as required’;• §19.4 doesn’t adequately plead to the claims in breach of contract, deceit, knowing assistance and knowing receipt including in that (i) the denial contained therein is expressed to be on the part of D2 only, and advances no case in respect thereof on behalf of D1 and (ii) the denial advanced on the part of D2 does not plead to the allegations at §§30-31 PoC that D2 knew of the duties and obligations owed to C by her and D1 and acted in breach of them

Flat 21 Bramerton

67. Mr Akbar’s allegations in respect of Flat 21 Bramerton are summarised in paragraph 7(ii) above and contained in paragraphs 38 to 44 of the Particulars of Claim. In essence:

- i) As pleaded in paragraphs 38 and 39, Mr Akbar’s case is that in February 2020 Mr Ghaffar approached him and asked him for a short-term loan of £90,000 “*to be used in the purchase of*” Flat 21 Bramerton, Mr Ghaffar explaining that he intended to resell within a matter of months and offering to pay Mr Akbar the sum of £60,000 on sale in addition to repayment of the loan of £90,000. Mr Akbar says that he agreed to those terms (defined in paragraph 39 as “*the Flat 21 Loan Agreement*”) and, on 1 March 2020, paid Mr Ghaffar the sum of £90,000.
 - ii) In paragraph 40 it is pleaded that Flat 21 Bramerton had, in fact, been purchased on 27 January 2020 in Mrs Shah’s name.
 - iii) In paragraph 41, Mr Akbar “*notes*” the admission in Mr Ghaffar’s and Mrs Shah’s affidavits dated 18 November 2022 of Mr Akbar’s beneficial interest in Flat 21 Bramerton. However, the case as pleaded in paragraph 42 is of Mr Ghaffar having “*failed to repay*” to Mr Akbar the sums owed to him.
 - iv) Paragraph 44 seeks an order for sale, payment of the sum of £150,000 (£90,000 + £60,000), an account and enquiry as to the rental income generated and other accounts and enquiries. In addition, further or in the alternative, Mr Akbar seeks equitable compensation or damages for breach of trust. However, no trust, as such, is alleged, and nor is any breach of trust alleged in relation to Flat 21 Bramerton.
68. The allegations in respect of Flat 21 Bramerton are dealt with in paragraphs 20 to 30 of the Defence. In essence:
- i) In paragraphs 20 to 22, it is accepted that Flat 21 Bramerton was purchased in the name of Mrs Shah on 27 January 2024 £405,000. It is alleged that, additionally, the Defendants incurred costs in relation to purchase and renovation of £88,037.80, and service charges totalling £13,190.18.
 - ii) In paragraphs 23 and 24, it is admitted that Mr Akbar paid the sum of £90,000, but it is alleged that this was “*for the purpose of investing in the property*”. It is alleged that this conferred on Mr Akbar a beneficial interest therein of 17.7% (90,000/(405,000+ 88,037.80+ 13,190.18)). It is denied that Mr Akbar made the payment by way of loan, or that it was agreed that Mr Akbar would see a return of £60,000 within a matter of months.
 - iii) Paragraph 27 sets out circumstances in which, as a result of the Covid pandemic, sale was delayed, and as an interim measure tenants were put into Flat 21 Bramerton.
 - iv) In Paragraph 28 it is complained that an order for sale would result in a fire sale, and reference is made to various offers that have been received in respect of Flat 21 Bramerton.
69. The Breaches Table relied upon by Mr Akbar identifies the following alleged breaches of CPR 16.5 in relation to the Flat 21 Bramerton allegations:

PofC	Def	

38	§§23 -24	<ul style="list-style-type: none"> factual premise of the Flat 21 Loan Agreement averred by §38 PoC not pleaded to: denial of the Loan Agreement at §24 of the Defence is a bare denial
42-44	§§27-28	<ul style="list-style-type: none"> Failure to repay not pleaded to; absence of rental income after June 2022 not addressed; entitlement to accounts and inquiries, and requirement to account to C, is not addressed

Other alleged breaches of CPR 16.5

70. The Breaches Table identifies further alleged breaches of CPR 16.5 in respect of background and concluding paragraphs:

<u>The Parties</u>		
1-3	§§4-10	<ul style="list-style-type: none"> Allegation at §3 PoC that D2 from time to time holds assets in her name on behalf of D1 and others as nominee or trustee is not addressed
<u>Immediate Background</u>		
4-11	§§6-10	<ul style="list-style-type: none"> Prior loans and joint investment opportunities (§4 PoC) not pleaded to Allegation that D1 began in August 2019 to propose and recommend supposed investment opportunities to C (at §10 PoC) is not addressed. At best there is a bare admission of C’s reliance on D1’s introductions in final sentence of §10 of Defence Allegation that the recommended investments were at best, unsuitable and dishonestly described and, more generally, did not exist and/or were put forward by D1 in order to allow him to dishonestly misappropriate substantial sums of money belonging to the Claimant (at §11 PoC) is not pleaded to At best, §7 of the Defence contains an unparticularised admission that Ds ‘owe the Claimant some money’, which admission is not accompanied by tender of payment and is not accompanied by any explanation as to what monies the Ds do owe C
<u>Interest and Prayer for relief</u>		
§172		<ul style="list-style-type: none"> Claim for interest and prayer for relief not pleaded to

§§(i)- (x)		
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Mr Akbar’s case as to strike out

71. On the basis that *Mitchell/Denton* principles are relevant and important as explained in paragraphs 40 and 41 above, Mr Connolly submits that having regard to the same, the proportionate response to the breaches of CPR 16.5 on the part of the Defendants that are alleged is to strike out the Defence, and allow judgment to be entered on Mr Akbar’s proprietary claims. Thus, Mr Connolly addressed the seriousness of the non-compliance, whether there is any good reason for it, and all the circumstances of the case.
72. As to seriousness, reliance is placed upon what are said to be the numerous breaches of CPR 16.5 throughout the Defence demonstrated by the Breaches Table. It is submitted that the breaches are to be regarded as particularly serious given that the Court has given every opportunity to the Defendants to cure the breaches within the framework provided for by my Order dated 6 June 2023, but that the Defendants have singularly failed to make any attempt to remedy any of the same. Mr Connolly relies upon the fact that at the hearing on 6 June 2023, Mr Ghaffar indicated that he required some three months in order to deal with matters. Although my Order dated 6 June 2023 provide the Defendants with less than three months to cure any breaches of CPR 16.5, the various delays that have occurred, as explained above, have meant that the Defendants have now had some six months to make an attempt to remedy the breaches.
73. As to good reason for the breaches, Mr Connolly submits on behalf of Mr Akbar that there plainly is no good reason for the breaches that have occurred. The Defendants may now be acting in person, but at the time that the Defence was served they were represented by direct access Counsel and there is a limit to the leeway that it is appropriate to give to litigants in person, and acting in person does not prevent a party from at least having an attempt to cure any breaches of CPR 16.5. So far as evidence of any suggestion of ill-health preventing Mr Ghaffar from addressing breaches of CPR 16.5 is concerned, Mr Connolly points to the fact that whilst there may be some issues with regard to Mr Ghaffar health that may have affected his concentration and ability to engage with complex tasks, the evidence, including that of Dr Mason, falls well short of demonstrating that Mr Ghaffar is unable to make at least a reasonable attempt to remedy the various alleged breaches of CPR 16.5. In particular, reliance is placed upon the fact that Dr Mason’s letter dated 4 September 2023 does not suggest that Mr Ghaffar’s symptoms have prevented him from engaging with the present proceedings, merely that they have affected his ability to do so, requiring the same to be taken into account.
74. As to any consideration of all the circumstances of the case, it is submitted on behalf of Mr Akbar that, having regard to the above considerations, and other relevant considerations, the proportionate response is to strike out the Defence. As to other considerations, particular reliance is placed upon a submission that as presently drafted, the Defendants frustrates any proper attempt to identify the real issues in the case, and the matters that would require to be covered by the evidence. In the circumstances, it is Mr Akbar’s case that there are good case management reason is for striking out Defence.

75. This latter submission ties in with Mr Connolly's further submission that, as drafted, the Defence is also liable to be struck out pursuant to CPR 3.4(2)(b) as being an abuse of the court's process or as otherwise likely to obstruct the just disposal of the proceedings.
76. Mr Connolly submits that as the Defendants have already had every opportunity to remedy the breaches within a timescale going well beyond that envisaged by my Order dated 6 June 2023, the appropriate course is to strike out the Defence, without giving the Defendants any further opportunity, even on "unless" terms, to remedy the breaches.

Judgment if the Defence is struck out

77. If the Defence is struck out, then it is submitted on behalf of Mr Akbar that judgment ought to be entered in, essentially and subject as referred to below, the terms set out in the terms of the revised draft order referred to in paragraph 2 above. This is largely confined to the proprietary claims in the present proceedings, and the relief provided for includes declaratory relief in respect of the various heads of claim.
78. Thus, by way of example, in respect of the RPC allegations, in addition to accounts and enquiries, Mr Akbar in essence seeks the following declarations, namely that:
- i) Mr Ghaffar holds (or held) the sums of £1 million and £833,000 paid to him by Mr Akbar on 4 September 2020 and 6 October 2020 on trust for Mr Akbar, and is liable to account to Mr Akbar for trust monies and benefits obtained from use thereof, further or alternatively to restore the trust;
 - ii) By the matters identified in paragraph 83 of the Particulars of Claim, Mr Ghaffar has acted in breach of the trusts alleged in paragraphs 64 and 69 of the Particulars of Claim, and/or the contracts alleged in paragraphs 66 and 71 of the Particulars of Claim, and has thereby caused loss and damage to Mr Akbar as identified in paragraph 84 of the Particulars of Claim;
 - iii) Mr Ghaffar made to Mr Akbar the false representations identified at paragraph 85 of the Particulars of Claim, knowing those representations to be false, and did so with the intention that Mr Akbar should rely upon the same, which he did, in paying Mr Ghaffar the sums totalling £1.833 million, thereby causing loss to Mr Akbar as identified in paragraphs 84 and 88 of the Particulars of Claim.
79. In the course of submissions, Mr Connolly accepted that it would not be appropriate for the Court to grant declaratory relief on various alternative bases, and that it would be appropriate to limit relief to Mr Akbar's primary claim that Mr Ghaffar had held the relevant monies on trust for Mr Akbar and had acted in breach of trust in misapplying/misappropriating the same.
80. At the hearing on 20 October 2023, I expressed concerns with regard to the grant of declaratory relief on a default basis, and I referred Mr Connolly to the decision of the Court of Appeal in *Wallersteiner v Moir* [1974] 1 WLR 991, where both Buckley and Scarman LJ had expressed concerns regarding declarations being made without the benefit of evidence and without trial (see at 1028H to 1029D, and 1030D in that case).

81. Mr Connolly addressed my concerns in his Skeleton Argument dated 15 November 2023 prepared for the adjourned hearing of the Application on 20 November 2023. His principal submission, by reference to more recent authority, was to the effect that *Wallersteiner v Moir* is now some 50 years old and was decided well before the advent of CPR and the use of statements of truth on pleadings, and that the courts are now more willing to grant declaratory relief, even on a default basis, in the light thereof.
82. Thus, in *Lever Faberge v Colgate Palmolive* [2005] EWHC 2655 (Pat), at [4], Lewison J (as he then was) observed that: “*the reluctance of the court to grant declarations without full investigation of the facts is less strong now that allegations have to be verified by a statement of truth than was formerly the case.*” Further, *Wallersteiner v Moir* was considered by the Court of Appeal in *Animatrix v O’Kelly* [2008] EWCA Civ 1415 at [53], where the historic reticence about making declarations without trial was described as a rule of practice rather than a rule of law, and it was explained that consent declarations were a matter of discretion where necessary to do justice in a case.
83. Mr Connolly referred to the decision of the Court of Appeal in *Rolls Royce plc v Unite the Union* [2010] 1 WLR 318, at [350] per Aikens LJ, as providing contemporary guidance as to the circumstances in which it might be appropriate to grant declaratory relief. Aikens LJ at [350] identified seven principles, and Mr Connolly relies upon the following of these principles as being of particular relevance for present purposes, namely:
- i) The power to grant declarations is discretionary (principle 1).
 - ii) The court needs to be satisfied that all sides of the argument will be fully and properly put (principle 6).
 - iii) The Court should ask the question, are declarations the most effective way of resolving the issues raised (principle 7).
84. Two recent cases identified by Mr Connolly where declaratory relief was refused were the following:
- i) *Bank of New York Mellon London Branch v Essar Steel India Limited* [2018] EWHC 3177 (Ch) – In this case Marcus Smith J declined to grant declaratory relief at a Part 8 Trial against a non-attending defendant on the basis of Aikens LJ’s principle 6 above, but more critically because of the potential impact a declaration would have had on an identified third party – see at [18] to [22].
 - ii) *Juul Labs INC v MFP Enterprises* [2020] EWHC 3380 (Pat) – In this case Mann J was unwilling to grant declaratory relief where the claimant sought the same against the defendant on a default basis with the express intention of the relevant declarations being used against, and being binding on the world at large, in circumstances in which the declarations would have been of no material use against the relevant defendants – see at [27] and [32].
85. In contrast to the decisions in these latter two cases, Mr Connolly places reliance upon the subsequent decision of Simon Salzedo QC, sitting as a Judge of the High Court, in *Montlake Qiaif Platform ICAV v Tiber Capital and others* [2021] EWHC 202 (Comm). This was a case where an application for judgment in default of acknowledgement of

service was determined in the absence of the relevant defendant, where there had been an earlier successful application for a worldwide freezing order heard by Jacobs J. The default judgment sought and granted included declaratory relief. There are therefore clear similarities with the present case.

86. Questions arose in that case as to the availability of evidence to support the granting of declaratory relief, and the impact thereof on third parties. As to the former question, the learned Deputy Judge relied upon the earlier judgment of Jacobs J when granting interim proprietary relief (see [7] and [45]). As to the latter question, the Deputy Judge observed that the declaratory relief would not, in fact, impinge on third-party interests and would not be binding on third parties in any event (see [45] to [46]).
87. On the basis of these authorities, Mr Connolly submits that:
- i) The Court has the power to make the declarations sought against Mr Ghaffar and Mrs Shah;
 - ii) The latter have been afforded every opportunity to engage in the proceedings and in argument and to file and serve a compliant Defence which answers the claims for which declarations are sought. For no good reason they have failed to take up the opportunities afforded to them.
 - iii) The Court can be satisfied on the evidence that Mr Akbar's proprietary claims are well founded.
 - iv) It would be a grave injustice to require Akbar to take his proprietary claims against D1 and D2 to trial in the absence of a sustainable defence.
 - v) In contrast there would be no injustice to the Defendants for the Court to make the declarations or, insofar as there was any injustice, it is entirely self-inflicted and outweighed by the injustice that Mr Akbar would suffer if the declarations sought are not made.
 - vi) The declarations sought are not intended to and will not bind third parties.
 - vii) Making the declarations sought will not offend against the Court's obligation to jealously guard the discretionary power to make declarations that it holds.
 - viii) Declarations are the most effective way of resolving the issues raised by the Application.
 - ix) *Wallersteiner v Moir* does not operate as a bar to the Court making the declarations sought by Mr Akbar.

The Defendants' response to the Application

88. As I have mentioned, neither Defendant attended the hearing on 20 December 2023. Save as indicated above, Mr Ghaffar has attended previous hearings and made representations thereat, saying that he also appears on behalf of his wife, Mrs Shah. Mrs Shah has yet to attend any hearing, or to respond to the proceedings in any way since Solicitors came off the record as acting for both Defendants in March 2023. I do have real concerns as to how much is being passed on by Mr Ghaffar to Mrs Shah with regard

to the present proceedings. However, I note that the only allegations actually made against Mrs Shah concern Thackery Court and Flat 21 Bramerton, albeit that relief is sought against Mrs Shah in respect of other heads of claim in the Particulars of Claim – see paragraph 46(xvi) above.

89. The Defendants have filed no evidence in response to the Application apart from Mr Ghaffar’s witness statement filed on 14 September 2023, which solely dealt with the question of Mr Ghaffar’s health, in particular his mental health. As noted in paragraph 25 above, Mr Ghaffar raises these health issues in the context of his ability to properly defend the present proceedings - see in particular paragraph 3.7 of Mr Ghaffar’s witness statement.
90. As further referred to above, the Defendants did provide a Skeleton Argument dated 15 November 2023 ahead of the hearing listed on 20 November 2023. Oddly, whilst this Skeleton Argument raises a number of arguments concerning the Application, it makes no reference to mental or other health issues as providing an explanation for what has occurred, or as otherwise being relied upon in opposition to the Application.
91. The Defendants’ Skeleton Argument is not an easy document to read and comprehend, but the following key points do emerge therefrom:
 - i) It is maintained that the Injunction Order has affected the Defendants’ ability to mount a defence to the present proceedings;
 - ii) The point is taken that the Defendants are litigants in person without legal representation, and it is submitted that their position has been prejudiced thereby;
 - iii) It is disputed that the Defence is lacking, and it is maintained that any required further clarity has been provided through Mr Ghaffar having been cross examined over several days in regard matters raised by the Defence;
 - iv) It is maintained that Mr Akbar has sought frivolous, harmful and vexatious litigation through applications, rather than advancing issues through dialogue or mediation which, it is said, the Defendants have sought to engage in;
 - v) It is accepted that monies are owed to Mr Akbar, but not of the magnitude contended for by him, and the Defendants maintain that any differences can and ought to be settled by agreement;
 - vi) It is submitted that it would be disproportionate to strike out the Defence, in particular in the light of the quantity of material that it is said has been disclosed by the Defendants.
92. Given that the Defendants filed their Skeleton Argument, I proceed on the basis that the Application is opposed even though there was no attendance at the hearing of the Application on 20 December 2023.

Determination of the Application

Introduction

93. Having already found in making my Order dated 6 June 2023 that there has been some breach on the part of the Defendants of CPR 16.5 through the failure of the Defence to deal with every allegation in the Particulars of Claim by stating as required by CPR 16.5(1)(a)-(c) and (2)(a) and (b), I consider that my task is now to consider the extent, significance and seriousness of the breaches of CPR 16.5 alleged on behalf of Mr Akbar in the light of the further submissions that have been made, and to then consider the appropriate response thereto, having regard to a requirement to:
- i) Consider what would be a reasonable and proportionate sanction for what has occurred – see *Biguzzi v Rank Leisure Limited* (supra) at 1933A-D and *Candy v Holyoake* (supra) at [31];
 - ii) In doing so, have regard to *Mitchell/Denton* principles on the basis that they are relevant and important, i.e. have regard to the seriousness of the breach or breaches, whether there are any good reasons for the same, and all the circumstances of the case albeit having regard to the observations of David Richards LJ in *Walsham Chalet Park Ltd v Tallington Lakes Ltd* (supra) at [44] with regard to the difference between the present circumstances, and the consideration by the Court of an application for relief from sanction.
94. I accept Mr Connolly’s submission that CPR 16.5 is not properly to be regarded as a self-contained code in the sense that the consequences of any breach should be regarded as solely catered for by CPR 16.5(5) providing that a defendant who fails to deal with an allegation is to be taken to admit the same, subject to CPR 16.5(3) and (4). On this point, I essentially accept Mr Connolly’s submissions as set out in paragraph 38 above. There is, as I see it, nothing that expressly, or by implication, excludes the application of CPR 3.4(2)(c) to a breach of CPR 16.5 in appropriate circumstances. However, the fact that CPR 16.5(3) and (5) provide as they do is, I consider, a highly relevant consideration in considering whether the discretion to strike out ought to be exercised in the case of a breach of CPR 16.5 given that these provisions may, in appropriate circumstances, provide the claimant with a reasonable and proportionate answer to the failure to comply with CPR 16.5(1) and/or (2).
95. Further, I accept that Mr Connolly’s submission that a consequence of the breach of CPR 16.5(1) and/or (2) may be such that the Defence is susceptible to being struck out pursuant to CPR 3.4(2)(b) as an abuse of the court’s process, or as being otherwise likely to obstruct the just disposal of the proceedings.

Extent of breaches of CPR 16.5

96. I consider that, in order to consider the extent, significance and seriousness of the breach of CPR 16.5 on the part of the Defendants that are alleged for the purposes of considering whether strike out is reasonable and proportionate, it is necessary to work through the various respects in which it is said that the Defendants have breached CPR 16.5 in order to identify significant breaches. I do this working through the various matters complained of in the Breaches Table as referred to and set out above.

The Parties

97. It is true that the Defence does not, in terms, respond to paragraph 3 of the Particulars of Claim and the allegation therein that Mrs Shah from time to time holds assets in her name on behalf of Mr Ghaffar and others as nominee or trustee. However, paragraphs 16.1 and 21 of the Defence admit that Thackery Court and Flat 21 Bramerton were purchased in Mrs Shah's name, and paragraph 19.4 of the Defence provides a reason as to why Thackery Court at least was purchased in Mrs Shah's name. In the circumstances, whilst there might have been a breach of CPR 16.5 with regard to the way that paragraph 3 of the Particulars of Claim was responded, I do not regard this as a particularly significant breach.

Immediate Background

98. On the other hand, I do consider that a failure to plead to the allegation in respect of prior loans and joint investment opportunities in paragraph 4 of the Particulars of Claim, and a failure to plead to the allegation in paragraph 10 of the Particulars of Claim that Mr Ghaffar began in August 2019 to propose and recommend supposed investment opportunities to Mr Akbar, are significant breaches of CPR 16.5 in relation to important background averments. On the other hand, I do not consider the absence of a plea to the generalised allegations in paragraph 11 of the Particulars of Claim to be particularly significant, even if it does amount to a breach of CPR 16.5. Further, so far as paragraph 7 of the Defence is concerned, to the extent Mr Akbar has any difficulty therewith, I consider that his proper remedy is to serve a Request for Further Information pursuant to CPR Part 18 in relation to the allegations therein contained.

Thackery Court

99. I regard it as significant that the Defendants have advanced a positive case in respect of Thackery Court as referred to in paragraph 65 above. In essence, as referred to above, it is disputed that the respective contributions of Mr Akbar and Mr Ghaffar should necessarily have been made on a mortgage free basis. Further, it is asserted that Mr Akbar, based on the contribution alleged by the Defendants to have been made by him, which differs from that alleged by Mr Akbar, has led to him holding a 36% interest in Thackery Court entitling him to 36% of the profit on sale. It is accepted by the Defendants that Thackery Court was purchased in the name of Mrs Shah, and that she is liable to account to Mr Akbar for £234,393.47, representing the return of his investment plus his (36%) share of the profit on sale.
100. Whilst it is true that the Defendants have not, as they ought strictly to have done pursuant to CPR 16.5, specifically dealt with each of the allegations in the Particulars of Claim as such, given the alternative case that they have advanced, I do not regard this as being particularly significant. This, to my mind, becomes clear when one considers the various objections advanced on behalf of Mr Akbar in the Breaches Table.
101. So far as concerns paragraph 15.1 of the Defence only pleading to the constructive trust allegation, and not the express trust allegation, as I have said above, Mr Connolly accepted in the course of submissions that there cannot have been an express trust given the absence of writing. Whilst this might have been expressly pleaded in the Defence, in this context I do not consider a failure to plead to the express trust allegation to be significant.

102. So far as paragraph 15.2 of the Defence is concerned, and as to what is said to be the ambiguous and partial acceptance that Mrs Shah “*owed the Claimant the ordinary fiduciary duties that attached to constructive trusteeship but no broader*”, given the acceptance by the Defendants of the existence of a constructive trust, and a liability to account in respect of the proceeds of sale, albeit that there might be an issue as to the terms of the trust and the extent of the liability to account, I consider that little turns on the precise scope of the fiduciary duties in question, and I do not therefore regard any breach of CPR 16.5 in this respect as being particularly significant.
103. As to what is said to be the bare denial of partnership in paragraph 15.3 of the Defence, I consider that the denial in question goes beyond a bare denial in that it is asserted therein that a partnership was never intended, and that simply pooling resources for the purchase of a property for profit does not establish a partnership. Likewise, in respect of the denial of a contract in paragraph 15.4 of the Defence, where it is asserted that Mr Akbar has failed to identify the terms of the contract alleged, and it is asserted that there was no intention to create legal relations.
104. The complaint as to the way in which paragraphs 18.2 and 19.2 of the Defence respond to paragraphs 25 and 27 respectively of the Particulars of Claim is put in terms of a failure “*adequately*” to plead thereto. The Defence does deal with the generality of the allegations contained in these latter paragraphs by setting out what it is contended that Mr Akbar is entitled to. In the circumstances, I do not consider there to have been any significant breach of CPR 16.5.
105. Likewise, as I see it, in relation to Mr Akbar’s case that paragraphs 19.3 and 19.4 of the Defence do not respond to paragraphs 28 to 37 of the Particulars of Claim in a way strictly compliant with CPR 16.5. There is, perhaps, more of a point in relation to the complaint that paragraph 19.4 does not adequately plead to the claims of knowing assistance and knowing receipt, particularly given that the denial contained therein is simply expressed to be on the part of Mrs Shah, and paragraph 19.4 advances no case in respect thereof on behalf of Mr Ghaffar. However, one is able to ascertain the gist of the Defendants’ case by reference to what has been pleaded in the Defence, and I am not persuaded that any breach of CPR 16.5 in this respect is particularly serious.
106. Consequently, had the only allegations in the present claim been those in relation to Thackery Court, and had the Application to strike out on the grounds of breach of CPR 16.5 been solely based upon breaches of CPR 16.5 in respect of the way in which the Defence responded to those allegations, then I would not have been persuaded that even an “*unless*” order providing for compliance with CPR 16.5 would have been justified in the circumstances of the present and I consider that the appropriate course would simply have been to leave Mr Akbar to rely upon the consequences of non-compliance provided for by CPR 16.5(5), so far as relevant and applicable.

Flat 21 Bramerton

107. Again, although the Defendants might not strictly have complied with CPR 16.5, they have, as referred to in paragraph 68 above, advanced a positive case in respect of Flat 21 Bramerton. This positive case accepts that Mr Akbar acquired a 17.7% interest in Flat 21 Bramerton, but it is denied that the sum of £90,000 was advanced by way of loan, and it is denied that Mr Akbar was entitled to see a return of £60,000 on the £90,000 within a matter of months.

108. Complaint is made that paragraphs 23 to 24 of the Defence, pleading to paragraph 38 of the Particulars of Claim, failed to plead to the factual premise of the relevant loan agreement, and contain a bare denial that there was a loan agreement. I consider this criticism to be unfair given the plea that the £90,000 represented an investment and not alone, the effect of which is pleaded out in paragraphs 21 to 24 of the Defence.
109. There is more force in the point that, in all probability in breach of CPR 16.5, the Defence does not plead to the factual assertions regarding the circumstances behind the alleged loan agreement in paragraph 38 of the Particulars of Claim. However, I have a concern about this providing a basis for striking out any part of the Defence given what I see to be an inconsistency between paragraph 38 of the Particulars of Claim, and the explanation provided by Mr Akbar in respect of the payment of the £90,000 to Mr Ghaffar in paragraph 28 of his affidavit dated 5 August 2022 made in support of his application for the Injunction Order. In that paragraph it is alleged that Mr Akbar was approached by Mr Ghaffar after the purchase of Flat 21 Bramerton, whereas in paragraph 38, it is alleged that Mr Akbar was approached for a short-term loan to be used in the purchase thereof. Further, paragraph 28 of the affidavit makes no mention of loan and talks in terms of the £90,000 being an investment, which is the Defendants' case.
110. It is further complained by Mr Akbar that, in response to paragraphs 42-44 of the Particulars of Claim, paragraphs 27-28 of the Defence failed to plead to the alleged failure to repay the loan, failed to address the absence of rental income after June 2022 and fails to address Mr Akbar's claimed entitlement to accounts and inquiries, and to require an account. However, as I see it, the Defence does address the non-repayment of the alleged loan by asserting that the £90,000 was advanced as an investment giving rise to a beneficial interest in Flat 21 Bramerton, and there is an acceptance that, on sale, there is a liability to account to Mr Akbar out of the proceeds of sale. It is true that the failure to account in respect of rent after June 2022 is not pleaded to, but in the overall context, I do not consider this to be a particularly serious omission.
111. Regarding the Flat 21 Bramerton allegations, I reach the same overall conclusion as in the case of Thackery Court, as set out in paragraph 106 above.

London Commercial Property

112. As to the allegations concerning London Commercial Property:
- i) I consider that there was a significant failure to comply with CPR 16.5 in paragraph 30 of the Defence failing to deal with the detail of Mr Akbar's case with regard to a mortgage free agreement and the terms of payment in respect of the £310,000 provided to Mr Ghaffar, as well as the allegations as to the existence of a *Quistclose* Trust, as contained in paragraphs 45-48 of the Particulars of Claim.
 - ii) I regard it as less significant that the Defence did not expressly deal with the further or alternative allegations of partnership and contract in paragraphs 49-51.
 - iii) However, I do consider it to be a significant omission that paragraph 30 of the Defence failed to deal with the allegations of falsity and inconsistency in relation

to earlier accounts of events contained in paragraphs 52-53 of the Particulars of Claim given the importance of knowing what Mr Ghaffar's true case is concerning what has become of the monies in question.

- iv) I consider it of some, but less significance that the particulars of breach of trust and breach of contract, and loss alleged to have been caused thereby contained in paragraphs 55 and 56 of the Particulars of Claim were not expressly dealt with.

113. In short, I consider there to have been a significant breach of CPR 16.5 in respect of the failure to properly plead to paragraphs 45-48, and 52-53 of the Particulars of Claim.

RPC

114. As to the allegations concerning RPC:

- i) I consider that there was a significant breach of CPR 16.5 in the failure of paragraph 43 of the Defence to deal with the initial discussions between Mr Akbar and Mr Ghaffar as alleged in paragraphs 57-59 of the Particulars of Claim. Whilst paragraph 43 of the Defence does referred to certain discussions, it does not deal with the discussions as pleaded by Mr Akbar.
- ii) It is said on behalf of Mr Akbar that the Defence does not address the contents of what purports to be the email from Roger Crowe of RPC dated 4 September 2020 referred to in paragraph 60 of the Particulars of Claim. However, paragraphs 33 to 43 of the Defence do allege that Mr Ghaffar's role was simply to act as a postbox as between Mr Akbar and RPC, in which context the email dated 4 September 2020 was received by him from RPC and sent on to Mr Akbar. There does not, therefore, appear to be any issue as to the contents of the email. The issue is to whether or not Mr Ghaffar forged/falsely created this document, something that the Defendants expressly deny in paragraph 43.4 of the Defence. In these circumstances, I do not consider there to be any breach, or at least any significant breach, of CPR 16.5 in relation to the way that the Defence responded to paragraphs 60-62 of the Particulars of Claim.
- iii) However, I do consider that there was a significant breach of CPR 16.5 in the way that the Defence dealt with, or rather failed to deal with, the following, namely:
 - a) Mr Akbar's case as to the terms on which the payment of £1 million was made to Mr Ghaffar and the trust that arose in consequence thereof as pleaded in paragraphs 63 and 64 of the Particulars of Claim;
 - b) Mr Akbar's case as to duties as pleaded in paragraph 65 of the Particulars of Claim;
 - c) Mr Akbar's case with regard to the "*£1 Million Transfer Document*" contained in paragraph 67 of the Particulars of Claim;
 - d) Mr Akbar's case with regard to the payment away of the £940,822.28 contained in paragraph 68 of the Particulars of Claim;

- e) Mr Akbar's case as to the terms on which the payment of £833,000 was made to Mr Ghaffar and the trust that arose in consequence thereof as pleaded in paragraph 69 of the Particulars of Claim;
 - f) Mr Akbar's case as to duties with regard to the £833,000 contained in paragraph 70 of the Particulars of Claim;
 - g) Mr Akbar's case with regard to the email dated 15 October 2020 and the "*Purported Joint Venture Agreement*" as set out in paragraphs 72-73 of the Particulars of Claim;
 - h) Mr Akbar's case with regard to how the £833,000 was paid and applied by Mr Ghaffar as contained in paragraph 74 of the Particulars of Claim;
 - i) Mr's Akbar's case with regard to the correspondence from RPC dated 14 February 2022, and with regard to the correspondence from Fladgate dated 15 October 2020, contained in paragraphs 75 and 76 respectively of the Particulars of Claim;
 - j) Mr Akbar's contention that Mr Ghaffar falsely asserted that the £833,000 had been paid to a Swiss lawyer contained in paragraph 77 of the Particulars of Claim (see paragraph 46(xv)(a) above).
 - k) Mr Akbar's allegations of falsity and inconsistency in relation to earlier accounts of events in his affidavits dated 1 September 2022 and 18 November 2022 as contained in 78-80 of the Particulars of Claim.
 - l) Mr Akbar's case as to relief as contained in paragraphs 81-84 of the Particulars of Claim.
- iv) I am less persuaded that there was any significant breach in relation to any failure by the Defence to deal with the allegation of contract in paragraphs 66 and 71 of the Particulars of Claim, or those of deceit in paragraphs 85-88 of the Particulars of Claim.

115. In short, I consider there to have been a significant breach of CPR 16.5 in the failure to properly plead to paragraphs 57-59, 63-65, 67-70, and 72-84 of the Particulars of Claim. I consider a number of these breaches to be particularly serious from a case management perspective in that they frustrate the ability and the Court to properly understand Mr Ghaffar's in respect of the relevant allegations concerning the most significant element of the present proceedings. This is reinforced by the points referred to in paragraph 48 above.

NextSource

116. As to the allegations concerning NextSource:

- i) I consider that there was a significant breach of CPR 16.5 in the way that the Defence dealt with, or rather failed to deal with, the following, namely:
 - a) Mr Akbar's case as to duties contained in paragraph 92 of the Particulars of Claim;

- b) Mr Akbar's allegations of falsity and inconsistency in relation to earlier accounts of events in his affidavits dated 1 September 2022 and 18 November 2022 contained in paragraphs 94-96 of the Particulars of Claim;
 - c) Mr Akbar's claim to relief as contained in paragraphs 97-100 of the Particulars of Claim.
- ii) I am less persuaded that there was any significant breach in relation to any failure by the Defence to deal with the claim in deceit contained in paragraphs 101-104 of the Particulars of Claim.
117. In short, I consider there to have been a significant breach of CPR 16.5 in the failure to properly plead to paragraphs 92, 94-100 of the Particulars of Claim. I consider a number of these breaches to be particularly serious from a case management perspective.

Pluto

118. As to the allegations concerning Pluto:
- i) I consider that there was a significant breach of CPR 16.5 in the way that the Defence dealt with, or rather failed to deal with, the following, namely:
 - a) Mr Akbar's case as to the existence of a trust in relation to the relevant £400,000 as contained in paragraph 107 of the Particulars of Claim;
 - b) Mr Akbar's case as to duties as contained in paragraph 108 of the Particulars of Claim;
 - c) Mr Akbar's case as to what Mr Ghaffar had said with regard to the use of the £500,000 in question, and with regard to the provision of a declaration of trust dated 4 December 2021 as contained in paragraph 110 of the Particulars of Claim;
 - d) Mr Akbar's allegations of falsity and inconsistency in relation to earlier accounts of events in Mr Ghaffar's affidavits dated 1 September 2022 and 18 November 2022 and otherwise as contained in paragraphs 111-113 of the Particulars of Claim;
 - e) Mr Akbar's claim for relief as contained in paragraphs 114-117 of the Particulars of Claim.
 - ii) I am less persuaded that there was any significant breach in relation to any failure by the Defence to deal with the other matters identified in the Breaches Table, namely paragraphs 109 and 118-121 of the Particulars of Claim.
119. In short, I consider there to have been a significant breach of CPR 16.5 in the failure to properly plead to paragraphs 107-108, and 110-117 of the Particulars of Claim. I consider a number of these breaches to be particularly serious from a case management perspective.

786 London

120. As to the allegations concerning 786 London:

- i) I consider that there was a significant breach of CPR 16.5 in the way that the Defence dealt with, or rather failed to deal with, the following, namely:
 - a) Mr Akbar's case as to duties as contained in paragraph 126 of the Particulars of Claim;
 - b) Mr Akbar's case as to the circumstances and timing of the incorporation of 786 London, and as to 786 London having no trading history and therefore as to the impossibility of payments having been made to it by Mr MD Thomson (or Mr Akbar or Mr Ghaffar) contained in paragraph 128 of the Particulars of Claim;
 - c) Mr Akbar's case concerning an alleged loan agreement with 786 Card Ltd, the dormancy of the latter and Mrs Shah's ownership of the latter as contained in paragraph 129 of the Particulars of Claim;
 - d) Mr Akbar's case with regard to the failure of Mr Ghaffar to lend 786 London £375,000 on a matched funding basis, and with regard to Mr Ghaffar's previous explanation in connection therewith contained in paragraph 130;
 - e) Mr Akbar's claim for relief as contained within paragraphs 132-135 of the Particulars of Claim.
- i) I am less persuaded that there was any significant breach in relation to any failure by the Defence to deal with the other matters identified in the Breaches Table, namely paragraphs 127 and 136-139 of the Particulars of Claim.

121. In short, I consider there to have been a significant breach of CPR 16.5 in the failure to properly plead to paragraphs 126, 128-130, and 132-135 of the Particulars of Claim. I consider a number of these breaches to be particularly serious from a case management perspective.

Gold Dealing

122. As to the allegations concerning the £315,000 to be invested in gold dealing:

- i) I consider that there was a significant breach of CPR 16.5 in the way that the Defence dealt with, or rather failed to deal with, the following, namely:
 - a) Mr Akbar's case with regard to a *Quistclose* purpose trust as contained in paragraph 142 of the Particulars of Claim. Paragraph 66 of the Defence merely says, "*if any trust arrangement has arisen*", without addressing the issue.
 - b) Mr Akbar's allegations of falsity and inconsistency in relation to earlier accounts of events in Mr Ghaffar's affidavits dated first September and

18 November 2022 as contained in paragraphs 145-147 of the Particulars of Claim.

- c) Mr Akbar's case as to remedy in paragraphs 148-151 of the Particulars of Claim.
 - ii) I am less persuaded that there was any significant breach in relation to any failure by the Defence to deal with the other matters identified in the Breaches Table, including paragraphs 152-155 of the Particulars of Claim.
123. In short, I consider there to have been a significant breach of CPR 16.5 in the failure to properly plead to paragraphs 142, and 145-151 of the Particulars of Claim. I consider a number of these breaches to be particularly serious from a case management perspective.

Physical Gold/Drinks

124. As to the allegations concerning £100,000 to be invested in a soft drinks business:
- i) I consider that there was a significant breach of CPR 16.5 in the way that the Defence dealt with, or rather failed to deal with, the following, namely:
 - a) Mr Akbar's case as to the inconsistent account provided by Mr Ghaffar in his affidavit dated 18 November 2022 as contained in paragraph 163 of the Particulars of Claim.
 - b) Mr Akbar's case as to relief contained in paragraphs 164-167 of the Particulars of Claim.
 - ii) I am less persuaded that there was any significant breach in relation to any failure by the Defence to deal with the claim in deceit as contained in paragraphs 168-171 of the Particulars of Claim.

125. In short, I consider there to have been a significant breach of CPR 16.5 in the failure to properly plead to paragraphs 163-167 of the Particulars of Claim. I consider the first at least of these breaches to be particularly serious from a case management perspective.

Mitchell/Denton considerations

126. Having found that there have been a number of significant breaches of CPR 16.5 as identified above, I turn then to *Mitchell/Denton* considerations, namely the seriousness of the breaches, the reasons for the same and all the circumstances of the case.

Seriousness of breaches

127. A number of the breaches are, in my judgment, serious breaches involving the Defendants failing to properly plead to important and significant allegations in the Particulars of Claim that require to be addressed in order that the Defendants' case can be properly understood, and the issues in the present proceedings properly identified. I consider this particularly so in relation to the allegations concerning the £1.833 million that was supposed to have been invested in or through RPC, where the Defendants' case is particularly obscure.

128. The seriousness of the position is, as I see it, exacerbated by the fact that my Order dated 6 June 2023 was designed to give the Defendants the opportunity to either address the deficiencies alleged in the Defence or, alternatively, to advance a case as to why the relevant paragraphs of the Particulars of Claim had been addressed in a compliant way. The Defendants wholly failed to engage with the process envisaged by that Order.
129. I agree with Mr Connolly that it is significant that at the hearing on 6 June 2023, Mr Ghaffar indicated that he required three months to properly address matters. Even though the timescale provided for by the Order dated 6 June 2023 might have been tighter than that, in the six months since I made my Order dated 6 June 2023 the Defendants have made no substantive attempts whatsoever to address matters other than by filing, but not serving, Mr Ghaffar's (then unsigned) witness statement on 14 September 2023, and the Skeleton Argument dated 15 November 2023 which take matters no further so far as actual compliance is concerned.
130. Whilst a number of issues raised by the Application may have been touched upon during the course of Mr Ghaffar's cross examination referred to above, this does not absolve the Defendants from their requirement to file and serve a compliant Defence. In any event, it was apparent from Mr Ghaffar's cross examination, which I heard, that he was either thoroughly unprepared for the process, or unwilling to provide cogent answers to many of the questions that were put to him.
131. It is, as I see it, a further relevant consideration that the Defence itself was only served after Mr Akbar had applied for and obtained an "unless" order providing for it to be filed and served on the date on which it was actually filed and served.

Reasons for breaches

132. So far as reasons for the breaches are concerned, much has been made by the Defendants of the fact that they appear in person, and do not have legal representation. It is certainly true that in the period leading up to the hearing on 6 June 2023, and at all times thereafter, the Defendants have acted in person. However, at the time that the Defence was served, the Defendants had instructed experienced direct access Counsel who drafted the Defence on their behalf.
133. Although acting as a litigant in person, Mr Ghaffar comes across as a relatively articulate medically qualified individual, and, in any event, there are limits to the indulgence that it is appropriate to give to a litigant in person – see *Barton v Wright Hassall LLP* [2018] UKSC 12, [2018] 1 WLR 1119, at [18], per Lord Sumption, and the notes in Civil Procedure 2023 at 3.9.16 dealing with the consideration of whether there was a good reason for breach in the context of an application for relief from sanction pursuant to CPR 3.9. It is noted in this latter passage that: "*Whilst a party's lack of representation will often justify the making of allowances in setting case management decisions and in conducting hearings ... the lack of representation will not usually justify applying to litigants in person a lower standard of compliance with rules or court orders.*"
134. Had the Defendants made a serious stab at addressing the deficiencies, even late in the day after they had been more clearly defined by the Breaches Table, then one can see that there might have been a case for not requiring perfection in any amended Defence

provided on the basis that the Defendants were litigants in person. However, unfortunately, the Defendants have made no such stab.

135. It has been suggested by the Defendants that the existence of the Injunction Order prevents them from obtaining proper legal representation for the present very serious proceedings. However, if there are assets that might otherwise be available to fund the defence of the present proceedings, no cogent explanation has been provided as to why the carveout in respect of legal expenses in the Injunction Order could not be relied upon, if necessary, with some variation thereto, to secure payment of legal costs and expenses.
136. Although not, as referred to above, dealt with in the Defendants' Skeleton Argument, Mr Ghaffar has raised the question of his health, and in particular his mental health, as hindering his ability to deal with the allegations against him – see his witness statement, in particular at paragraph 3.7 thereof. However, the difficulty with accepting this as a good reason for the breaches that have occurred is that neither Mr Ghaffar's evidence, nor that of Dr Mason referred to above, provides any real assistance as to the extent to which any health condition that Mr Ghaffar might have does actually touch upon his ability to deal with the present proceedings. Further, Mr Ghaffar did, as I have said, indicate on 6 June 2023 that he could deal with matters within three months, yet no suggestion of any attempt whatsoever having been made since then to prepare a compliant Defence.
137. In short, I do not consider that any good reason has been advanced for the serious breaches CPR 16.5 that I have identified. Neither had any good reason been advanced for the Defendants not, in response to my Order dated 6 June 2023 or at any time, thereafter, filing and serving a compliant Defence that at least had a reasonable stab at addressing the breaches of CPR 16.5 that I have found have occurred.

All the circumstances of the case

138. It is clearly an important consideration that the present proceedings relate to fairly considerable sums of money, exceeding some £4 million, and include serious allegations of dishonesty against Mr Ghaffar, if not also Mrs Shah. The proceedings therefore have potentially very serious consequences for Mr Ghaffar, if not also for Mrs Shah, and therefore it is undesirable that they should be dealt with by default, rather than on their merits, unless there are very good reasons for doing so.
139. However, balanced against this is the need for effective case management of the present proceedings, including the early identification of the issues between the parties as disclosed by their respective pleaded cases. As I have indicated above, I consider that the breaches of CPR 16.5 that have occurred are seriously affecting the effective case management of the present proceedings. Indeed, I would go so far as to say that in respect of a number of instances where the Defence fails to deal properly with allegations in the Particulars of Claim, it is, to that extent, and to the extent that it remains uncorrected, an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings within the meaning of CPR 3.4(2)(b).
140. In their Skeleton Argument, the Defendants maintain that Mr Akbar has sought frivolous, harmful and vexatious litigation through applications, rather than advancing issues through dialogue or mediation in circumstances where they say that they are

seeking to settle matters by agreement. I have to say that I see no evidence or the suggestion that Mr Akbar is acting otherwise than in the proper pursuit of a lawful claim, whatever the merits of it may be. Further, I do not consider that it can be appropriate for the Court, at this stage, to get into any without prejudice discussions that may have taken place between the parties. Consequently, I do not consider this line of argument assists the Defendants.

Reasonable and proportionate response to the breaches

141. Having regard to the above considerations, it is necessary to consider what the reasonable and proportionate response of the Court ought now to be to the unremedied breaches of CPR 16.5 on the part of the Defendants that have occurred.
142. I have not found there to be any particularly serious or significant breach of CPR 16.5 in respect of the Thackery Court and Flat 21 Bramerton allegations in the Particulars of Claim, and how they have been responded to in the Defence. Further, at least in the case of Flat 21 Bramerton, I have identified another reason as to why I do not consider that it would be appropriate to deal with the matter on a default basis, namely the inconsistency between how the case is pleaded in the Particulars of Claim, and how Mr Akbar put matters in his affidavit relied upon in support of the application for the Injunction Order.
143. I do not therefore propose to strike out or make any further or other order concerning the paragraphs of the Defence that deal with the allegations concerning Thackery Court or Flat 21 Bramerton.
144. I have expressed above a concern in relation to the role of Mrs Shah in the present proceedings, and the extent to which she is, or is not, aware as to what has gone on. It is only really the allegations in relation to Thackery Court and Flat 21 Bramerton that concern her, and this provides a further reason why I am reluctant to deal with those aspects of the present claim on a default basis.
145. Whilst the allegations in relation to the other matters raised in the Particulars of Claim purport to indicate that some form of relief is sought against Mrs Shah, no cause of action in respect of the relevant claims is pleaded against her in respect thereof, and it is not pleaded that she became a trustee of the relevant monies – see paragraph 46(xvi) above. Consequently, I can see no scope for default judgment being obtained against her in respect thereof.
146. However, so far as the other allegations in the Particulars of Claim are directed at Mr Ghaffar are concerned, I have found that there have been significant and serious breaches of CPR 16.5 in relation to the way in which the Defence has responded to in the Particulars of Claim. Having regard to all the relevant considerations referred to above, I am in no doubt that to the extent that the relevant offending parts of the Defence remain unremedied, it would be appropriate to strike out the parts of the Defence that deal with the allegations to which the offending parts relate. I consider this to be necessary and appropriate course given that, if left unremedied, Mr Ghaffar's case cannot be properly understood, and the issues in the case cannot be properly identified. This would involve striking out those parts of the Defence that plead to all the allegations apart from those relating to Thackery Court and Flat 21 Bramerton.

147. The real issue, to my mind, is whether the Court should strike out the relevant paragraphs now, and permit judgment in an appropriate form to be entered by Mr Akbar now, or whether Mr Ghaffar ought to be provided with a final opportunity to remedy matters.
148. In view of the serious nature of the allegations and giving some strictly limited weight to the fact that Mr Ghaffar does appear in person and that there is some, albeit limited, evidence as to Mr Ghaffar having some difficulty in dealing the matters raised by the present proceedings in view of the health condition referred to in Dr Mason's letter, with very considerable reluctance, I have, on balance in the exercise of my discretion, decided that it is appropriate to give Mr Ghaffar one last limited opportunity to remedy matters. A further consideration is that it has taken a hearing and this judgment, and the somewhat late production of a revised Breaches Table shortly prior to the hearing that had to be adjourned on 20 November 2023, to more clearly identify the scope and extent of the breaches that require to be remedied.
149. What I therefore propose to direct is that paragraphs 30 to 69 of the Defence should be struck out, and that Mr Akbar should be entitled to enter judgment in the form referred to below in respect of the allegations concerning London Commercial Property, RPC, NextSource, Pluto, 786 London, Gold Dealing and the Drinks Business. However, the Order should provide that judgment should not be entered for a period of 14 days from the date of service thereof on the Defendants, and that if the Defendants or either of them should, within that period of 14 days, issue and serve an application seeking permission to amend the Defence attaching a draft Amended Defence responding to the following paragraphs of the Particulars of Claim in a way purporting to comply with CPR 16.5, then the entitlement of Mr Akbar to enter judgment should be stayed until after the determination of the application to amend and consideration being given at that hearing as to whether or not the stay should be lifted. I will direct that any such hearing should be dealt with by me on an expedited basis. The paragraphs of Particulars of Claim that would require to be responded to in a way compliant with CPR 16.5 in any Amended Defence are those where a significant breach of CPR 16.5 is identified in paragraph 96 to 125 above, namely paragraphs 4, 10, 45-48, 52-53, 57-59, 63-65, 67-70, 72-84, 92, 94-100, 107-108, 110-117, 126, 128-130, 132-135, 142, 145-151, and 163-167 of the Particulars of Claim.
150. In this way, if no application to amend the Defence were made attaching a draft Amended Defence as above, then it would be open to Mr Akbar to enter judgment. Alternatively, if such an application were made, then the merits thereof would be considered before judgment was entered.

Form of judgment

151. As is apparent from the above, I did have an initial concern about granting declaratory relief on a default basis. However, I am persuaded by Mr Connolly that the present case is closely analogous to the decision of Simon Salzedo QC, sitting as a Judge of the High Court, in *Montlake Qiaif Platform ICAV v Tiber Capital and others* (supra), and distinguishable from *Bank of New York Mellon London Branch v Essar Steel India Limited* (supra) and *Juul Labs INC v MFP Enterprises* (supra) where the court had, on the facts of those cases, understandably been reluctant to grant declaratory relief.

152. Issues arose in *Montlake Qiaif Platform ICAV v Tiber Capital and others* with regard to the availability of evidence to support the grant of declaratory relief, and the effect of the relief granted on third parties. Similar considerations arise in the present case, but just as the Deputy Judge in that case relied upon the evidence before Jacob J in support of an application for a freezing order, so, as I see it, am I entitled to rely upon the evidence from Mr Akbar that was before me on the hearing that led to the making of the Injunction Order. Additionally, there is the consideration that the Particulars of Claim themselves contain a statement of truth. In the circumstances, I do not consider that any absence of evidence prevents the granting of declaratory relief.
153. There is, of course, the concern that declaratory relief would be being granted without the Court hearing the case on its merits and having heard all sides of the argument. However, so far as Mr Ghaffar is concerned, this is a consequence of his own default and I consider that it can properly be said that the granting of declaratory relief is the most effective way of resolving the issues raised by the Application, cf. *Rolls-Royce plc v Unite the Union* (supra) at [120] referred to above. Although Mr Akbar will no doubt seek to rely upon such judgment as is obtained in support of his claim for proprietary relief against third parties, as was made clear in *Montlake Qiaif Platform ICAV v Tiber Capital and others*, the judgment would not be binding upon them and they will be able to see that it was a default judgment. Consequently, this ought not to prevent the Court from granting declaratory relief.
154. However, as touched on above, it clearly cannot be right (as accepted by Mr Connolly) for the declaratory relief to be expressed in an alternative way in any respect, and I consider that it should be expressed to relate solely to the trust claims, rather than the “*further or in the alternative*” claims formulated in contract or alleging a partnership.
155. I would ask that Mr Connolly, ahead of hand down of this judgment, prepares a form of draft Order dealing with the mechanism for entering judgment referred to above, together with the opportunity for the Defendants to make an application to amend the Defence, and setting out the terms of the judgment (including declaratory relief) which Mr Akbar would be entitled to enter, as well as any other matters arising from this judgment.

Conclusion

156. For the reasons set out above, I consider that, on the basis of the Defence as it now stands, paragraphs 30 to 69 thereof ought to be struck out pursuant to CPR 3.4 (2)(b) and (c) on the basis of an unremedied serial failure of the Defence to comply with CPR 16.5, and that Mr Akbar ought to be entitled to enter judgment on all the proprietary claims raised in the Particulars of Claim save for the claims in relation to Thackery Court and Flat 21 Bramerton.
157. However, I consider that the Defendants, i.e. in practice Mr Ghaffar, ought to be allowed one further short, limited opportunity to remedy the defects. I will therefore provide that Mr Akbar should not be entitled to enter judgment until 14 days after the Order made consequential upon this judgment being served on the Defendants. If, within that 14 day period, the Defendants, or either of them, issue and serve an application seeking to amend the Defence attaching a draft Amended Defence that purports to be compliant with CPR 16.5 in the way that it responds to the paragraphs 4, 10, 45-48, 52-53, 57-59, 63-65, 67-70, 72-84, 92, 94-100, 107-108, 110-117, 126, 128-

130, 132-135, 142, 145-151, and 163-167 of the Particulars of Claim, then the entitlement to Mr Akbar to enter judgment will be stayed pending an expedited hearing by me of the application to amend, and consideration being given at that hearing as to whether or not the stay should be lifted.

158. I will deal with consequential matters arising from this judgment, including the form of the order to be made, costs and any application for permission to appeal at a remote hearing by MS Teams to be held contemporaneously with the deemed remote hand down thereof.