



Neutral Citation Number: [2026] EWHC 1499 (Ch)

Case No: BL-2022-000913

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHD)

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

Date: 18/06/2026

Before :

MRS JUSTICE JOANNA SMITH DBE

Between :

- (1) HARRINGTON & CHARLES TRADING COMPANY LIMITED (IN LIQUIDATION)
- (2) BRAMHALL & LONSDALE LIMITED (IN LIQUIDATION)
- (3) HOLDWAVE TRADING LIMITED (IN LIQUIDATION)
- (4) OC305234 LLP (IN LIQUIDATION)
- (5) OCEANROAD GLOBAL SERVICES LIMITED (IN LIQUIDATION)
- (6) CONNECOR (UK) LIMITED (IN LIQUIDATION)
- (7) COLIN DISS (AS JOINT LIQUIDATOR OF THE FIRST TO SIXTH AND NINTH CLAIMANTS)
- (8) NICHOLAS STEWART WOOD (AS JOINT LIQUIDATOR OF THE FIRST TO SIXTH AND NINTH CLAIMANTS)
- (9) DOCKLANDS INVESTMENT LIMITED (IN LIQUIDATION)

Claimants

- and -

- (1) JATIN RAJNIKANT MEHTA
- (2) SONIA MEHTA
- (3) VISHAL JATIN MEHTA
- (4) SURAJ JATIN MEHTA
- (5) HAYTHAM SALMAN ALI ABU OBIDAH
- (6) IIA TECHNOLOGIES PTE LIMITED
- (7) POLISHING TECHNOLOGIES PTE LIMITED
- (8) ~~APURVA KOTHARI~~

Defendants

**Christopher Parker KC, Ian Wilson KC, James Davies, James McWilliams & Zachary
Kell (instructed by Gateley Plc) for the Claimants**
**Jasbir Dhillon KC, Jonathan Dawid, Stephen Ryan & Helena Spector (instructed by
Gardner Leader LLP) for the Defendants**

Hearing dates: 5 and 8 June 2026

Approved Judgment

This judgment was handed down remotely at 2pm on 18 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE JOANNA SMITH

Mrs Justice Joanna Smith DBE :

1. After the close of factual evidence in this high value and extremely complex fraud trial (due to continue until 8 July), I must now deal with (i) an informal application by the Claimants to amend their Consolidated Re-Re-Re-Amended Particulars of Claim (“**the CRRRAPOC**”) so as to reflect the abandonment of aspects of their existing claim (“**the Claimants’ Application**”); and (ii) a formal application by the Active Defendants (“**the Active Defendants**” or “**the ADs**”) dated 20 May 2026 to amend their Re-Amended Defence and Counterclaim (“**the RADC**”) (“**the Active Defendants’ Application**”).

Relevant Background to the Applications

2. For the purposes of this judgment I need not go into detail as to the claim. However, in brief summary, the Claimants’ case is that the First to Fifth Defendants were complicit in a US \$1.2 billion fraud whereby the proceeds of loans of gold bullion advanced by various Banks (“**the Bullion Banks**”) to two Indian companies (“**Winsome**” and “**Forever Precious**”) and secured by Standby Letters of Credit (“**SBLCs**”) from a consortium of Banks (“**the Consortium Banks**”), were misappropriated, laundered and concealed through multiple layers of corporate entities, with the vast majority of the proceeds said to have ended up in entities owned and/or controlled by the First to Fourth Defendants, all members of the Mehta Family (together “**the Family Defendants**”). The First to Sixth Claimants (“**the Claimant Companies**”) are said to have been used as vehicles in the alleged fraud. Winsome and Forever Precious defaulted on the loans from the Bullion Banks, who then called on the Consortium Banks under the SBLCs. The Consortium Banks were left out of pocket and are thus said to be the ultimate victims of the fraud.
3. The Third and Fifth Claimants were placed into members voluntary liquidation (“**MVL**”) in October 2020, subsequently converted into a creditors’ voluntary liquidation in February 2021 after a default judgment was obtained in January 2021. The Seventh and Eighth Claimants, both partners in Grant Thornton UK Advisory & Tax LLP (“**Grant Thornton**”), (together “**the JLs**”), took up appointment as joint liquidators. The four remaining Claimant Companies were all dissolved, following MVLs, in 2019 or 2020. These four Claimant Companies were all restored to the register in June 2021 and the MVLs were subsequently converted to creditors’ voluntary liquidations in August 2021. The JLs are also now liquidators of these four Claimant Companies.
4. The Family Defendants and the Sixth Defendant (together the Active Defendants) are represented at trial and deny their involvement in any fraud. The Fifth Defendant (who is said to be a close associate of the First Defendant) does not appear and is not represented at trial. During the course of the trial the Court has heard oral evidence from, amongst others, the Seventh Claimant (“**Mr Diss**”) and each of the First to Fourth Defendants.

5. Further to the service by the Claimants of a draft Consolidated Re-Re-Re-Re- Amended PoC (referred to by the parties as the “**CRRRRAPOC**”) on 11 May 2026 and the issue and service on 20 May 2026 of the Active Defendants’ Application, I made an Order dated 21 May 2026 setting out directions for the hearing of the applications, which it was agreed would take place on Friday 5 June 2026. Following a short extension of time, skeleton arguments were served pursuant to that Order on the morning of 4 June 2026.
6. Unfortunately, it proved impossible to complete the submissions on both applications in one day and the hearing of the Active Defendants’ Application continued on Monday 8 June 2026. The applications were hard fought and are of considerable importance to the parties. The Claimants’ Application is opposed on the grounds that concessions were made on the first day of the trial and that the proposed amendments in the draft CRRRRAPOC are inconsistent with, and do not properly reflect, the full extent of those concessions. The Active Defendants’ Application, which (amongst other things) seeks permission to introduce an entirely new illegality defence together with a claim against the JLs in unlawful means conspiracy, is also highly controversial.
7. In the circumstances, I required time for reflection and was unable to give an immediate judgment on 8 June. However, I am conscious that the parties need to know the outcome of the applications well in advance of closing submissions and so I have prepared this judgment as swiftly as possible. In doing so, I have inevitably focussed on the key arguments and have not tried to address each and every point made in submissions. However, I have revisited the transcript of the hearing and I confirm that I have borne in mind all of the submissions made by the parties. I note that many of those submissions stray far beyond the arguments raised in the skeleton arguments.

The Claimants’ Application

8. Owing to the nature of the dispute in respect of the Claimants’ Application, I must go into some detail as to the relevant terms of the existing pleading and the concessions made in opening submissions.
9. The existing CRRRAPOC dated 15 December 2025, includes a number of causes of action against the Active Defendants, including breach of fiduciary duty, claims in constructive trust, knowing receipt, dishonest assistance and unlawful means conspiracy, together with statutory claims made pursuant to the Insolvency Act 1986 (“**the 1986 Act**”), sections 212, 213 and 423. The existing statement of case also includes a claim under the Civil Liability (Contribution) Act 1978. These causes of action are captured by numbered issues in the List of Issues for trial, which (at the outset of the trial) ran to 56 Issues.
10. The claims in unlawful means conspiracy and contribution were abandoned by the Claimants during Mr Parker KC’s opening submissions on behalf of the Claimants. He said nothing, however, about the claims in knowing receipt and constructive trust. The

latter is of particular importance in the context of the Claimants' Application. It appears in section D2 of the CRRRAPOC in the following terms (references to the Alleged Principal Conspirators are to the First-Fifth Defendants):

“D2. Constructive trust

132. For the reasons pleaded in section D1 above, all transfers from Layer 2 to Layer 3 of the funds were in breach of fiduciary duty and were received by Docklands in circumstances where the Directors and the Alleged Principal Conspirators as shadow directors (whose knowledge falls to be attributed to Docklands for this purpose) knew that such proceeds had been transferred in breach of the fiduciary duties owed by the Directors and the Alleged Principal Conspirators to the Layer 2 Companies.

132A. Further, and again for the reasons pleaded in section D1 above, all transfers from Layer 3 to Layer 4 of the funds were in breach of fiduciary duty and were paid by Docklands in circumstances where the Directors and the Alleged Principal Conspirators as shadow directors (whose knowledge falls to be attributed to the Layer 3 and 4 Companies for this purpose) knew that such proceeds had been transferred in breach of the fiduciary duties owed by the Directors and the Alleged Principal Conspirators to the Layer 2 and Layer Companies.

133. Further and in any event, Docklands, and all subsequent recipients of the funds in Layers 4 and 5 received the funds as volunteers and for no consideration.

134. As a consequence, Docklands held such funds on constructive trust for the Layer 2 Companies, including the First to Sixth Claimants Companies. Docklands' transfer of funds to Layer 4 was a breach of said trust, and the Layer 2 Companies' equitable interest in the funds persisted as those funds were transferred through Layers 4 and 5. Docklands is entitled to, and is under a duty, to recover those funds as trustee”.

135. For the reasons pleaded in section C8 above, it is to be inferred that the funds were ultimately paid out of Layer 5 to the Defendants and/or the Alleged Principal Conspirators' Companies ~~Alleged Principal Conspirators and the Alleged Principal Conspirator Recipient Entities~~, who received the funds in the knowledge of their origins in the Default and Alleged Fraud and as volunteers and for no consideration.

136. In the premises, on receipt of such funds, and to the extent that such funds (or their proceeds) are still held by, the ~~Alleged Principal Conspirators~~ Defendants and/or the Alleged Principal Conspirators' Companies ~~Recipient Entities~~, such funds belong in equity to ~~the Layer 2 Companies, including the Claimant~~

Companies and are held on constructive trust for their benefit. ~~Pending disclosure, the Claimants cannot yet give further particulars, including as to the amounts received.~~

137. Accordingly, the Claimant Companies are entitled to and hereby claim (as beneficiary and/or trustee):

137.1. A declaration that the said Defendants hold the traceable proceeds of such receipts held by, for or on behalf of the Defendants and/or the Alleged Principal Conspirators' Companies Alleged Principal Conspirators on constructive trust for the Claimant Companies; and

137.2. An order for an account of such receipts; and

137.3. An order for payment of such receipts to the Claimant Companies.

138. For the avoidance of doubt, the Claimant Companies' own title to such traceable proceeds is itself held subject to any proprietary claims that are established against the Claimant Companies by SCB, the Consortium and/or the Bullion Banks, and the Claimants will in those circumstances account to those banks in respect of relevant recoveries made. It is the Claimants' case that it is no defence to this proprietary claim by the Claimant Companies for the Defendants to assert that there are third parties with superior title to the relevant funds. Paragraph 26 above is repeated”.

11. The List of Issues for trial included two issues arising in light of these paragraphs (as was clear from the footnotes). Issues 40 and 41:

“40. Did Docklands hold the funds it received from the (Layer 2) Claimant Companies on constructive trust for those companies such that its transfer of those funds onwards to the Layer 4 Companies was a breach of trust?

41. What sums (if any) do the Defendants hold on constructive trust for the benefit of the Claimant Companies?”

12. In opening the Active Defendants' case in the trial, Mr Dhillon KC observed that in their skeleton argument, the Claimants had omitted all reference to their claims in constructive trust (Issue 41), knowing receipt (save in relation to the Sixth and Seventh Defendants) (Issue 42), unlawful means conspiracy (Issue 44), section 212 of the 1986 Act (Issue 46) and contribution (Issue 48). Mr Dhillon explained that, in light of the requirement in the Chancery Guide for skeleton arguments to address the issues in play in the proceedings, he had interpreted this omission as an abandonment of those causes of action and these issues. He observed that “if” those claims had been dropped then he would expect a notice of discontinuance to be filed in due course. He added,

however, that if those claims had not been dropped then he would have “something to say”. The Active Defendants had of course prepared their own skeleton argument on the assumption that these various causes of action (all reflected in the List of Issues for trial) remained live.

13. In light of Mr Dhillon’s submissions, I then took up the matter with Mr Parker and the following exchange ensued:

“MRS JUSTICE JOANNA SMITH: ...Are you dropping those aspects of your case that Mr Dhillon has identified ? Because certainly I didn't understand you to be running those points but it wasn't entirely clear.

MR PARKER: Dropping unlawful means conspiracy based on the allegation in the pleadings that the Claimant companies were victims of the conspiracy...

MRS JUSTICE JOANNA SMITH: Right, so unlawful means conspiracy is gone. That's issue 44...

MR PARKER: Yes. Contribution. As we indicated back in October 2025 that we couldn't see from both sides how there could be any contribution, because they had a contribution claim in their conspiracy. We've stuck to that position in our skeleton argument.

...

MRS JUSTICE JOANNA SMITH: Right, so issue 48 is gone. Issues 44 and 48 have gone.

MR PARKER: The right paragraphs again, yes.

MRS JUSTICE JOANNA SMITH: Now Mr Dhillon has raised also issue 42, knowing receipt against the Family defendants; issue 41, constructive trust; and issue 46, which I think was one of the statutory claims.

MR PARKER: Well, **knowing receipt/constructive trust, in the sense that it's certainly arguable whether a knowing recipient can hold the proceeds as a constructive trustee. So I just qualify any concessions in that regard**” (emphasis added).

14. I then asked Mr Parker to show me where this was dealt with in the Claimants’ skeleton argument, at which point he confirmed that the knowing receipt claim was “expressly only” now being pursued against the Sixth and Seventh Defendant. He went on to explain that the claim in knowing receipt is:

“...against the two companies (inaudible) because we press the claims insofar as the involvement in the breach of fiduciary duty against the individuals if they're not themselves part of the shadow directorship so as to incur the direct breach of — the direct fiduciary duty, then dishonest assistance is the appropriate cause of action against those individuals”.

15. I then sought to clarify this further:

“MRS JUSTICE JOANNA SMITH: ...In your skeleton argument under the heading "Knowing Receipt" you've made a claim which you say is relating to two companies only.

MR PARKER: Yes.

MRS JUSTICE JOANNA SMITH: Are you only pursuing your knowing receipt claim against those two companies?

MR PARKER: Yes.

MRS JUSTICE JOANNA SMITH: Right. You are not pursuing it against the Family Defendants?

MR PARKER: Right”.

16. I then confirmed my understanding that Issue 42 (knowing receipt) remained alive but only in relation to the Sixth and Seventh Defendants.

17. At this point, Mr Dhillon intervened saying this:

“MR DHILLON: This is why there should be formal notice of discontinuance. If they are dropping those claims against the Family Defendants, just put it in a discontinuance and then we all know where we stand. Because listening to Mr Parker it's very difficult to follow”.

18. I then sought to explore the other causes of action which appeared to have been abandoned:

“MRS JUSTICE JOANNA SMITH: The constructive trust, issue 41.

MR PARKER: Constructive trust, what we said applies — what we said about knowing receipt applies equally to constructive trust. It 's just the two corporate Defendants.

MR DHILLON: My Lady, there's nothing in the skeleton on this. There isn't.

MR PARKER: Knowing receipt will give rise to a constructive trust over the property received. It doesn't add anything to the knowing receipt analysis.

MRS JUSTICE JOANNA SMITH: Constructive trust doesn't add anything to the knowing receipt analysis, so either you win on knowing receipt or you don't —

MR PARKER: Yes, by all means –

MRS JUSTICE JOANNA SMITH: — and you can't win on constructive trust if you don't.

MR PARKER: — by all means disregard constructive trust on that basis.

MRS JUSTICE JOANNA SMITH: Well I'm not going to tell you what you should be doing, Mr Parker, you must decide whether you're dropping that or not.

MR PARKER: I'm just resisting the suggestion that there are two separate causes of action that we have pursued: knowing receipt and constructive trust. I 'm simply saying the factual matrix on which we rely for knowing receipt necessarily gives rise to constructive trust. Now right or wrong, the constructive trust argument doesn't add anything to the knowing receipt argument. So I'm very happy that we just proceed by focusing on this particular cause of action with the label "knowing receipt".

MRS JUSTICE JOANNA SMITH: For the court's purposes, when it comes [to] determining the issues, I need to understand whether you're actually pursuing a constructive trust argument. And I think, on that answer, you are content not to advance any constructive trust argument because you're content with your "Knowing Receipt" claim, is that fair ?

MR PARKER: Yes.

MRS JUSTICE JOANNA SMITH: Right”.

19. I then turned to deal with section 212 of the 1986 Act which Mr Parker explained he wished to retain such that Issue 46 remained live. Mr Dhillon later requested the service of a skeleton argument dealing with this issue, which Mr Parker agreed could be done that evening.
20. There then followed a brief discussion about the need for a notice of discontinuance, during which I expressed the view that “at the very least” a letter should be sent to the Active Defendants identifying the issues which had been abandoned “so that there can be no suggestion that anyone’s got it wrong if they later don’t deal with those issues”, a rather inelegant way of saying that I wished the Claimants’ position on its

abandonments to be absolutely clear such that there could be no confusion later in the trial over what issues remained in play.

21. Mr Dhillon then made one final point on this topic, which I consider to be of some importance:

“MR DHILLON: As I understand it they're dropping all of these issues, apart from section 212, **and if that's formalised, then that's fine**. But we have to make decisions about what to cross-examine or not to cross-examine, to call evidence and argument, and therefore I would invite your Ladyship to direct that those discontinuance notices come by 10.30 tomorrow, before we see Mr Diss being called to give evidence so we know and can make an election as to how we proceed based on knowing what causes of action are being advanced.

MRS JUSTICE JOANNA SMITH: Yes. Mr Parker, I'm afraid I think that's entirely fair. The Defendants are entitled to know before they start their cross-examination how the case is being advanced against them” (**emphasis added**).

22. On the morning of the following day, 28 April 2026, the Claimants’ solicitors sent a letter to the Court identifying “the causes of action which the Claimants do not wish to pursue”. This included the claims in unlawful means conspiracy and for contribution. On the subject of knowing receipt and constructive trust, the letter identified the following abandonments:

“(c) the claims in knowing receipt against the First to Fourth Defendants at paragraphs 27.1.3, 139 and 140 and in paragraph (3) of the prayer in the CRRRAPOC; and

(d) the claims for declarations that monies are held on constructive trust by the Defendants (at paragraphs 27.1.2, 136, 137 and paragraph (4) of the prayer in the CRRRAPOC) save in so far as those claims relate to the Claimants’ claims against the Sixth and Seventh Defendants for knowing receipt”.

23. It will immediately be clear from these paragraphs that, while the claim for declarations that monies were held on constructive trust was being abandoned, no mention is made of paragraphs 132-135 and 138 (as set out above) of the CRRRAPOC and the intention appears to be that, in so far as the claims in constructive trust “relate” to the claims against the Sixth and Seventh Defendants in knowing receipt, these are to remain live.
24. In oral submissions on that day, Mr Dhillon revisited his submission that a notice of discontinuance should be served “**so my clients know for certain** and in a formal way [that] they have discontinued those claims and then we can all focus on what is still in order” (**emphasis added**). He submitted that “it’s not right for the Claimants to...deal with this in an informal flippant way, to be...abandoning claims”. He very properly

drew my attention to the provisions of CPR 38.3, at which point the Claimants immediately confirmed that they would file a notice of discontinuance by 4pm on 1 May 2026. At no point during these exchanges did the Active Defendants suggest that they did not understand the way in which the abandonments had been framed in the letter of 28 April 2026 or that they considered them to be inconsistent with what had been said on the first day of trial or that they could not cross-examine Mr Diss until further clarification had been provided. They also did not seek service of an amended statement of case from the Claimants.

25. By Order of 30 April 2026 (which also addressed various issues that had arisen in respect of disclosure), I required the Claimants to file and serve a notice of discontinuance of the claims they no longer sought to advance. Amongst other things, the recitals to this order recorded that it was being made upon:

“the Claimants by their counsel Christopher R. Parker KC confirming to the Court that parts of their claim were no longer being advanced against the Active Defendants (the “Discontinuance”) on 27 April 2026, and the Claimants sending a letter to the Court dated 28 April 2026 setting out the claims that are no longer advanced against the Active Defendants”.

26. The notice of discontinuance was duly served on 1 May 2026. It did no more than cut and paste the content of the letter of 28 April 2026 into the notice. Following sight of the notice of discontinuance and an opportunity to look again at the existing pleadings, I made clear on 5 May 2026 (the next working day) that I was going to require an amended pleading because, as I said, I was having difficulty understanding “what is and isn’t remaining in the case”. No observations were made by the Active Defendants (who were still in the middle of cross-examining Mr Diss at this point) on this subject. They certainly did not suggest that there was any issue with their continued cross-examination of Mr Diss.
27. On 11 May 2026, the Claimants provided the draft CRRRRAPOC together with a draft Amended List of Issues which amended Issues 38, 42 and 45 and excised Issues 41, 44, 47, 48 and 49. These documents reflected (for the most part and subject to a couple of errors which have since been addressed) the abandonments identified in the notice of discontinuance and the original 28 April 2026 letter. However, they continued to raise questions in my own mind as to the way in which the Claimants were advancing their case and I raised three specific questions with them on the morning of Day 10 of the trial. One of these questions was what the relevance of paragraphs 132-135 of the existing pleading was now in the context of the remaining causes of action. The Claimants said they wished to take instructions on the point.
28. In a letter dated 14 May 2026, the Active Defendants’ solicitors, Gardner Leader, indicated that, while they were prepared to consent to various of the proposed amendments, they did not consent to the proposed retention of existing paragraphs 132-

135 and 138 which they said continued “to advance a claim based on constructive trust”. They said this was contrary to clear statements made by Mr Parker in oral opening submissions and they set out some of the exchanges to which I have referred above. Specifically they said that it had been made clear to the Court that no constructive trust argument was to be advanced and that “the only relevance of constructive trust at all was that, as a matter of law..., a claim in knowing receipt can give rise to a constructive trust”. Gardner Leader thus went on to say that it was not now open to the Claimants to retain paragraphs 132-135 and 138, contending that those paragraphs continue to advance self-standing allegations as to the existence of a constructive trust, which was breached, and that the Claimant Companies have a proprietary claim on the basis of that constructive trust. Gardner Leader also made the point that the notice of discontinuance did not accurately reflect the scope of the concessions made in opening submissions. Gardner Leader then made a few other points about the amendments, a couple of which remain relevant on this application. Finally, Gardner Leader turned to the proposed amended List of Issues, agreeing the amendments with the exception of Issue 42. They made no comment about the continuing inclusion in the list of issues for trial of Issue 40.

29. The Claimants’ solicitors, Gateley Legal (“**Gateley**”), responded to this letter on 1 June 2026, enclosing a further, slightly revised, draft CRRRAPOC. In this letter they explained that, by his concessions on Day 1 of the trial, Mr Parker had conceded that the Claimants were not seeking to argue that any of the Defendants (including the Sixth and Seventh Defendants) were holding any assets on constructive trust and that “personal liability for knowing receipt sufficed”. They said that (as is common ground) the knowing receipt claim against the Sixth and Seventh Defendants had been expressly retained but that, as Mr Parker had said, the Claimants continued to rely upon a factual matrix “which necessarily gives rise to constructive trust”. They explained that this factual matrix included paragraphs 132-135 of the existing pleading. They accepted that “the first sentence of paragraph 138 can usefully be deleted given that no such proprietary claims are being made (which also means an amendment to paragraph 63 is called for)”. They then drew the Active Defendants’ attention to a new amendment they had made to paragraph 142A.1 to which I shall return in a moment.
30. Against that background, most of the amendments that are proposed by the Claimants are consented to. However, as I understood their submissions, the Active Defendants invite me (i) to strike out paragraphs 132-135 of the CRRRAPOC together with the remaining sentence in paragraph 138 so as to reflect the concessions made on the first day of the trial; (ii) to strike out wording in paragraphs 139.1 and 139.2 of the CRRRAPOC; and (iii) to refuse permission for the proposed new amendment to paragraph 142A.1.

Decision on the Claimants’ Application

31. Having considered the background in detail, I am going to permit the proposed amendments and (with one minor exception) I am not going to strike out any paragraphs in the Claimants' existing statement of case. My reasons are as follows:
32. Regrettably the Claimants' skeleton argument for trial was not prepared in compliance with the guidelines in the Chancery Guide at White Book 2026 Volume 2 [12.49] and Appendix Y (paragraph 4) to the effect that a skeleton argument "*is intended to identify both for the parties and the court those points which are, and are not, in issue and the nature of the arguments in relation to those points that are in issue*". It failed to set out the causes of action which had been abandoned, apparently preferring to deal with them by way of omission, and it failed clearly to explain how the Claimants wished to maintain their arguments in constructive trust. There was also a failure to identify how the Claimants' abandonments affected the existing List of Issues.
33. There can be little doubt that it is this lack of clarity that has brought about the dispute that is now before the Court. It is most unfortunate that the Claimants did not explain that they had abandoned certain of their causes of action in their opening submissions or inform the Court and the Active Defendants that various of the issues in the List of Issues had now fallen away, and it should not have been left to Mr Dhillon to raise the issue in his own oral opening submissions. The Active Defendants were entitled to know the case they had to meet at trial and it is plainly unsatisfactory that this was not clear.
34. However, while this failure certainly caused the Court and the Active Defendants to question the full scope of the Claimants' remaining case, I did not understand the Active Defendants to contend that this failure was enough in itself to constitute an implied abandonment by the Claimants. Any such submission would have been inconsistent with the observations of Beatson J in *Compania Sud-Americana De Vapores SA v Nippon Yusen Kaisha* [2009] EWHC 1606 (Comm) ("*Compania*") at [49].
35. As I have explained above, upon the point being raised, I took up the matter with Mr Parker and he did then seek to explain the Claimants' new position to the Court. Unfortunately, and with no disrespect to Mr Parker, who says that he was not always focussing on whether the discussion was about causes of action or continuing "arguments", his explanation was not entirely clear. Although at times it appeared that he had conceded all aspects of his case on constructive trust during the exchanges to which I refer above, a careful reading of the transcript indicates that, while he was prepared to concede that the Claimants no longer wished to advance a separate cause of action in constructive trust, he still wished to maintain that the "factual matrix" for knowing receipt "necessarily gives rise to constructive trust". At the very least, I consider that an objective reading of the full exchanges leaves a degree of uncertainty over inconsistencies in his responses to my questions together, therefore, with uncertainty over the extent to which the Claimants still wished to deploy constructive

trust arguments in support of their claim in knowing receipt against the Sixth and Seventh Defendants.

36. During submissions on the application (which were unsupported by evidence), Mr Dhillon suggested that the Claimants are only now seeking to re-interpret their opening submissions, that Mr Parker's concession was unequivocal, that the Active Defendants had therefore cross-examined Mr Diss "on the basis that constructive trust was not in issue", and that it was only upon sight of the draft CRRRRAPOC on 11 May 2026 that the Active Defendants understood that the Claimants wished to continue to advance a constructive trust argument. Thus he submits that the Active Defendants will be prejudiced if all the paragraphs in the Claimants' existing pleading which make reference to arguments premised on the existence of a constructive trust are not struck out.
37. I reject these submissions, which do not appear to me to reflect reality.
38. In *Compania* a challenge was made to an arbitral award on the grounds of serious irregularity, namely that the arbitrators had permitted the claimant after the close of cross examination to advance an argument which had been impliedly abandoned in opening submissions, thereby causing prejudice to the respondent. Beatson J held that there had been an implied abandonment (albeit not so as to give rise to any substantial injustice), not by reason of the claimant's failure to mention the argument in opening submissions, but by reason of the claimant's failure to gainsay opening oral observations made by the respondent to the effect that it understood the argument to have been abandoned; leaving the respondent to pursue the case on this understanding until the end of its cross-examination. Mr Dhillon invites the court to adopt the objective approach applied by Beatson J in considering what "a reasonable observer would have concluded", and he submits that the position in the present case is "even stronger".
39. However, as I have already said, I do not consider the Claimants' concessions to be (objectively) unequivocal or clear and, furthermore, I reject any suggestion that the understanding of the Court and of the Active Defendants (including their reactions at the time) is of no relevance to the question of whether there has been an implied abandonment and (importantly) to the question of whether the Claimants should, as a matter of justice, be held to any such implied abandonment.
40. Indeed, although my overriding impression of Mr Parker's submissions was that he had conceded the Claimants' case in constructive trust (as indeed he had in so far as the Claimants sought declaratory relief), there remained a continuing element of uncertainty which prompted certain of the observations that I made at the time. This lack of clarity plainly also remained of concern to Mr Dhillon who expressed the view that Mr Parker's submissions were "difficult to follow". No doubt with this in mind, he expressly sought service of a notice of discontinuance to "formalise" the position

and also to ensure that the Active Defendants were in a position to “elect” how to proceed in light of the way in which the Claimants were now seeking to put their case.

41. To my mind this is not an indication that the Active Defendants considered at the time that they were entitled to proceed on the assumption that a clear and unequivocal concession had been made. On the contrary – they were expressly seeking further clarity in the form of a written notice of discontinuance so as to be sure about the case they needed to put to the Claimants’ witnesses. This appears to me to be very different from the situation in *Compania* where, having made clear that it was operating on the assumption that a particular aspect of the pleaded case was not being pursued and having received no response to that, the respondent proceeded to cross-examine on that basis, without any objection until the fifth day of the hearing.
42. Clarity as to the Claimants’ intended abandonments came the following morning in the letter from Gateley. On a fair reading of that letter, I consider it to have been immediately clear that it omitted any reference to there being a proposed abandonment in relation to paragraphs 132-135 and 138 (i.e. the remaining paragraphs in the Claimants’ existing pleading which fall under the heading “Constructive Trust”). Even assuming that (as the Active Defendants now contend, contrary to their more circumspect approach taken at the time) Mr Parker’s concession of 27 April 2026 was unequivocal and permitted them to proceed on the assumption that all arguments as to constructive trust had been abandoned, by the following morning Gateley had provided a letter which immediately disabused them of any such understanding.
43. The Active Defendants are represented by a substantial legal team and it is reasonable to infer that they read the letter of 28 April 2026 upon receipt. If they had been concerned as to the content of the letter given that they were commencing their cross-examination of Mr Diss that same day, I would have expected them to have raised the matter, whether immediately or, if they had not had sufficient time before Court to review the letter, in very short order. They did not do so. They also did not raise any concerns upon sight of the notice of discontinuance on 5 May 2026 (provided while they were still cross-examining Mr Diss). The request for an amended pleading came from the Court and not from the Active Defendants. When that pleading was ultimately provided it should not have come as any surprise; it crossed out only the paragraphs that had been identified in the letter of 28 April 2026 and the notice of discontinuance as having been abandoned.
44. Accordingly, I reject the suggestion on the part of the Active Defendants that it only became clear to them upon sight of the amended pleading that the Claimants intended to continue to advance some of the paragraphs in that pleading under the heading “Constructive Trust”, and I also reject the argument that the Active Defendants have been deprived of any opportunity to question the Claimants’ witnesses “in relation to constructive trust”. I have no evidence as to what any such cross examination might have entailed and it is unclear to me why there would need to be cross examination of

Mr Diss on a legal issue of this type. Further and in any event, I reiterate that Mr Dhillon himself suggested a mechanism to provide the Active Defendants with clarity as to the Claimants' case. Albeit initially (at the Court's suggestion) by way of a letter, the Claimants' followed that mechanism. Even assuming the Active Defendants to have been working on the assumption that all issues relating to constructive trust arguments had fallen away in light of the concessions made on Day 1, they were disabused of that fact prior to the commencement of Mr Diss' lengthy cross examination on the morning of Day 2. They proceeded with the cross examination of Mr Diss regardless.

45. Furthermore, there has never been any suggestion (including in the Active Defendants' skeleton argument for this hearing) that Issue 40 was not still in play, an issue that arises in respect of paragraphs 132-135 of the CRRRAPOC. I accept of course that the case is advanced in the pleadings and not the List of Issues, but again I infer that if the Active Defendants had objected to the continued inclusion of Issue 40 in the List of Issues, they would have raised the point.
46. I cannot see that it is now fair, just or consistent with the overriding objective to strike out paragraphs of the Claimants' existing pleading which, as has been clear from the morning of 28 April 2026, remain in the case, and I decline to do so.
47. Specifically:
 - a. I decline to strike out paragraphs 132-135. I make an exception for the last two sentences of paragraph 138, which appear to me to make no sense now that it has been conceded that the first sentence cannot stand. The reference to "this proprietary claim" is a reference to the proprietary claim that has now been struck out in the first sentence. I cannot see that the repetition of paragraph 26 takes matters any further.
 - b. I decline to strike out the words "and/or the Alleged Principal Conspirator Companies" in paragraphs 139.1 and 139.2; these paragraphs as I understand it being of significance to the factual matrix case advanced by the Claimants.
48. Further, I shall permit the amendments proposed by the Claimants to paragraph 142A.1, which is a sub-paragraph providing particulars of facts and matters which are alleged to support an inference that the Active Defendants dishonestly assisted in breaches of duty and trust. The proposed amendments are in the following form:

"142A.1 their involvement in the conspiracy, as alleged at paragraphs 20 to 23, 25 and 142-145 to 148 below".
49. This paragraph originally referred to paragraphs dealing with the alleged unlawful means conspiracy (paragraphs which have all been deleted by this amendment). However, the Claimants now wish to cross-refer instead to pre-existing paragraphs in the pleading. I cannot see that this is either objectionable or unfair. The Active

Defendants contend that it is too late to allege an involvement in a “different” conspiracy from the conspiracy previously advanced and that the paragraphs to which reference is now made do not identify any conspiracy. However, I reject those submissions. The Claimants no longer seek to advance a cause of action based on unlawful means conspiracy (essentially, as I understand it because they accept that the Claimant Companies as conspirators cannot sue their co-conspirators) and thus they have removed the reference to paragraphs that have now been deleted. However, the existence of a conspiracy as a matter of fact is an essential element of the Claimants’ pleaded case and it is already alleged in the numbered paragraphs on which the Claimants now wish to rely. That this is the case they have to meet has at all times been understood by the Active Defendants as is clear from the RADC at paragraphs 2.2 and 37. Indeed I note that the Active Defendants have themselves made positive averments as to the existence of an unlawful conspiracy (see the RADC at 70.2). I can see no prejudice to the Active Defendants in permitting the Claimants to make it clear that for the purposes of their dishonest assistance claim they wish to rely upon facts and matters that have already been pleaded.

50. Finally, I consider that in accordance with the Claimants’ confirmation that the claim in knowing receipt is now limited to the sums pleaded in paragraph 140A, the claim for an account in paragraph 164.1 of the existing pleading should be excised. I did not understand this to be resisted by the Claimants.
51. There are no further amendments I consider to be necessary to the List of Issues.

The Active Defendants’ Application

52. In order to address the merits of this application (in respect of which I have evidence in the form of the twentieth witness statement of Mr Felton on behalf of the Active Defendants and the tenth witness statement from Mr Diss on behalf of the Claimants), I need to begin by considering in some detail the Active Defendants’ existing pleading, together with the way in which they sought to advance their case in opening submissions.
53. The Active Defendants currently advance a defence of illegality in their RADC of 30 January 2026 in the following terms:

“Illegality, Ex Turpi Causa, and Unclean Hands

210. The Family/IIA Defendants also aver that:

210.1. On the Claimants’ own case, the Claimant Companies not only participated in the Alleged Fraud, but by their claims seek to recover (in their own right and not as trustee for any other person) moneys said to represent the very proceeds of the Alleged Fraud such that the Claimant Companies’ causes of action are reliant on their own wrongdoing and there is a real and close connection between their wrongdoing and the claims which they now seek to advance.

210.2. As such:

210.2.1. It would be contrary to the public policy of the English courts and harmful to the integrity of the legal system to allow the Claimants to enforce any of the Alleged Claims in Section D to the ACRRRAPOC. As such, the Family/IIA Defendants have a complete illegality defence to the Alleged Claims.

210.2.2. Further or alternatively, the Claimants are prevented from advancing their claim in unlawful means conspiracy by reason of the maxim *ex turpi causa non oritur actio*.

210.2.3. Further or in the further alternative to paragraph 210.2.1, the Claimant Companies are not entitled to any equitable relief or assistance from the Court on the basis that they do not come to the Court with clean hands”.

54. The illegality identified in these paragraphs is very clearly said to arise by reason of the participation of the Claimant Companies in the alleged fraud. The public policy issue said to be in play is the harm to the integrity of the legal system that would be caused by permitting the Claimant Companies to enforce their claims. In their opening submissions for trial, the Active Defendants introduced the topic of illegality by referring to the well-known principle of English common law that “an action founded on illegal conduct cannot succeed” and they relied upon *Patel v Mirza* [2017] AC 467 at [120] (per Lord Toulson JSC) as encapsulating the modern form of that principle:

“The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary (a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) to consider any other relevant public policy on which the denial of the claim may have an impact and (c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather by than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate”.

55. In relation to factor (c), proportionality, they relied upon Lord Toulson’s earlier observation at [107] that:

“...various factors may be relevant...I would not attempt to lay down a prescriptive or definitive list because of the infinite possible variety of cases. Potentially relevant factors include the seriousness of the conduct, its centrality to the contract, whether it was intentional and whether there was marked disparity in the parties’ respective culpability”.

56. The Active Defendants then went on in their skeleton to describe what they said were the relevant features of the Claimants’ claims, before going on (in the same section on illegality) to make submissions as to the JLs’ conduct of the liquidations. In his oral opening, Mr Dhillon summarised these submissions as follows:

“That then leaves the joint liquidators themselves, who are the seventh and eighth Claimants, both partners of Grant Thornton, and they control the Claimant companies. There is no doubt that the driving force behind this case has been the joint liquidators. The joint liquidators persuaded SCB to agree to a scheme, which the joint liquidators devised and implemented, by which SCB, as the Claimant companies’ purported creditor, restored four of the Claimant companies to the register, appointed purported independent liquidators, all paid by SCB, who then accepted SCB’s claim and then proceeded to appoint Mr Diss and Mr Wood as joint liquidators of all six companies, who then implemented what’s called Project Damocles Stage 2, the enforcement of the claims against the Mehtas, with the backing of the funder, and the result of that is that the joint liquidators have generated for themselves and Grant Thornton millions of dollars in fees for investigating and conducting this case, with the promise if the claim is successful of generating potentially hundreds of millions of dollars of profits for the funder and recoveries for SCB and the consortium banks, with no expenditure or cost risk at all to the banks”.

57. I pause there to make three important preliminary points.
58. First, allegations of this sort have never been pleaded by the Active Defendants in connection with their illegality defence. Indeed (contrary to the submissions made by Mr Dhillon during the hearing, who suggested that no objection had been taken by the Claimants to his opening) the Claimants specifically objected on the morning of the second day of trial to what they perceived to be the attempt on the part of the Active Defendants in their opening submissions to make unpleaded allegations of impropriety on the part of the JLs in connection with the illegality defence. The Claimants explained that they had dealt with the Active Defendants’ distinct plea of conflict of interest (made in paragraphs 245B.1-245B.5 of the RADC) in Appendix D of the opening submissions in order to address the Active Defendants’ pleaded case that a conflict free liquidator would have rejected the Inbound Claims from the Consortium Banks. That case includes the allegation that the JLs stand to share in any recoveries made by the Claimant Companies in the proceedings and that they have not taken obvious defences available to them in response to the Inbound Claims.

59. Mr Parker submitted (correctly and with some prescience) that the Active Defendants were now seeking to repackage these allegations of impropriety (made in a wholly different context) as being relevant to their illegality defence and, while he accepted that it was appropriate for the Court to allow *de bene esse* cross examination of Mr Diss on the point, he made clear that he was putting a marker down as to the absence of a pleaded case. In the event, Mr Diss was robustly cross-examined on issues of conflict and impropriety and the evidence he gave may in due course go (as the Active Defendants contend) to his credibility and to their case on conflict. However, that evidence is not relevant to the existing pleaded case of illegality.
60. Second, allegations of this nature (as to what has been described as “**the Grant Thornton Scheme**” and “**Project Damocles**”) are by no means new in these proceedings. They have been raised by the Active Defendants in witness statements and skeleton arguments for various applications made early on in these proceedings and they have been scrutinised in detail by the experienced High Court Judges hearing those applications.
61. I need not go into the detail of these earlier hearings, but refer specifically to:
- a. the judgment of Edwin Johnson J following an application by the Family Defendants in October 2022 to discharge a Worldwide Freezing Injunction ([2022] EWHC 2960 (Ch)) at [77]-[78] in which he described “the so-called Grant Thornton Scheme”, which he observed “pervaded” the Family Defendants’ case. At [202] he referred to the fact that it was clear to him that the Grant Thornton Scheme involved “a series of pre-planned steps” and gave rise to the “potential for a conflict of interest”; and
 - b. the judgment of Miles J (as he then was) following an application in July 2023 to strike out and/or summarily dismiss the Claimants’ claims on (amongst other things) grounds of abuse ([2023] EWHC 2420 (Ch)). At [144], the Judge set out Edwin Johnson J’s description of the Grant Thornton Scheme and at [146] he recorded the Family Defendants’ submission that “Grant Thornton’s motivation under the Grant Thornton Scheme was to secure commercial and financial benefit for Grant Thornton, including through their litigation funding vehicle”. At [149] he referred to the provision of funding by a Grant Thornton-owned asset recovery fund (ARF SV 1 SARL) and at [150] he explained that, in their evidence, the Family Defendants had speculated that the funders may have a 50% interest in the litigation. At [152] he described the implementation of the Grant Thornton Scheme in four steps. At [160] he recorded a complaint by the Family Defendants (in the context of their abuse argument) that the JLs “have simply taken a position concerning the Inbound Claims which has been influenced by their interest in inflating the claims”. At [168] and [170] he recorded the Family Defendants’ submissions that SCB had “managed artificially to construct, acting with Grant Thornton, a commercial scheme which allows the Claimants to bring a claim for \$1 billion with the possible outcome that there are no other creditors. Grant Thornton will itself share in recoveries through the funding arrangements” and that the JLs were subject to:

“irresolvable conflicts of interest and duty. Liquidators are fiduciaries, who owe duties to the creditors as a whole. The liquidators, as partners in Grant Thornton are personally

interested in the outcome of the litigation. Grant Thornton are “effectively commercial co-adventurers” with SCB. They have an interest in inflating the claims against the Defendants. This conflict, which inevitably affects their decisions in conducting the litigation, renders the proceedings manifestly unfair to the Defendants”.

62. Third, owing to their importance to the application, I record the late disclosure by the Claimants of documents said by the Active Defendants to have prompted their proposed amendments. These included: (i) on 10 April 2026, just over a week before the start of the trial, an unredacted copy of Grant Thornton’s letter of engagement with Standard Chartered Bank (“**SCB**”) dated 20 November 2019 (the “**LOE**”); (ii) on 23 April 2026, an Enforcement Funding Agreement dated 19 April 2021; and on Monday 27 April 2026, a Recoveries Funding Agreement (“**RFA**”) dated 24 April 2020. Disclosure of the RFA was the subject of an Order made on the first day of trial. Other documents were subsequently disclosed by the Claimants in the first few days of the trial.
63. It is against that background that Gardner Leader wrote to the Claimants on 1 May 2026 (the Friday of the first week of the trial) inviting the Claimants to confirm their consent to draft amendments to the RADC, without prejudice to the contention that there was in fact no necessity for the Active Defendants to amend their pleaded case on illegality. At this hearing the Active Defendants have maintained that position, submitting that it is only in fact in relation to the Conspiracy Allegation (as explained in the next paragraph) that the Court’s permission is formally required.
64. In summary, the proposed amendments seek to introduce allegations that:
- a. the JLs have breached their fiduciary duties to the Claimant Companies and as officeholders under the Insolvency Act 1986 by reason of their pursuit of these proceedings and/or the liquidation of the Claimant Companies whilst subject to a conflict of interest (“**the Conflict Allegations**”);
 - b. the JL’s appointment was procured by way of a corrupt inducement contrary to s.164 IA 1986 (“**the Corrupt Inducement Allegation**”); and
 - c. the JLs together with Grant Thornton, SCB, ARF and/or the Carlyle Group have been engaged in an unlawful means conspiracy (“**the GT Conspiracy**”) to secure the corrupt appointment of the JLs contrary to s.164 IA 1986 and with the intention of bringing and pursuing these proceedings in order to injure the ADs (“**the Conspiracy Allegation**”). This allegation is advanced by way of a counterclaim against the JLs which is contingent upon the Claimants’ success in the proceedings. In such event, it is the Active Defendants’ case that they will suffer loss and damage in (amongst other things) the sum of any amount for which they are found liable in the proceedings by reason of the JL’s participation in the GT Conspiracy.
65. Pausing there, these are extremely serious allegations which it might be thought should have been raised long ago. They are made not only against the JLs, but also against non-parties to this dispute. Nevertheless, the Active Defendants say that their introduction into the case will cause no prejudice and can reasonably be accommodated within the existing timetable for trial. They contend that the Conflict Allegations

merely involve the provision of further particulars of the existing illegality defence and that they arise out of a combination of previously pleaded facts, points arising from the Claimants' own very late disclosure, including the disclosure given during the course of the trial, and evidence obtained from Mr Diss in cross-examination. The Corrupt Inducement Allegation and the Conspiracy Allegation are said to be "further legal consequences" arising in connection with the Conflict Allegations.

66. Owing to their length, I set the proposed amendments out in Annex 1 to this Judgment, in the form that they were provided to the Court. I shall look at the individual aspects of those amendments in due course.

Legal Principles

67. There is no dispute as to the principles that are applicable to amendments generally. An application to amend will be refused if it is clear that the proposed amendment has no real prospect of success. The test to be applied is the same as that for summary judgment under CPR Part 24 (see *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm) ("**Quah Su-Ling**"), per Carr J (as she then was)). The Court has a general discretion under CPR 17.3 to permit a party to amend its statement of case, in the exercise of which the Court must have regard to the overriding objective and seek to strike a balance between injustice to the applicant if the amendment is refused and injustice to the opposing party and other litigants, in general, if the amendment is permitted. The principles relevant to the exercise of that discretion were reviewed at length by Bryan J in *Invest Bank PSC v El Husseni* [2024] EWHC 1235 (Comm) ("**Invest Bank**") at [25]-[55]. They are well known and I need not set them all out here, although I bear them firmly in mind.
68. There is also no dispute that lateness of an amendment is a relevant factor which should be weighed in the balance. I was referred to a number of cases and I emphasise in particular that:
- a. The lateness of an amendment is a relative concept which "depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done": *Quah Su-Ling* at [38a];
 - b. An amendment is late if it "could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the resisting party to revisit any of the significant steps in the litigation (such as disclosure or the provision of witness statements and expert's reports) which have been completed by the time of the amendment": *CIP Properties (AIPT) v Galliford Try Infrastructure Limited* [2015] EWHC 1345 (TCC) per Coulson J (as he then was) at [19].
 - c. An amendment is very late if "permitting the amendments would cause the trial date to be lost": *Quah Su-Ling* at [38c].
 - d. Even if an amendment is "late" rather than "very late" there is a "heavy burden" on the party seeking permission to make the amendment to justify it: *Invest Bank* at [46]). Where a "very late" amendment is sought the correct approach is not that the amendment ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. Rather, a heavy burden lies on the

party seeking the very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it (*Quah Su-Ling* at [38(b)]).

- e. Where an amendment is very late there is a particular onus on the proposing party “to ensure that it satisfies to the full the requirements of a proper pleading” – a late amendment cannot be insufficient or deficient and, if it is, that may be fatal to the application (*Invest Bank* at [50]). It is not open to a party seeking to make a late amendment to say that any deficiencies in the proposed pleading can be remedied in due course by further particularisation (*Scott v Singh* [2020] EWHC 1714 (Comm) (“*Scott v Singh*”) per Eyre J at [18]).
 - f. Whether an amendment is late, very late, or not late, the Court is always engaged in balancing various factors according to the circumstances of the case before it: *Berkeley Square Holdings Ltd v Lancer Property Asset Management Ltd* [2021] EWHC 750 (Ch) at [18]-[20].
 - g. A useful summary of the various factors is to be found in *PJSC Tatneft v Bogolyubov* [2020] EWHC 623 (Comm) at [15] per Jacobs J:

“...if there is no good explanation as to why an amendment is being made at a late stage that is not fatal to an application to amend. It is simply one of the factors which needs to be brought into the balance in deciding where to strike a fair balance. The authorities show that the principal matters to be considered are the timing and lateness of the amendment, the reason that it has not been made earlier, the respective prejudice to the parties, and the clarity of the amendment made”.
69. The authorities recognise that amendments may be made to catch up with the disclosure and also to provide further clarity about a generalised case (*Invest Bank* at [30]). They also recognise that amendments can be made to bring the case into line with the witness or expert evidence where that is the case “the parties have in fact already been addressing” (*Toucan Energy Holdings Ltd v Wirsol Energy Ltd* [2021] EWHC 895 (Comm) (“*Toucan*”), per Henshaw J at [9] of the Annex). However, even in such cases, the fact that the amendment could have been made sooner will be a point telling against the grant of permission (*Invest Bank* at [31] and [34]).
70. The Active Defendants point to *Scott v Singh* at [19] in support of the proposition that the requirement to show a real prospect of success applies only to amendments which introduce a new claim or defence; it does not apply to those which provide further particulars of fact in support of an existing pleaded case.
71. Further, the ADs rely upon *Otkritie International Investment Limited v Urumov* [2013] EWCA Civ 1196 (“*Otkritie*”), per Sir Stanley Burnton at [11] for the proposition that particular principles apply to an application to amend a defence to plead illegality:
- “(1) If the facts giving rise to the illegality are such that the illegality is “manifest” or obvious, the Court must take the point of its own motion so as to ensure that its process is not abused in

furtherance of the illegality: see, e.g., Bingham J in *Bank of India v Patel* [1982] 1 Lloyd's Rep 427.

(2) If the illegality is not manifest or obvious (for example, because it depends on disputed facts or inferences from those facts), the normal rules applicable to amendments apply. The merits of the amendment must be set against the forensic and other consequences for the parties and for the Court. The assessment or balancing of the desirability that the real issues in the case should be determined against the prejudice to the parties and to the Court and public that would be caused by allowing the amendment is regarded as a matter of discretion, and the trial judge's decision will not be set aside absent an error of principle or of law or other defect justifying an appellate court in interfering with his decision.

(3) If the trial judge concludes that there is no properly pleadable case of illegality, his decision is not a matter of discretion, and will be reviewed by an appellate court in the normal way."

72. At [12], the Judge went on to explain that there is "a spectrum of cases":

"At one end is a case of obvious illegality, where the Court must allow the defence to be raised, and indeed if necessary must take the point even if the defence is not pleaded. At the other end is a case in which the intended amendment has no real prospect of succeeding at trial, and permission to amend must be refused. In between there are cases in which the merits of the proposed amendment vary from the relatively strong to the just arguable. At the upper end of these cases are those to which Briggs J referred in *Lexi Holdings v DTZ Debenham Tie Leugn Ltd* [2010] EWHC 2290 (Ch) (a decision to which Eder J referred) that is, cases which give the Court real concern that without some investigation compensation might be ordered in circumstances which would undermine the integrity of the justice system. The stronger the apparent merits of the application to amend, the more substantial must be the potential prejudice caused by the amendment if permission to amend is to be refused. Conversely, the court may properly refuse permission to amend to plead an apparently weak allegation of illegality if the prejudice that might result from the amendment is relatively insubstantial."

73. In *Otkritie*, the Judge at first instance had rejected an application by the defendants made during the course of the trial to amend to plead illegality. The Court of Appeal dismissed the appeal, holding (amongst other things) that the Judge had correctly considered whether the case was one of manifest illegality, that he had been entitled to look critically at the proposed late amendments in circumstances where "the essential basis of the alleged illegality" had been known to the defendants for a very considerable time and that there was no basis to disagree with the Judge's finding that there was no proper basis for a plea of illegality. The Court of Appeal observed (at [26]) that even

if it had taken the view that the Judge was wrong to hold that there was no proper basis for a plea of illegality, it would have dismissed the appeal on the grounds that the case was “evidentially weak and legally fragile” and that the balancing exercise required (specifically having regard to the irremediable prejudice to the claimants) would have rendered a refusal of permission to amend as the “only one decision sensibly open to the Court”.

74. *Otkritie* was decided prior to the clarification provided by the Supreme Court in *Patel v Mirza* as to the approach to be adopted to illegality. However, I did not understand either side to suggest that the principles espoused by the Court of Appeal in *Otkritie* had not survived that clarification and indeed they have subsequently been applied in *Kliers v Schmerler* [2018] EWHC 1350 (Ch) - a case in which the court was able to determine on the evidence and facts as found at trial that the illegality arose on the claimant’s own case and that the court was required to consider the question of illegality, applying the trio of considerations in *Patel v Mirza*, of its own motion - by Mr Rosen QC, sitting as a Deputy High Court Judge, at [77]-[78].
75. There was, however, considerable disagreement between the parties as to (i) the meaning of “manifest or obvious” and (ii) the correct application of the *Otkritie* principles - specifically whether, even absent a manifest or obvious illegality, the Court is obliged to treat an amendment application involving illegality in some special way. There was some considerable overlap between these two issues in the submissions made by the Active Defendants and so I shall deal with them together.
76. The Active Defendants contend that the question of what is manifest or obvious should not be approached from a narrow viewpoint. They say it is entirely possible to have an offence which is “to some degree, complex, and open to dispute”, but which is nevertheless manifest or obvious. They point to the omission from the words in parenthesis in [11(2)] of the judgment in *Otkritie* of any reference to disputed propositions of law and they say there is a distinction to be drawn between points of law and points of fact. They rely upon the reference to a “spectrum of cases” in [12] of *Otkritie*. Further, they rely upon *Bank of India v Patel* [1982] 1 Lloyd’s Law Reps 427 (“**Bank of India**”) in support of the proposition that if persuasive and comprehensive evidence of illegality has emerged at trial, the court is bound to take note of it (or as Mr Dhillon put it, the court has a “duty not to turn its head”), notwithstanding that illegality has not been pleaded and notwithstanding that illegality is not manifest or obvious. At one point the Active Defendants suggested that it would be inconsistent with the judicial oath “to ignore unpleaded evidence” of illegality as long as it has a real prospect of success. Thus, notwithstanding [11(2)] of *Otkritie*, they say that in a case of illegality the Court must undertake “a special kind of balancing exercise” such that the ordinary approach to amendments does not apply.
77. Mr Dhillon relied upon Bingham J’s (as he then was) observation at first instance in *Bank of India* at [2]-[3] that:
- “2. Where a transaction is not on its face manifestly illegal, the ordinary rule applies that only evidence relevant to a pleaded allegation is admissible...
3. In such a case, that is where a transaction is not on its face manifestly illegal, no special rule regarding pleading or granting

leave to amend applies, **subject only to this, that if persuasive and comprehensive evidence of illegality emerges, even in the absence of a pleading of illegality, the Court will take notice of it” (emphasis added).**

78. The Active Defendants contend that this passage makes plain that the Court is bound to have regard to persuasive and comprehensive evidence of illegality even if it is not manifest or obvious and illegality is not pleaded. I disagree. In common with Mr Wilson KC (acting on this application for the Claimants), I do not read this as somehow widening the circumstances in which the Court must take the illegality point of its own motion or as espousing an exception to the general principle applicable to amendments. I read this merely as confirming that illegality may be manifest, not only from the face of the transaction, but also where it is “comprehensive” (which I understand to mean “complete”) from the evidence. This is reflected in [11(1)] of *Otkritie* and is confirmed by the decision of the Court of Appeal in the same case.
79. In a judgment with which the other members of the Court of Appeal agreed, Sir David Cairns considered some of the earlier cases, including (at p.433) *North Western Salt Co v Electrolytic Alkali Co. Ltd* [1914] AC 461, a case in which Scrutton J held that an allegation of illegality could not be relied on unless pleaded or unless the illegality appeared on the face of the transaction. The case went to the House of Lords and Sir David Cairns set out an extract from the decision of Lord Haldane as follows:
- “It is no doubt true that where on the Plaintiffs’ case it appears to the Court that the claim is illegal, and that it would be contrary to public policy to entertain it, the Court may and ought to refuse to do so. But this must only be when either the agreement sued is on the face of it illegal, or where, if facts relating to such an agreement are relied on, the Plaintiffs’ case has been completely presented. If the point has not been raised on the pleadings so as to warn the Plaintiff to produce evidence which he may be able to bring forward rebutting any presumption of illegality which might be based on some isolated facts, then the Court ought not to take a course which may easily lead to a miscarriage of justice...”
80. Sir David Cairns then observed that:
- “That statement has never been doubted since it was made; it does not deal with an amendment of pleadings; it does say that if illegality is not pleaded and illegality does not appear on the face of the matter it is not the duty of the Court to seek to discover whether there was illegality”.
81. Sir David Cairns then considered a decision of the Court of Appeal in *Harbans Singh Batra v Ebrahim*, in respect of which the Court had a transcript. In that case, the Court of Appeal allowed an allegation of illegality arising under Indian law to be raised for the first time in the Court of Appeal. Mr Dhillon suggested that *Harbans Singh* provides support for the proposition that there is an “extra caveat” to the test articulated in [11] of *Otkritie* in a case where evidence of illegality had emerged (absent a pleaded case) at trial, or that somehow the Court is required to have regard to that illegality on an

amendment application, even if it is not manifest and obvious. But that is not consistent with the fact that *Harbans Singh* was a case of clear and manifest illegality, as is plain from Sir David Cairns' pithy observation that:

“If facts are before the Court which do in law show an illegality, then of course the Court must have regard to the illegality”.

82. To my mind, the authorities draw a clear distinction between a situation in which an agreement or transaction is, on its face, obviously illegal, and a situation in which evidence has been given at trial from which illegality might be inferred but in respect of which (absent a pleading) the claimant has not had a proper opportunity to respond. Standing back, this appears to me to be entirely consistent with the fact that the purpose of the illegality doctrine is to ensure that, as a matter of public policy, the Court's procedures are not being misused. The Court can only form a view about that where an agreement or transaction is manifestly illegal.
83. Finally, I do not regard paragraph [12] of *Otkritie* as seeking to formulate any special rule or as being intended to detract from the statement of applicable principles in paragraph [11]. I do not consider it to support a deviation from the usual rules to be applied to amendments even where there is no manifest or obvious illegality. To my mind, paragraph [12] is merely commenting on the obvious fact that there will be a range of cases while also making clear at the outset that it is only in the case of obvious illegality that the usual amendment principles will be disapplied. Thereafter it does no more than address the fact that the merits of the proposed amendment will be a relevant factor in the exercise of the Court's discretion. I cannot see that this represents a departure from usual amendment principles or the articulation of a different test; on the contrary it appears to me to be no more than an explanation of the nature of the balancing exercise that the Court should undertake. It is certainly not support for the proposition (advanced by the Active Defendants) that if illegality is not pleaded “but the evidence is before the court” then (even where the illegality is not manifest) there is no good reason for the court to reject an amendment application.
84. Drawing the strings together, I agree with Mr Wilson that the applicable principles where a party is applying to amend to plead illegality, as set out in *Otkritie*, are in fact entirely straightforward. I repeat and expand upon them below only so as to address the submissions that I have heard in this case:
- a. If the illegality is manifest or obvious on the face of the agreement or transaction the Court must take the point of its own motion so as to ensure that its process is not abused in furtherance of the illegality (*Otkritie* at [11(1)]).
 - b. On a proper reading of both *Bank of India* and *Otkritie*, “manifest or obvious” means exactly what it says. The illegality must be clear and incontrovertible. It cannot be susceptible to serious dispute (whether as to fact or law), and it cannot depend upon inferences. It would be inconsistent with the overriding objective and the need to do justice between the parties for the court to take matters into its own hands, absent a pleading, unless that were the case.
 - c. Illegality may be manifest on the basis of evidence relied upon at trial but only where there has been a “complete presentation” of a claimant's case. In the ordinary course, it is difficult to see how there can be a complete presentation

of the claimant's case if the point has not been raised on the pleadings so as to alert the claimant to the fact that it is in play. In such a case it is not possible to identify a manifest illegality and nor would it be fair or just for the Court to identify the illegality of its own motion.

- d. That a plea of illegality may have a real prospect of success or can be regarded as a strong *prima facie* case does not make it "manifest or obvious", although it will be relevant to take its prospects of success into account when undertaking the balancing exercise (*Otkritie* at [11(2)] and [12]).
- e. If the illegality is not manifest or obvious, the normal rules applicable to amendments (as set out above) apply. There are no "special rules" which apply to a plea of illegality. The Court must undertake the familiar balancing exercise identified and explained at [11(2)] and [12] of *Otkritie*.

The Corrupt Inducement Allegation

85. I begin by setting out the paragraph in the proposed amendments which makes this new allegation:

"210.3.5 Further, the Family/IIA Defendants will rely upon the arrangements between (i) Grant Thornton LLP and SCB as set out in an engagement letter dated 20 November 2019, and/or (ii) ARF and SCB as set out in the Recoveries Funding Agreement dated 24 April 2020 as constituting corrupt inducements contrary to s. 164 Insolvency Act 1986, whereby Grant Thornton and/or ARF offered to and did provide to SCB valuable consideration in the form of investigative services and advice and/or funding with a view to securing the appointment of a liquidator from Grant Thornton and/or the Joint Liquidators as liquidators".

86. In his oral submissions, Mr Dhillon explained that the first seven lines of paragraph 210AA were also intended as part of this plea of illegality:

"Further or alternatively, by virtue of the matters pleaded at paragraph 210.3.1-210.3.5 above, the Grant Thornton Scheme amounts to an unlawful means conspiracy (the "GT Conspiracy") between the Joint Liquidators individually and between the Joint Liquidators severally, Grant Thornton LLP, SCB, ARF and/or the Carlyle Group in order to secure the corrupt appointment of the Joint Liquidators contrary to s. 164 Insolvency Act 1986 and with the intention of bringing and pursuing these proceedings against the Family/IIA Defendants in the manner described at paragraphs 210.3.3 and 210.3.4...".

87. It is common ground that this is an entirely new plea of illegality which (at least as formulated in paragraph 210.3.5) is dependent upon the content of only two documents, the LOE and the RFA. Accordingly, in light of the analysis of the law that I have undertaken above, unless it is manifest or obvious, the usual principles applicable to amendments apply.

88. Having regard to the statutory provisions, the documents on which the Active Defendants rely and the submissions of the parties, I do not consider that this new plea of corrupt inducement is manifest or obvious because:
- a. There is a serious dispute between the parties as to the proper construction of the wording of section 164 of the 1986 Act;
 - b. There is a lack of clarity as to the way in which the case is advanced on the proposed pleading;
 - c. The documents relied upon by the Active Defendants in paragraph 210.3.5 are not manifestly illegal on their face; and
 - d. The evidence from the Claimants is not complete or comprehensive because the offence has never previously been pleaded and the Claimants have thus never had an opportunity to address it.

The Dispute on the Law

89. As explained above, the “manifest or obvious” test asks whether the evidence before the Court does “in law show an illegality”. In other words, the test applies to “the threshold question” of whether a sufficiently illegal act has occurred to engage the defence (see *Lewis-Ranwell v G4S Health Services (UK) Ltd* [2026] 2 WLR 187 at [112]-[113]).
90. In many cases, the elements of the relevant illegal act will be well-established. However, if there is a serious dispute as to the requirements of the offence (separate from their application to the specific facts of the case), this may be a fatal obstacle to a finding of “manifest” illegality.
91. Section 164 of the 1986 Act entitled “Corrupt Inducement affecting appointment” is in the following terms:
- “A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator is liable to a fine”.
92. It is common ground that this creates a criminal offence and that it is identified as such in Schedule 10 to the 1986 Act. It is also common ground that this offence requires the establishment of two elements. First, the objective physical component of the crime, or guilty act, namely giving, agreeing, or offering to give, to any member of a company any valuable consideration; and second, a mental element which requires that the physical act is done with a view to securing an individual’s own appointment or nomination or the appointment or nomination of another person as the company’s liquidator.
93. However, there is a dispute between the parties as to whether the mental element must be determined objectively (as the Active Defendant’s contend) or subjectively (as the

Claimants contend). The Active Defendants say that the subjective understanding of any relevant person, including Mr Diss, as to the intention of the parties in entering into the LOE and the RFA is irrelevant because the Court must construe objectively the meaning and effect of the agreements to determine whether valuable consideration has been given and whether the requisite intention to procure the liquidator's appointment is established on the assumption that a party entered into an agreement with a view to it taking effect in accordance with its terms. They rely for this proposition on *Re Debenhams Plc (Frasers Group Plc v Official Receiver)* [2023] B.C.C. 428 ("*Debenhams*").

94. The Claimants say that *Debenhams* is not authority for this proposition. They accept for present purposes that a corporate entity may fall within the scope of section 164, but they submit that if they are right that the requisite mental element is subjective, then there is a requirement to identify the individual whose state of mind is to be attributed to the corporate entity. They contend that given that section 164 creates a criminal offence, it cannot be enough merely to show that there was an agreement to provide some consideration to a creditor and some linkage between that consideration and the liquidator's appointment. Furthermore, they submit that, given that this is an offence which applies only to and within the very specific context of the insolvency profession it is to be considered by the Court in the context of the norms of that profession, which is subject to a regulatory regime. They rely for this proposition on *The Dunelm* [1884] ("*Dunelm*") at page 171.
95. For the purposes of this application, I do not need definitively to determine whether the mental element in section 164 of the 1986 Act is to be objectively or subjectively determined and nor is it necessary or appropriate for me to give a definitive ruling on the meaning and effect of the section. The mere fact of this dispute (which is fundamental to the section 164 offence as pleaded by the Active Defendants) appears to me to make plain that the illegality alleged is neither manifest nor obvious. Nonetheless, owing to the fact that I shall need to return to whether the arguments have a real prospect of success, it is convenient to examine the respective arguments in a little more detail at this stage.
96. In *Debenhams* the appellant had applied to the ICC Judge for permission to amend an existing claim that the Joint Administrators had committed a criminal offence under section 164 of the 1986 Act so as to allege that two different existing parties to the proceedings (both creditors in the liquidation of Debenhams plc) had also committed the same offence. It was accepted by the respondent to the appeal that the ICC Judge had been wrong to refuse to permit the amendment solely on the ground that it was not for a civil court to decide whether a criminal offence had been committed. At [48] Sir Paul Morgan records the appellants' successful submission that "it is not uncommon for civil courts to deal with allegations of criminal conduct as a necessary element in a civil claim and that the civil court determines the facts alleged by applying a civil standard of proof". There appears to have been no argument (whether at first instance or on appeal) about the approach to be taken to an amendment application where illegality is alleged and Sir Paul Morgan determined the application by reference to normal principles, including looking at whether there was a real prospect of success in respect of the proposed amendments.
97. In this context, the Judge observed that he did not intend to give a definitive ruling on the meaning of section 164, but nonetheless made a number of observations, including

that the section can potentially apply to a corporate body, that the section identifies three different ways in which an offence under section 164 can be committed and that “valuable consideration” has a well understood meaning in the law. At [29], he observed that “a person only commits an offence under section 164, if he or it does the things described in the section with the intentions therein described (by use of the words “with a view to”)”. At [33], he referred again to the mental element in the following terms:

“Section 164 contains a requirement of a mental element for the commission of an offence. There are three possible mental elements which will satisfy the requirements of the section. The different cases referred to are that a person does what is described in the section with a view to:

- i) securing his own appointment or nomination as liquidator; or
- ii) securing the appointment or nomination of someone other than himself as liquidator; or
- iii) preventing the appointment or nomination of someone other than himself as liquidator”.

98. The argument that the offence had been committed was dependent upon the content of various documents and the Judge did observe at [35] that the application of section 164 “could depend” on the potential operation of a relevant clause in a Claims Release Deed “on the assumption that a party to the Deed entered into the clause “with a view to” the clause taking effect in accordance with its terms” – a very similar formulation to that adopted by the Active Defendants in this case. However, the Judge (who gave permission for the proposed amendments) made no final determination on the point and there seems to have been no debate as to whether or not it was necessary to identify an individual whose knowledge was to be attributed to the relevant corporate entity. Interestingly, the proposed amendments expressly pleaded an inference that, prior to disclosure, the corporate entities concerned (who were each acting through solicitors) had read, understood and been advised on the terms of the Claims Release Deed, a plea that is relevant to the question of subjective knowledge. There is no similar plea in this case.
99. Against that background, I agree with the Claimants that *Debenhams* is not authority for a purely objective approach and neither party has been able to direct my attention to any other case in which the interpretation of section 164 of the 1986 Act has been considered. *Debenhams* illustrates the fact that serious arguments as to the true interpretation of section 164 cannot be determined on an application to amend. The objective/subjective debate remains moot.
100. That in itself answers the “manifest or obvious” question in so far as the dispute of law is concerned. In passing, however, I observe that it is not so clear to me that there is a serious legal argument in respect of *Dunelm*. In support of the proposition that they would be entitled to call evidence of industry practice in the event of the Court deciding to permit the Corrupt Inducement Allegation by way of amendment, the Claimants drew my attention to the following passage in the judgment of Brett MR:

“My view of an Act of Parliament—and this article is equivalent to an Act of Parliament—which is made applicable to a large trade or business is, that it should be construed, if possible, not according to the strictest and nicest interpretation of language, but according to a reasonable and business interpretation of it with regard to the trade or business with which it is dealing”.

101. I asked whether there were any more recent cases addressing a similar principle and was referred to *Lehner v Lant Street Management Co Ltd* [2024] H.L.R. 47 at [101] where the principle is summarised in the following terms by the Upper Tribunal:

“...where an expression is used in a statute dealing with a technical subject, such as fire safety, it is legitimate to consider how that expression is usually understood in that context”.

102. Although *Dunelm* is cited in support of this proposition, this seems to me to be a rather narrower approach. Section 164 of the 1986 Act contains no technical expressions which require interpretation in line with their usage in the Industry. However, I have heard extremely limited argument on the point and cannot express any definitive view as to the admissibility of expert evidence one way or the other.

Lack of Clarity

103. As it stands, the existing proposed amendment at paragraph 210.3.5 relies upon the arrangements between Grant Thornton and SCB as set out in the LOE and/or the arrangements between ARF and SCB as set out in the RFA “as constituting corrupt inducements”. As explained in oral submissions, paragraph 210AA is also intended as part of this plea. That paragraph asserts a conspiracy between the JLs individually and severally, Grant Thornton, SCB, ARF and/or the Carlyle Group. In Mr Felton’s statement he explains that “the arrangements between GT and SCB and/or between ARF and SCB, constitute corrupt inducements contrary to s.164 of the Insolvency Act 1986, which forms the substance of the GT Conspiracy (paragraph 210AA of the Draft RRADC alleges that the object of the GT Conspiracy was to secure the corrupt appointment of the JLs contrary to s.164 of the Insolvency Act 1986)”.
104. In light of the way the matter is pleaded, it is perhaps unsurprising that I detected a degree of inconsistency in the way that Mr Dhillon advanced this case while on his feet. On a couple of occasions he confirmed that the Active Defendants are not saying that Mr Diss or Mr Wood is criminally liable but that the claim is against Grant Thornton. Later he said that it was a claim of illegality on the part of Grant Thornton “together with ARF and SCB”. However, when explaining how the Court should understand paragraph 210AA, he said that “there’s a conspiracy between these parties [i.e. the parties identified in 210AA] involving an offence with the intention of bringing these proceedings”. He went on to describe this as “the 164 conspiracy”, by which I understood him to mean a conspiracy to commit a criminal offence. In the circumstances, I agree with Mr Wilson that it is unclear both on the face of the proposed amendment and from Mr Dhillon’s submissions who it is that is alleged to have committed the criminal offence (even assuming, which is at least a matter for serious debate, that it is not necessary to identify the individuals whose knowledge and intention is to be attributed to these various corporate entities).

105. Furthermore, having taken the Court through the LOE and the RFA, he then elided those documents in submitting that “Grant Thornton, ARF offered to provide, proceeded to provide valuable consideration in the form of the GT investigative services and advice and the ARF funding with a view to completion of stage one [of Project Damocles], the express culmination of which was the appointment of the liquidators from GT”. This elision was clearest in his submission that the offence under section 164 could not be pleaded without sight of the recital in the RFA. From this I understood him to be saying that the offence requires a combination of both the LOE and the RFA.
106. In his reply to Mr Wilson’s effective and forensic submissions, Mr Dhillon suggested that in respect of his conspiracy claim at 210AA he could excise reference to Grant Thornton, ARF, SCB and Carlyle Group, leaving only a conspiracy on the part of Mr Diss and Mr Wood. He did not explain how this would work in so far as the Corrupt Inducement Allegation relies upon both 210AA and 210.3.5. He then went on to submit that the LOE “concerns the case against Grant Thornton” and that the RFA “concerns the case against ARF” – as I understood it a very different submission from the one he initially made. I queried this at the time and Mr Dhillon suggested that this had always been the Active Defendants’ position, that they had never sought to rely upon the LOE and the ARF in tandem and that the pleading is concerned with “two forms of illegality”. He conceded that if this was not clear then the pleading could be “tweaked”. In my judgment it is very far from clear, not least because the Active Defendants’ case has fluctuated over the course of the hearing.
107. To my mind this lack of clarity in the pleading and the way in which the Active Defendants have explained their case will be important in the context of the exercise of my discretion on the amendment application, but it is also fatal to the suggestion that there is a manifest and obvious illegality. I fail to see how the Court could recognise an illegality of its own motion where the essential elements of that illegality are unclear.

The Documents on which the Active Defendants rely

108. The Active Defendants contend that an objective construction of the LOE and RFA enables the Court to determine that the offence under section 164 is made out. Although their skeleton argument suggests that they also say the offence is made out on the “clear evidence” given by Mr Diss at trial, Mr Dhillon expressly disavowed this during his oral submissions confirming that while the cross-examination of Mr Diss “buttresses” what is now being said “that wasn’t what we needed. We needed the documents”. Those documents were provided very late (as explained above) and thus it is only now (say the Active Defendants) that they have the evidence they need of manifest illegality.
109. However, I cannot see that illegality is manifest on the face of either of these documents and the Active Defendants’ submissions on the point were again inconsistent. At one point it was suggested that the Court has every reason “to infer illegality” from the LOE and the RFA, and on another that there is “at least a strong prima facie case”. But this is not enough to permit or require a finding of manifest illegality by the Court.
110. The LOE, dated 19 November 2019, evidences the terms on which SCB engaged Grant Thornton to act on their behalf. Mr Dhillon took me through the clauses on which the Active Defendants rely, as follows:

- a. Clause 3.1 identifies the scope of the work. In summary it includes obtaining historical investigative reports from SCB, investigating and reporting on potential recovery options or strategies, assisting lawyers with the preparation of claims against the Claimant Companies to restore them or place them into liquidation and to assist SCB in seeking the support of the SCB Consortium to accede to the Enforcement Framework Agreement. It is common ground that this work was regarded as Phase 1 of Project Damocles.
 - b. Clause 6.1 records Grant Thornton's agreement to enter into a contingent fee arrangement with SCB. Clause 6.6 records that the fees of SCB's legal adviser will be "paid by the funder under the terms of the Enforcement Framework Agreement". Clause 6.7 provides that Grant Thornton's costs will not be paid by SCB, but will be subject to the payment terms of the Enforcement Framework Agreement. Mr Wilson also drew my attention to clauses 6.2 (which records that Grant Thornton's time costs will be calculated on its standard hourly charge out rates) and 6.4 (which records that its fees for the assignment were likely to be in the region of £100,000 to £150,000).
 - c. Clause 7.1 identifies the Enforcement Framework Agreement as a "separate commercial arrangement" following on from Grant Thornton's initial "Phase 1" work, designed to encompass services and funding options required for the recovery of the loss identified during the Phase 1 work. It records that SCB agreed to give Grant Thornton an "exclusive option to provide the services and funding options to be agreed pursuant to the Enforcement Framework Agreement" for an identified period.
111. Pausing there, ARF is not a party to the LOE and Mr Dhillon accepted in his reply that it cannot evidence an offence under section 164 on the part of ARF. As for Grant Thornton, the LOE does not evidence any form of inducement, much less an inducement to enter into this engagement with a view to securing the appointment of a liquidator from Grant Thornton and/or the Joint Liquidators as liquidators, as alleged. On its face I can find nothing that is even arguably illegal (much less anything manifestly illegal), and Mr Dhillon did not show me any provisions that could be said to evidence the commission of an offence under section 164. There is no reference in the LOE to Grant Thornton subsequently being appointed as Liquidators and no requirement that SCB should vote for, or support, Grant Thornton's appointment as office holders in the event of a liquidation. The purpose of the LOE, as is clear from its face, was to explore "potential recovery options or strategies" in relation to SCB's loss at a time before any decision had been made on those options or strategies. Indeed clause 7.6 records an acknowledgement on the part of "both Grant Thornton and SCB that the precise terms and structure of the Enforcement Framework Agreement are subject to final agreement" and would depend on (amongst other things) the results of the Phase 1 Work.
112. In his reply, Mr Dhillon suggested that Grant Thornton was providing its services for "no valuable consideration" and went on to articulate the question arising on this document as whether "free service, free funding [was] provided with a view to the appointment of liquidators". Leaving aside the hotly disputed question as to whether there was valuable consideration, this articulation appears to me to acknowledge the absence of any manifest illegality on the face of the LOE.

113. The RFA, dated 24 April 2020 is a funding agreement between SCB and ARF SV 1 Sarl. The Active Defendants rely upon:
- a. Recital D which records that:

““Stage One” of Project Damocles is the stage during which steps will be taken, subject to the approval of the Court, to (i) restore those Derivatives Companies which have been dissolved to the register of companies; (ii) put each of the Derivatives Companies into creditors voluntary liquidation (“CVL”) or compulsory liquidation; and then (iii) have joint liquidators appointed from Grant Thornton UK LLP (“GT”) in respect of each such Derivatives Company (the “Joint Liquidators”)”.
 - b. Clause 2.1 which provides that “subject to clause 2.2” (which is not relevant for these purposes) ARF would fund SCB’s costs, including Grant Thornton’s historic fees (identified in Schedule 2) in respect of each of the seven Claimant Companies.
 - c. Clause 3.1 which provides that SCB will take reasonable and appropriate steps in “conducting the Claims and Project Damocles” including pursuing the agreed strategy for Project Damocles, including “the appointment of members or employees of GT as liquidators of each of the [Claimant Companies]”.
114. Again, pausing here, it is important to observe that Grant Thornton is not a party to the RFA. Accordingly this document on its own cannot possibly evidence the commission of a criminal offence by Grant Thornton and there is no pleaded case which seeks to draw an inference from the content of Recital D. I understood this to be accepted by Mr Dhillon in his reply. As Mr Wilson points out, if the Active Defendants’ case is that there is a linkage between the LOE and the RFA such that the conduct and intention of ARF is somehow to be attributed to Grant Thornton, then that would need to be properly pleaded. The mere fact that Grant Thornton has a financial interest in ARF is not sufficient. However, as I have said above, that no longer appears to be the Active Defendants’ case. Mr Dhillon has now confirmed that the Active Defendants rely only upon the RFA to establish their illegality plea against ARF.
115. The Claimants do not accept that the ARF establishes manifest illegality on its face, as opposed to merely evidencing a desire on the part of ARF to fund Project Damocles with a view to securing a commercial profit, which they say is entirely standard commercial conduct on the part of a funder. Further, as Mr Wilson points out, the Grant Thornton Scheme had already been agreed by the date of the RFA such that any inference that might conceivably be drawn from the document would appear capable of being rebutted on the facts. As Mr Diss says in his tenth witness statement:
- “The funding advanced by ARF to SCB to restore the Claimant Companies was not intended in any way to procure the appointment of the JLS. Rather the appointment of the JLS had already been agreed upon by all the creditor banks as part of the agreed strategy. The funding merely enabled that strategy to be implemented”.

116. In my judgment nothing in the arguments I have heard supports the contention that either the LOE or the RFA is manifestly illegal on its face or that there is no further evidence that the Claimants could provide to the Court on the point.

Evidence

117. Given what I have already said, there is no real need to say much more on the evidence other than that the Claimants have not had the opportunity in this case to consider how to respond to an allegation under section 164 and so have been unable to give a “complete presentation” of their case. They contend that a finding by this Court of manifest illegality (which would be a finding that these arrangements were criminally illegal on their face) would have potentially seismic consequences for Grant Thornton, for liquidators and for the profession at large and I have no doubt they are right, although that in itself is of course not a reason to refuse to permit the amendment, as is clear from *Debenhams*.
118. For present purposes I observe that Mr Diss was not aware when he gave evidence at trial that such an allegation would be made and the Claimants have had no opportunity to consider whether they might wish to call Mr Wood and/or anyone else from Grant Thornton, ARF, SCB or the Carlyle Group to respond to the Corrupt Inducement Allegation. In this sense there has not been a complete presentation of the Claimants’ case. Justice requires that they have an opportunity to consider whether they wished to put in further evidence, including evidence that might have involved a waiver of privilege. They have had no such opportunity.
119. In my judgment there could be no obvious or manifest illegality in such circumstances.

The exercise of the discretion

120. Given that I have found that there is no manifest illegality in relation to the Corrupt Inducement Allegation, a proper application of the principles that I have set out above arising from *Otkritie* and *Bank of India* requires me to apply the usual pleading principles to determine whether the proposed amendment should be admitted.
121. In the exercise of my discretion I consider that it would be contrary to the overriding objective and inconsistent with the requirements of justice, including that the case be dealt with expeditiously and fairly, to permit the Corrupt Inducement Allegation to be introduced by way of amendment. My reasons are as follows:
122. Turning first to the merits of the proposed amendments and the need to consider where this case lies in the “spectrum” (and always bearing in mind that the Court should not be conducting a mini trial):
- a. For reasons I have explained above, there is no real prospect of success in establishing the commission of an offence under section 164 as against Grant Thornton on the face of the LOE alone and the Active Defendants accept that they cannot make out such a case against Grant Thornton in respect of the RFA because Grant Thornton was not even a party to that agreement. No inferential case is pleaded. For this reason alone I refuse the amendment in paragraph 210.3.5 against Grant Thornton.

- b. While Recital D to the RFA raises the possibility of an inferential case against ARF (albeit that no such case is pleaded), Mr Diss' evidence as to its timing appears to me to render any such case (even if properly pleaded) no more than merely arguable. However, the case is not properly pleaded and there is also a serious dispute on the interpretation of section 164 which I cannot resolve on this application. The case as pleaded is, in my judgment, weak at best.
 - c. In so far as the Corrupt Inducement Allegation also emerges from paragraph 210AA, it is wholly unclear how the claim of conspiracy to commit an offence under section 164 is being advanced against each of the individuals and entities identified in that paragraph and I consider the existing pleading to be inadequate. Further, paragraph 210AA is dependent upon the Conflict Allegations pleaded at paragraphs 210.3.1-210.3.5, which (for reasons explained in more detail below) I decline to permit. There has never been any suggestion previously that the Active Defendants' case on conflict could found the basis of a claim in unlawful conspiracy.
123. In light of the previous paragraph and my view that the Corrupt Inducement Allegations either have no real prospect of success or are weak (at best), I need not spend much time on the trio of considerations in *Patel v Mirza*, and it would not be appropriate for me to draw any firm conclusions. For now I make the following observations:
- a. The first stage of the *Patel v Mirza* test requires the Court to consider the underlying purpose of the prohibition which has been transgressed. Here that purpose would appear to be the protection of the integrity of the appointment process. That purpose does not appear to include avoiding or invalidating a corruptly induced appointment or extinguishing the claims that have been vested in the liquidator – certainly there are no statutory provisions to which my attention has been drawn which have this effect. On the contrary, as the Claimants contend, the general scheme of the 1986 Act appears to be to uphold the validity of the liquidator's acts, even where an appointment can be challenged or impugned (see for example section 232 of the 1986 Act). Against that background and on the submissions I have heard, it is difficult to see that the purpose of section 164 will be in any way enhanced by denial of the Claimants' claim (i.e. a refusal to enforce that claim).
 - b. As to the third stage of the test dealing with proportionality, [107] of *Patel v Mirza* set out above makes clear that factors such as “the seriousness of the conduct, its centrality to the contract, whether it was intentional and whether there was marked disparity in the parties' respective culpability” will be relevant.
 - c. Focussing on the issue of centrality, it is difficult to see that the commission of a section 164 offence is anything more than merely peripheral, background narrative, to the Claimants' claim (cf. *Gron dona v Stoffel & Co* [2021] AC 540 (“*Gron dona*”) at [40]). Indeed it is in my judgment conceptually entirely separate from the fraud that is alleged against the Active Defendants; they are not being sued under the allegedly unlawful appointment arrangements and they are not being sued under any of the contractual arrangements on which the Claimants expressly rely. This litigation concerns causes of action that arise from their own alleged misconduct which took place long before the Grant

Thornton Scheme was even in contemplation. Although the change in the law brought about by *Patel v Mirza* means that reliance upon illegal conduct to establish a cause of action is no longer determinative of an illegality defence, it is clear that it continues to have a bearing on the issue of centrality (see *Grondona* at [43]). It is difficult to see how the Corrupt Inducement Allegation taints those causes of action or the relief that is being sought and it is also difficult to see from a public policy perspective why it would offend against the doctrine of illegality for the claim against the perpetrators of fraud to succeed (cf. *Bilta v Nazir* [2015] UKSC 23 at [128]-[129]).

- d. Finally, the fact that the JLs, Grant Thornton, ARF, SCB or the Carlyle Group may profit if these claims succeed is not determinative. As Lord Lloyd-Jones made clear in *Grondona* (at [46]) the true focus of the Court should not be on whether a claimant is “getting something” out of the wrongdoing. Instead it should focus on the question whether to permit recovery would produce inconsistency damaging to the integrity of the legal system. As he observes “the true rationale of the illegality defence...is that recovery should not be permitted where to do so would result in an incoherent contradiction damaging to the integrity of the legal system”. In the present case it is difficult to see that permitting the JLs to enforce their claim (if successful) would involve any such contradiction.
 - e. Ultimately the question for the Court on this application is whether (assuming illegality can be established) there is a real prospect that the Court would refuse in principle to lend the JLs its assistance in suing the Active Defendants for the alleged fraud. The Active Defendants’ assertion that it should, appears to me on the authorities to which I have been referred, to be (at best) weak.
124. Related to the weak nature of the case is the fact that, as has emerged over the course of the hearing, the case as advanced is inadequately pleaded. It fails clearly to identify how the case is put against each of the proposed offenders and it fails to plead any inferential case notwithstanding that it would appear that the Active Defendants wish to run such a case. The mismatch between the pleaded case and the oral submissions at this hearing has led to a considerable degree of confusion and left Mr Wilson trying to deal (in only a few minutes at the end of the hearing) with the entirely different case that was advanced in Mr Dhillon’s reply submissions. The relationship between paragraph 210.3.5 and 210AA, and how the Active Defendants are advancing their “s164 conspiracy” claim against all of the individuals and entities identified in paragraph 210AA, remains opaque and indeed it now appears that the Active Defendants do not wish to maintain the reference to Grant Thornton, ARF, SCB and Carlyle in paragraph 210AA. I consider the inadequacy and uncertainty in the proposed pleading to be a strong factor militating against the grant of permission. This is not merely a question of the elegance of the pleading, but of its comprehensibility (see *Rose v Creativityetc Ltd* [2019] EWHC 1043 (Ch) at [50]). There cannot be any room for doubt as to the case the Claimants have to meet and the nature of the case with which this Court will be concerned in closing. It is far too late for the Active Defendants to be indicating on this application that the pleading can be “tweaked” to improve it or to remove some of the named entities. The trial is into its latter stages, with evidence coming to an end today (18 June 2026). There is a particular onus on a party seeking to make a very late amendment (which this is, for reasons I identify below) to ensure

that it satisfies the full requirements of a proper pleading (*Invest Bank* at [50]). There is now no scope for yet further amendments to be made to the Corrupt Inducement Allegation so as to try to cure the existing defects.

125. Even if I am wrong that there is no real prospect of success against Grant Thornton, the proposed amendment relating to Grant Thornton is quite obviously late, both for the reasons set out in the next paragraph and because, during submissions, at a time when he seemed to be contending that the offence was evidenced by a combination of the LOE and the RFA, Mr Dhillon suggested that its timing could be explained by reason of the late disclosure of the RFA: “the 164 offence could not be pleaded as we pleaded it until the RFA was disclosed on 27 April and then the draft plea was made by 1 May”. However, now that it is accepted that the offence cannot be made out against Grant Thornton by reference to the RFA, this is no longer a good excuse for delay. The Active Defendants have had the LOE in unredacted form since 10 April 2026 but have provided no excuse whatever as to why they could not have pleaded a case against Grant Thornton based on that document alone now that they appear to advance the offence against Grant Thornton only on the basis of that document. Mr Felton’s evidence does not assist in this regard. The amendment is late because (as I shall return to in a moment) it would plainly require the Claimants to revisit their evidence.
126. As against ARF, the Active Defendants did not have sight of the RFA until 27 April 2026 but they have long been aware of all of the facts set out in recital D on which they rely and I cannot see that they are really in a position where they could not have pleaded the commission of this offence had they identified the point at an earlier time. Accordingly this aspect of the amendment is also late. The core constituent elements of the proposed amendment have been known to the Active Defendants for years, as I address in more detail in respect of the Conflict Allegations. The alleged Grant Thornton Scheme, the restoration strategy, the role of SCB, the funding arrangements, the alleged conflicts and the JLs dealings with creditors all formed part of the hearings to which I have referred above. The recent disclosure has supplied a small amount of additional detail but it does not explain why the Corrupt Inducement Allegation could not have been pleaded long ago. It was plainly open to the Active Defendants to plead that allegation by reference to an inference and they did not need the new disclosure to do that.
127. Furthermore, against this background, it is difficult not to conclude that the late disclosure is being used by the Active Defendants as a convenient hook on which to hang a re-packaged allegation of illegality. I note in this regard that (as the Claimants correctly point out) it is not Mr Felton’s evidence that, but for the disclosure of the LOE and RFA, the Corrupt Inducement Allegation could not have been made. I note also that given the extent of the Active Defendants’ long-standing knowledge, there is no explanation from Mr Felton as to why a specific disclosure application was not made much earlier.
128. I accept that there will be significant prejudice to the JLs if the Corrupt Inducement Allegation were to be introduced into the case at this stage and I reject the Active Defendants’ contention that there can be no more relevant evidence to give. Mr Felton confirms that the Active Defendants do not wish to adduce further evidence in support of any of the matters which are the subject of the amendments, but this is a serious allegation and I am entirely unsurprised that Mr Diss confirms in his evidence (which I accept) that the Claimants would want to adduce factual and/or expert evidence in

response. Mr Felton asserts in his evidence that “the proposed amendments sought to be pleaded...were all fairly put to Mr Diss in cross-examination”, but to my mind, this misses the point. First Mr Diss was entitled to understand that the Corrupt Inducement Allegation was being made when he was being questioned, second the Claimants were entitled to have an opportunity to consider the evidence they may wish to call in response to that allegation and, third, there may well be other witnesses who had (and, if the amendment is permitted, would have) relevant evidence to give.

129. Mr Diss identifies four categories of potential evidence that the JLs would wish to adduce to address the amendments generally, including the circumstances of the JLs appointment and the commerciality of the funding arrangements, both of which I consider would be relevant and admissible in connection with the Corrupt Inducement Allegation. Indeed I consider that it would be contrary to the interests of justice and potentially highly damaging to the Claimants’ interests for such evidence to be excluded. I agree with Mr Diss’ evidence that the only proper course (if the amendment is permitted) would be for the Court to give the Claimants a fair opportunity to adduce this evidence. I am less clear that it would be appropriate for the Claimants to adduce further evidence of industry practice in relation to the pursuit and funding of litigation in an insolvency context (see my observations about *Dunelm* above), but I need not make a decision about that. Had this allegation been pleaded earlier the Claimants would have been afforded the opportunity to consider fully the evidence that would be required to address the allegations being made and would have prepared their evidence and prepared for trial more generally on that informed basis. I do not regard the fact that the Claimants’ immediate reaction to this proposed amendment (in a letter dated 10 May 2026) was to ask why the matter should be addressed otherwise than as part of closing submissions to shift the dial. This did not amount to consent to the amendments – indeed the letter expressly confirmed that the Claimants did not consent to the amendments. Nothing in this letter precludes the Claimants from making arguments as to prejudice, or anything else, in opposing the Active Defendants’ Application.
130. If the Claimants were to be given time in which to adduce this evidence, I have little doubt that the trial would be derailed. I agree with Mr Diss that it is impossible to see how such evidence could realistically be adduced and accommodated within the existing trial timetable. Accordingly, not only is the application late, but it is also very late. As Coulson J made clear in *CIP Properties* “[p]arties have a legitimate expectation that trial dates will be met and not adjourned without good reason”. I extrapolate in similar vein that parties have a legitimate expectation that their trial once commenced, will be completed without additional cost and disruption, save in exceptional cases. A heavy burden thus lies with the Active Defendants to justify the amendment and to show the strength of the new case and why justice requires it (*Quah Su-Ling* at [38(b)-(c)]). In my judgment they have not discharged that burden.
131. A final aspect potentially in the balance on the Claimants’ side of the scales is the evidence from Mr Diss that Gateley Legal has taken steps to make enquiries of Grant Thornton, SCB and Carlyle in order to ascertain what their position would be if the Corrupt Inducement Allegation were to be introduced into the case at this stage. He says in his evidence that he understands them to be considering their position and he goes on to say that consideration must be given to the possibility that any or all of them may wish to be joined in light of the allegations made against them. In a letter to the Court dated 7 June 2026, Grant Thornton expressed the view that the proposed

allegations were baseless and without merit. They pointed out that even if findings of the kind invited by the proposed allegations would not fix Grant Thornton with direct civil liability, they would impact its business, including in reporting and disclosure obligations to regulators and public bodies in this country and overseas, its relationships with clients, investors, insurers and others and in the professional and commercial standing of the firm and its individual members. They explained that if permission were to be given for the amendments they would be minded to request the Court's permission to adduce evidence and make representations.

132. I take these points (which seem to me to be entirely unsurprising) seriously. Although it is not clear from the letter that Grant Thornton would certainly take this course, there is plainly potential that it would decide to do so and even an application for permission to become involved would cause disruption to the trial. Although I accept the Active Defendants' submissions that they cannot be required to join third parties against their will (see *Pawley v Whitecross Dental Care Ltd* [2022] 1 WLR 2577 (CA) at [31]-[32]), the seriousness of the Corrupt Inducement Allegation (and the Conspiracy Allegation) render it entirely conceivable that one or more of these third parties may wish to be heard in connection with that allegation and, if that were the case, I consider that the Court would need to ensure a procedurally fair and realistic opportunity for them to make submissions as to how that should happen. Although not a determinative factor, this plainly creates a yet further risk of disruption to the trial in the event that the amendments were to be permitted.
133. Turning to the Active Defendants' side of the balance, I accept of course that there will be prejudice to the Active Defendants if the amendment is not permitted, not least because they will not be able to advance the Corrupt Inducement Allegation. However, that is just one countervailing factor to be considered and in my judgment it does not begin to tilt the balance in their favour, having regard to everything I have already said. Furthermore, as I have explained above, the Active Defendants have known the core facts on which they wish to rely for this plea for a very long time and have not adequately explained why they could not have pleaded the Corrupt Inducement Allegation long ago. In this context I record that during the course of his submissions Mr Dhillon took me to paragraph 26 of the existing CRRRAPOC which pleads that:

“The Claimant Companies were restored to the register at Companies House upon the application of SCB as creditor, and the Joint Liquidators appointed, in order to pursue the claims advanced herein”.

He observed that “[o]n its face there's not much missing for the 164 offence there; that certainly had got the foundation, subject to the agreements”. If this has been the Active Defendants' understanding since the outset of the claim (and the case was certainly opened on this basis as I have referred to above), it is entirely unclear and unexplained why they did not plead out a case based on their knowledge of the Grant Thornton Scheme at a much earlier date. Even if I am wrong as to the merits of the Corrupt Inducement Claim, I consider the remaining factors that I have identified on the Claimants' side of the balance to point overwhelmingly in favour of refusing the amendment.

134. In all the circumstances I refuse permission to amend to rely upon the Corrupt Inducement Allegation.

The Conspiracy Allegation

135. As I understood Mr Dhillon's submissions at the hearing, it is not suggested by the Active Defendants that they can maintain their amendment application in respect of the Conspiracy Allegation in circumstances where I refuse permission for the Corrupt Inducement Allegation. The Conspiracy Allegation is contingent upon the Corrupt Inducement Allegation. Accordingly, there is no need for me to consider this allegation further or to set out here the proposed amendments.
136. Accordingly, I also refuse permission to amend to rely upon the Conspiracy Allegation in paragraphs 210.1A, 210AA, 255B and 263A.

The Conflict Allegations

137. The final main tranche of amendments are proposed paragraphs that the Active Defendants wish to add to their existing plea of illegality in paragraphs 210.1 and 210.2 of the existing RADC. The Conflict Allegations are set out at paragraphs 210.3-210.4 of the proposed amended pleading and owing to their length I do not set them out in full here. They may be seen in their entirety in the Annex to this Judgment.
138. I observe at the outset that it is the Active Defendants' primary position that it is not necessary for them to amend their existing pleaded case on illegality in order to rely on evidence as to the JLs' own conduct as set out in the Conflict Allegations essentially (i) because there is no need to plead evidence which has only been pleaded "for good order"; (ii) the facts and matters pleaded are all matters on which they will be entitled to rely in support of other aspects of their case in any event; and (iii) various of these facts and matters have emerged in cross-examination of Mr Diss at trial (although on this latter point I observe that some of that evidence has only emerged because I permitted his cross-examination to continue *de bene esse*). If this submission is correct, and I need not determine it now, then there is no need for the amendment application in relation to the Conflict Allegations and my inclination is to dismiss it. The Active Defendants should not be wasting court time in the latter stages of a trial of this size and complexity by making an application to amend which they themselves say is unnecessary.
139. Nevertheless, the points have been fully argued and I must try to deal with them as swiftly as I can.
140. As I understood the Active Defendants' oral submissions (although it was not clear from their skeleton argument), they contend that the Conflict Allegations must be permitted as part of the existing illegality defence if that defence is manifest and obvious because "all of the evidence that is before the court can and indeed is required" and because the Conflict Allegations are "public interest factors relevant to that illegality plea". Alternatively they say that the Court is required to take them into account in any event in assessing public policy factors relevant to the existing illegality plea, because the evidence on which they are based has emerged during the course of the trial.
141. As to the first of these arguments, I was not really addressed as to the alleged manifest nature of the existing plea of illegality. However, I note that there is no suggestion in the Active Defendants' lengthy opening skeleton argument that the pleaded illegality

in 210.1-210.2 of the RADC is manifest and I cannot see that it would be appropriate at this stage of the trial (and without proper submissions) for me to make any such finding. The Claimants raise a legal argument in their opening skeleton in response by reference to *Bilta v Nazir* (No. 2) [2016] AC 1, which goes to the application of the *Patel v Mirza* test. However, I am not in a position to determine that this does not raise a serious dispute on the law and I was not invited to do so. Accordingly, I reject the submission that I must treat the existing pleading of illegality as manifest and so permit the Conflict Allegations without undertaking any form of balancing exercise.

142. Further, I make the additional point that the Conflict Allegations plainly do not go to the question of establishing the illegality (i.e. the participation of the Claimant Companies in the Alleged Fraud), but (rather) they are said by the Active Defendants to be designed to raise public policy factors relevant to the test as set out in *Patel v Mirza* (hence the new plea at paragraph 210.3 that “it would be contrary to public policy to allow the claims” in light of the Conflict Allegations that are then set out). There is however no attempt to identify the competing public policy on which they seek to rely. For my own part, I am not convinced that looking to see whether the existing plea of illegality is manifest or obvious is the right test when it comes to an amendment to plead particulars of relevant public policy (even assuming, for present purposes, that is what this amendment is seeking to do). In fact the Conflict Allegations go far beyond a mere plea of public policy.
143. In all the circumstances, I reject the suggestion that I must approach the Conflict Allegations in any way other than by applying the exercise of my discretion having regard to the overriding objective and the various authorities to which I have referred above and that is the approach that I shall take.
144. Applying that balancing exercise, I refuse permission to amend to plead the Conflict Allegations for the following reasons:
145. Notwithstanding the Active Defendants’ arguments that the Conflict Allegations are designed merely to identify relevant public policy factors, they in fact seek to introduce a new allegation of conflict of interest and breach of duty, not previously pleaded, said to arise from the funding arrangements and Grant Thornton’s interests in the funder. Thus at paragraph 210.3.3 they plead that:

“By reason of that conflict of interest, the Joint Liquidators have failed to conduct these proceedings solely in the interests of the Claimant Companies, the creditors of the Claimant Companies as a class, the public interest, and/or in compliance with their fiduciary duties to the Claimant Companies, and/or their duties as officeholders under the Insolvency Act 1986, but have instead conducted them for the sole or dominant purpose of furthering and/or preferring their own personal interests and/or those of Grant Thornton LLP and ARF”.
146. This extremely serious allegation goes well beyond the existing plea of conflict in the consideration of the Inbound Claims pleaded at paragraphs 245B.1-245B.5 of the RADC and I agree with Mr Wilson that it represents an entirely new attack on the

conduct of these proceedings together with new allegations of breach of duty in the conduct of the liquidation. In the circumstances, I also agree that while the Conflict Allegations have been pleaded as particulars of public policy, they in fact represent a new case in respect of which it is necessary for the Active Defendants to establish a real prospect of success. I cannot see that the principle in *Scott v Singh* to which I have referred above applies.

147. Furthermore, I consider that (as Mr Diss confirms in his evidence) the essential elements of this case have long been known to the Active Defendants, as is clear from the judgments in the earlier hearings in these proceedings (referred to above) together with the evidence and skeleton arguments served on behalf of the Active Defendants for the purposes of those hearings to which I was referred by Mr Wilson.
148. The Active Defendants have long known of (i) the existence of the Grant Thornton Scheme; (ii) that it was a pre-planned arrangement between Grant Thornton, ARF and SCB conceived in or around 2019; (iii) that under that scheme Grant Thornton procured funding through an associated entity; (iv) that the associated entity was ARF; (v) that Grant Thornton had an interest in ARF; (vi) that ARF and through ARF, Grant Thornton, have a financial interest in the recoveries from these proceedings which is very substantial; (vii) that an aspect of the Grant Thornton Scheme was that Grant Thornton reached an agreement with SCB to procure liquidators from within its own firm; (viii) the potential to argue that the JLs are therefore in a position of conflict – an argument they have been advancing in detail from the outset of these proceedings – and that that conflict arose by reason of Grant Thornton’s interest in ARF and its financial interest in the recoveries.
149. In a skeleton argument challenging the freezing injunction for the hearing in October 2022, the Third Defendant referred to the reliance by the JLs on “the device of liquidation” and asserted that a question arose as to “whether the whole scheme amounted to an improper contrived misuse of the corporate insolvency regime and an abuse of process”. Looking at paragraph 210.3.1 of the Conflict Allegations, this is essentially the plea that the Active Defendants now seek to make over three and a half years later in the closing stages of the trial:
- “210.3.1 As set out in paragraph 74.1 above, these proceedings were brought pursuant to a scheme agreed between Grant Thornton and SCB, under which Grant Thornton procured funding through an associated company (now known to be ARF SV1 Sarl or “ARF”) and through which it has a financial interest in any recoveries from these proceedings. As revealed by recent disclosure, under the terms of this funding ARF and Grant Thornton will receive a significant proportion (and depending on the amount recovered, up to 100%) of recoveries. Further, the majority investor in ARF was the Carlyle Group who, at all material times, cooperated, acted and worked with Grant Thornton for the purpose of implementing the said scheme”.
150. It is asserted in paragraph 210.3.1 of the Conflict Allegations and/or in the evidence of Mr Felton that:

- a. the identity of ARF has only recently become known, but that is neither correct nor relevant where the Active Defendants have long known of the involvement of a funder;
 - b. that the extent of ARF and Grant Thornton's interest in any recoveries has only recently been revealed. However, the fact that they would receive a significant proportion has been known at least since the service of the affidavit of Mr Diss in support of the freezing injunction (and positively relied upon by the Active Defendants in support of their attempt in 2023 to strike out these proceedings on the grounds of abuse of process). Although there is a new plea that, depending on the amount recovered, that proportion could be up to 100%, there is no suggestion that the conflict or breach of duty arises purely because the quantum of the recoveries is beyond a certain level; and
 - c. that Carlyle has recently been revealed as Grant Thornton's partner in the ARF, but the identity of Grant Thornton's commercial partner is immaterial to the central complaint.
151. The essential plea is that Grant Thornton's financial interest creates a conflict – the very essence of the complaint that the Active Defendants have made (but not pleaded) from the outset of these proceedings. Mr Felton's evidence appears to suggest that paragraph 210.3.1 arises out of an existing allegation at 74.1 of the RADC but looking at that paragraph it is clear that (despite the Active Defendants' knowledge of the issue) the Grant Thornton Scheme has not been relied upon previously by way of substantive defence in the proceedings or to raise positive allegations of breach of duty (or indeed to plead an unlawful means conspiracy).
152. At 210.3.2 of the Conflict Particulars, the Active Defendants assert a conflict on the part of the JLs in their conduct of these proceedings and/or the liquidation of the Claimant Companies. Again, however, this complaint is not new and Mr Felton does not suggest that it arises out of any recent disclosure. It is little more than a re-packaging of complaints that the Active Defendants have made before but never sought to plead. The same applies to paragraph 210.3.3 (set out above). While the allegations of breach of duty are new, the underlying factual allegation is one that the Active Defendants have long been in a position to make and have effectively made before (see the extract from the judgment of Miles J at [170] set out above). The same applies to paragraph 210.3.4(i), which is in fact already pleaded in a different context. Mr Felton seeks to rely upon recent disclosure provided on 27 April 2026 but (at most) this disclosure provided only additional evidence of a case on conflict that the Active Defendants could have pleaded long ago.
153. As for 210.3.4(ii)-(v):
- a. 210.3.4(ii): Mr Felton suggests that it was only on sight of recent disclosure (which he does not identify) that the JL's decision not to pursue the Amicorp Group, the Amicorp Entities or any of the Amicorp Individuals or BSI "became significant", but the Active Defendants have long been in a position to make this substantive allegation given their view of the conflict under which they have always complained the JLs have been operating.

- b. 210.3.4(iii): Mr Felton asserts that the fact that the JL's decision to enter into the Amicorp, Arts and Kothari Settlement Agreements for no or no adequate consideration meant that the Amicorp Entities became co-funders of and/or co-investors in the Claimants' claims only became clear "after the funding arrangements for Project Damocles were revealed by the Claimants' recent disclosures", but this is erroneous. Unredacted versions of each of these settlement agreements were provided to the Active Defendants on 9 December 2025, 23 December 2025 and 14 May 2025 respectively. These agreements do not reveal the precise terms of the funding arrangements, but the fact that the claims are being funded and that Grant Thornton has an interest in the funder (and through it any recoveries) has long been known. From the date of receipt of the Amicorp Settlement Agreement in December 2025 the Active Defendants have known that a settlement sum was paid by the Amicorp entities which, depending on recoveries, might be repaid.
 - c. 210.3.4(iv): Mr Felton makes no attempt to suggest that the JL's conduct in not contacting Winsome and Forever Precious to submit proofs of debt has not always been known to the Active Defendants. He does say that the JLs' communications with the Consortium Banks were only revealed during the trial (and this is correct) but the Active Defendants did not need to have sight of those communications to make this point.
 - d. 210.3.4(v): The information that the JLs decided to pay, in full, debts submitted for proof in the liquidation of Holdwave Trading Limited (the Third Claimant) by CapShire (UK) LLP and Waybar Trading Limited is not new. It is recorded in Holdwave's 2021 progress report which has been publicly available since 4 January 2022. The particular documents on which the Active Defendants rely were first disclosed on 13 February 2026 (as Mr Felton concedes).
154. Pausing there, I consider both the fact that these allegations are not really new and the fact that the late attempt to rely upon them has not been properly explained (and in some cases has been "dressed up" to support the proposition that they could not have been pleaded prior to recent disclosure) to be significant factors weighing against the grant of permission.
155. The remaining paragraphs of the Conflict Allegations (at 210.3.4(vi)(a)-(d)) which attack decisions made by the JLs in these proceedings on the grounds that undue or improper pressure has been placed on the Active Defendants with a view to securing a settlement, including by obtaining the Worldwide Freezing Order, not divulging the existence of the Returned Billion (an aspect of the funds flow relied upon as part of the tracing exercise), failing to give timely disclosure and/or resisting applications for disclosure. Essentially it appears to be the Active Defendants' case that but for the conflict of interest on which they wish to rely, different decisions would have been made.
156. Mr Felton's statement acknowledges that the plea in 210.3.4(vi) of undue or improper pressure "arises from a number of documents disclosed by the Claimants" (i.e. not just from late disclosure) but then suggests that this is "made most clear" in Mr Wood's investment memorandum disclosed in unredacted form on 15 April 2026. However, he does not say that the allegation could not have been pleaded without this document and he provides no other explanation for the failure to plead the point earlier. The particulars

pleaded at (a)-(d) which I have summarised in the preceding paragraph do not rely on recent disclosure. As for 210.3.4(vii), which asserts that the JLs are pursuing the claims in the proceedings regardless of whether or not the Claimant Companies are liable to the Consortium Banks such that the Claimant Companies would receive the full benefit of their participation in the Alleged fraud even if the Court determined that they have no liability to the Consortium Banks, Mr Felton does not suggest that this is a matter that has emerged from disclosure. Instead he says that this became apparent for the first time in opening submissions. However, he does not suggest that the substantive allegation made in paragraph 210.3.3 could not have been made without this understanding.

157. Once again, I consider there to be no good reason why the core allegations made in these paragraphs could not have been made earlier and the Active Defendants have provided no good explanation for this omission.
158. As for prejudice to the Claimants if the amendments were to be permitted, I need only point to the fact that this new pleading now includes a serious and reputationally damaging allegation of breach of duty not only against Mr Diss, but also against Mr Wood (who has not given evidence in the trial), for it to be plain that justice would require the Claimants to have an opportunity to call further evidence and Mr Diss confirms that they would wish to do so. Indeed it seems very likely that they would wish to recall Mr Diss (as Mr Wilson confirmed) and they should at least have the opportunity to consider whether to call Mr Wood for the first time. Further, in relation to the Conflict Allegations, I can see no immediate objection (although I do not need to decide the point) to the Claimants calling evidence in all four categories identified by Mr Diss in his statement, including expert evidence of industry practice in relation to the pursuit and funding of litigation in an insolvency context, the commerciality of the funding arrangements and the industry practice in relation to assistance as regards the submission of proofs of debt. While there is an argument over whether evidence of this type is relevant to the Corrupt Inducement Allegation, it would appear to me to be potentially relevant to (and admissible in respect of) the Conflict Allegations.
159. The fact that new evidence will be required and the trial thereby derailed (as I have already found above) immediately takes the Conflict Allegations at 210.3, 210.3.1, 210.3.2, 210.3.3 and 210.3.4(i)-(v) into the very late category because, as I have already said, there is no scope in the existing timetable for further evidence, just as there is no time for the Claimants to consider what further evidence they wish to call. This appears to me to be an overwhelming reason for refusing the application for permission.
160. I heard detailed oral submissions from Mr Wilson as to the lack of merit of the Conflict Allegations, but (as I have said) this is not a mini-trial and it would not be appropriate to address these in any detail.
161. In brief summary, however, I am inclined to think that there would be very significant obstacles to success in making various of these allegations which have not been addressed by the Active Defendants. These include: (i) the no conflict rule does not apply to ordinary commercial dealings or to the conduct of litigation; (ii) the fiduciary duties of liquidators are owed to the insolvent company and its estate, with those duties being exercised for the benefit of creditors; (iii) conflicts on the part of the fiduciary may be permissible with the informed consent of the principal; (iv) a conflict of interests presupposes a misalignment between the interests of a fiduciary and the principal; (v)

strangers to the fiduciary relationship (as the Active Defendants are) cannot complain of a breach of fiduciary duty; (vi) the JLs owe no duties to the Active Defendants in the litigation (see *Trent Strategic Health Authority v Jain* [2009] 1 AC 853 at [30]-[31]) and accordingly any complaints about the conduct of the proceedings arise only pursuant to the provisions of the CPR (and the Active Defendants have already made an unsuccessful attempt to strike out the claim for abuse of process).

162. The Active Defendants submit that where issues of conflict are already in play, it is in the interests of justice to permit an amendment which provides further particulars in respect of that conflict – they say (relying upon *Toucan*) that this is an issue that the parties have already been addressing. However, the proposition upon which they rely (at [9] in the annex to the judgment in *Toucan*) makes clear that “[i]t is relevant to have regard to the degree to which the case sought to be advanced by the amendment is one that the parties have in fact already been addressing”. While it is true that the existing RADC raises a conflict issue, that issue is raised (in a very limited way) solely in connection with the Inbound Claims. It involves no allegation of breach of duty and it is not said to be relevant to any defence of illegality. Most of the facts and matters now raised in the Conflict Allegations have never previously been pleaded or addressed in the context of the dispute which is the subject matter of this trial. It has also never previously been suggested that these facts and matters raise a public policy factor which is to be taken into account when considering the illegality defence. The Claimants have not addressed the case that the Active Defendants now seek to advance in their evidence for trial (and expressly objected to it on the second day of trial), but they would plainly be entitled to do so if the amendment were to be permitted. I consider this to be a very different situation from that which applies to the Claimants’ proposed amendment at paragraph 142A of its CRRRAPOC.
163. It is also for these reasons that I consider Mr Dhillon’s submission that it would be unjust for the Court to determine the conflict issue in relation to the Inbound Claims but (in the event it makes a positive finding) ignore it in respect of the illegality defence, to be misconceived. The existing pleadings on conflicts are limited and (without having heard submissions on the point) I observe that it is not immediately obvious that they are central to the public policy considerations at the first stage of the *Patel v Mirza* test.
164. Finally, the only countervailing factor in favour of permitting the amendment is the fact that the Active Defendants would be precluded from relying upon these allegations at trial in support of their existing illegality defence. But where much of this could have been pleaded previously, they have only themselves to blame. There are very strong factors which militate against the grant of permission. In any event (as I have said) they contend that the amendment is not needed.
165. Applying the principles I have referred to earlier in this judgment, I refuse to permit the amendments to introduce the Conflict Allegations. This includes the amendment to paragraph 242 and 245.1 which are parasitic upon these amendments.

Remaining Additional Proposed Amendment

166. Very little time was spent at the hearing on the remaining paragraph of the proposed amended pleading but I must deal with it briefly.
167. The Active Defendants seek to amend paragraph 245.2 of the RADC to plead that:

“Further or alternatively, the Court should not exercise its discretion to award relief under section 423 and/or 425 of the 1986 Act having regard to:...

245.2 in the event that (contrary to paragraph 208.4 above) claims under s. 423 of the 1986 Act are not subject to a 6-year limitation period, the Claimant Companies’ failure to bringing (sic) claims in their own names within the relevant limitation period, as set out at paragraphs 207 to 209 above and the Voluntary Further Particulars of Paragraph 209 dated 30 January 2026”.

168. As I understand it, this proposed amendment has been prompted by a letter from the Claimants dated 16 March 2026 in which they stated that it is now clear from the recent decision of the Supreme Court in *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6 (“*Zedra*”) that claims under section 423 of the 1986 Act either have no limitation period or a limitation period of 12 years and that in the circumstances there is no limitation defence to their claim under section 423. The Active Defendants do not accept that *Zedra* applies to section 423 claims as is clear from their written opening submissions.
169. The Claimants have now provided the Court with a proposed amended pleading addressing the pure point of law on which they rely in *Zedra* (albeit that this has only been provided since the date of the hearing of the Active Defendants’ Application). By a letter of today’s date, the Active Defendants have consented to that amendment on condition that their own amendment in paragraph 245.2 is also consented to.
170. I have seen no response to this correspondence but applying the ordinary principles on amendments referred to above, I consider that both the Claimants’ revised pleading and this paragraph in the Active Defendants’ proposed amendments should be permitted. The Active Defendants’ amendment is plainly intended to be responsive to a change in the Claimants’ legal case prompted by *Zedra*. It addresses a pure point of law and is no more than an expansion of the case already set out. No prejudice to the Claimants was suggested and no new evidence can possibly be required to address the amendment. The matter can be addressed by way of legal submissions in closing.
171. Although Mr Kell for the Claimants submitted that the amendment is circular, I understand it to be saying no more than that if the section 423 claim is not time-barred, the Active Defendants are nevertheless entitled to point to the fact that the Claimants could have brought their own claims within the relevant limitation period when the Court exercises its discretion as to relief in respect of the section 423 claim.
172. I do not consider it to be contrary to the requirements of the overriding objective to permit this amendment, notwithstanding its late introduction. As a pure point of law, both sides will have every opportunity to make submissions in closing.

Conclusion

173. I now invite the parties to provide the Court with final versions of their pleadings as soon as possible which reflect the decisions I have made in this judgment.

ANNEX

Claim No: BL-2022-000913

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHD)

BETWEEN:

- (1) HARRINGTON & CHARLES TRADING COMPANY LIMITED
(IN LIQUIDATION)
- (2) BRAMHALL & LONSDALE LIMITED (IN LIQUIDATION)
- (3) HOLDWAVE TRADING LIMITED (IN LIQUIDATION)
- (4) OC305234 LLP (IN LIQUIDATION)
- (5) OCEANROAD GLOBAL SERVICES LIMITED (IN LIQUIDATION)
- (6) CONNECOR (UK) LIMITED (IN LIQUIDATION)
- (7) COLIN DISS (AS JOINT LIQUIDATOR OF THE FIRST TO SIXTH
CLAIMANTS)
- (8) NICHOLAS STEWART WOOD (AS JOINT LIQUIDATOR OF THE FIRST TO
SIXTH CLAIMANTS)
- (9) DOCKLANDS INVESTMENT LIMITED (IN LIQUIDATION)

Claimants

-and-

- (1) JATIN RAJNIKANT MEHTA
- (2) SONIA MEHTA
- (3) VISHAL JATIN MEHTA
- (4) SURAJ JATIN MEHTA
- (5) HAYTHAM SALMAN ALI ABU OBIDAH
- (6) IIA TECHNOLOGIES PTE LIMITED
- (7) POLISHING TECHNOLOGIES PTE LIMITED
- (8) APURVA KOTHARI

Defendants

DRAFT RE-RE-AMENDMENTS TO THE DEFENCE AND COUNTERCLAIM

OF THE FIRST TO FOURTH AND SIXTH DEFENDANTS

Illegality, Ex Turpi Causa, and Unclean Hands

210. The Family/IIA Defendants also aver that:

210.1. On the Claimants' own case, the Claimant Companies not only participated in the Alleged Fraud, but by their claims (including those brought by the Joint Liquidators) seek to recover (in their own right and not as trustee for any other person) moneys said to represent the very proceeds of the Alleged Fraud such that their ~~Claimant Companies'~~ causes of action are reliant on their own wrongdoing and there is a real and close connection between their wrongdoing and the claims which they now seek to advance.

210.1A Further or alternatively, these proceedings have been brought as a result of the Joint Liquidators' unlawful conduct pursuant to the GT Conspiracy as defined at paragraph 210AA below.

210.2. As such:

210.2.1. It would be contrary to the public policy of the English courts and harmful to the integrity of the legal system to allow the Claimants to enforce any of the Alleged Claims in Section D to the CRRRAPOC. As such, the Family/IIA Defendants have a complete illegality defence to the Alleged Claims.

210.2.2. Further or alternatively, the Claimants are prevented from advancing their claim in unlawful means conspiracy by reason of the maxim *ex turpi causa non oritur actio*.

210.2.3. Further or in the further alternative to paragraph 210.2.1, the Claimant Companies are not entitled to any equitable relief or assistance from the Court on the basis that they do not come to the Court with clean hands.

210.3. In particular, it would be contrary to public policy to allow the claims in circumstances where:

210.3.1. As set out in paragraph 74.1 above, these proceedings were brought pursuant to a scheme agreed between Grant Thornton and SCB, under which Grant Thornton procured funding through an associated company (now known to be ARF SV1 Sarl or “ARF”) and through which it has a financial interest in any recoveries from these proceedings. As revealed by recent disclosure, under the terms of this funding ARF and Grant Thornton will receive a significant proportion (and depending on the amount recovered, up to 100%) of recoveries. Further, the majority investor in ARF was the Carlyle Group who, at all material times, cooperated, acted and worked with Grant Thornton for the purpose of implementing the said scheme.

210.3.2. As set out in paragraph 245B.1 below, the Joint Liquidators, by reason of their membership of Grant Thornton, are thereby in a position of conflict in their conduct of these proceedings and/or the liquidation of the Claimant Companies.

210.3.3. By reason of that conflict of interest, the Joint Liquidators have failed to conduct these proceedings solely in the interests of the Claimant Companies, the creditors of the Claimant Companies as a class, the public interest, and/or in compliance with their fiduciary duties to the Claimant Companies, and/or their duties as officeholders under the Insolvency Act 1986, but have instead conducted them for the sole or dominant purpose of furthering and/or preferring their own personal interests and/or those of Grant Thornton LLP and ARF.

210.3.4. The Family/IIA Defendants will rely, without limitation, upon the following conduct of the Joint Liquidators:

(i) Not to contest the Inbound Claims (see paragraph 245B below) and instead to procure the Consortium Banks to submit revised proofs of debt prior to trial in a form devised and advised by, and edited and approved in draft by, the Joint Liquidators, but for which the Claimants would have

- no sustainable claims for loss against the Family/IIA Defendants;
- (ii) Not to issue and pursue any claims against the Amicorp Group, the Amicorp Entities or any of the Amicorp Individuals, or against BSI in these proceedings or any other proceedings;
 - (iii) To enter into the Amicorp, Arts and Kothari Settlement Agreements (as pleaded at paragraphs 41A-41B, 61A and 65A-65B above) for no or no adequate or reasonable consideration or value and with the consequence that the Amicorp Entities became co-funders of and/or co-investors and/or financially interested in the Claimants' claims;
 - (iv) Not to contact Winsome or Forever Precious as potential creditors of the Claimant Companies and/or not to invite Winsome or Forever Precious to submit proofs of debt in the manner in which the Joint Liquidators engaged with the Consortium Banks, or at all;
 - (v) To pay, in full, the debts submitted for proof by CapShire (UK) LLP and Waybar Trading Limited in the liquidation of Holdwave Trading Limited (the Third Claimant), in breach of the *pari passu* principle and without the consent of all the creditors of the company;
 - (vi) To conduct these proceedings in a manner which has the object and/or effect of subjecting the Family Defendants to undue or improper pressure in order to secure settlement, including by
 - a. obtaining, against each of the Family Defendants, a Passport Surrender Order and a Worldwide Freezing Order for up to £743,176,152.77 (the Sterling equivalent of \$932,466,942.36) (the “WFO”), on the basis that that sum had been received by or for the benefit of the Family Defendants;
 - b. despite becoming aware of the Returned Billion by no

- later May 2023, not divulging the same to the Active Defendants or the Court until 30 June 2025 but instead continuing to issue, pursue and/or threaten applications under the WFO up to and including 30 April 2025 (and including at the 1st CMC in June 2024 at which the Claimants relied upon the funds flow diagram as presented at the original application for the WFO despite necessarily being aware that this diagram was no longer accurate);
- c. failing to give, full, proper and timely disclosure of documents to the Active Defendants and/or by unreasonably resisting the Active Defendants' requests and applications for such disclosure thereby causing prejudice to the Active Defendants; and
 - d. acting as set out in paragraphs 210.3.4(i) and 210.3.4(ii) above and 210.3.4(iv) and 210AA below.
- (vii) Having failed to engineer such a settlement, to pursue the Claimant Companies' claims in fiduciary duty, dishonest assistance and knowing receipt even if the Court determines that the Claimant Companies are under no liability to the Consortium Banks, with the consequence that the Claimant Companies (and their shareholders and/or ultimate beneficial owners) would receive the full benefit of their participation in the Alleged Fraud.

210.3.5 Further, the Family/IIA Defendants will rely upon the arrangements between (i) Grant Thornton LLP and SCB as set out in an engagement letter dated 20 November 2019, and/or (ii) ARF and SCB as set out in the Recoveries Funding Agreement dated 24 April 2020 as constituting corrupt inducements contrary to s. 164 Insolvency Act 1986, whereby Grant Thornton and/or ARF offered to and did provide to SCB valuable consideration in the form of investigative services and advice and/or funding with a view to

securing the appointment of a liquidator from Grant Thornton and/or the Joint Liquidators as liquidators.

210AA. Further or alternatively, by virtue of the matters pleaded at paragraph 210.3.1-210.3.5 above, the Grant Thornton Scheme amounts to an unlawful means conspiracy (the “GT Conspiracy”) between the Joint Liquidators individually and between the Joint Liquidators severally, Grant Thornton LLP, SCB, ARF and/or the Carlyle Group in order to secure the corrupt appointment of the Joint Liquidators contrary to s. 164 Insolvency Act 1986 and with the intention of bringing and pursuing these proceedings against the Family/IIA Defendants in the manner described at paragraphs 210.3.3 and 210.3.4 and thereby harming the Family/IIA Defendants. But for the GT Conspiracy, these proceedings would not have been issued and the Claimants’ claims against the Family/IIA Defendants would never have been made and/or pursued by the Claimants. The loss caused to the Family/IIA Defendants by the GT Conspiracy is set out in paragraph 263A below.

D7. Section 213 of the Insolvency Act 1986

[...]

242. As to paragraph 154, if, which is denied, the Claimant Companies have suffered any loss compensatable by an order under s.213(2), it is denied that loss has been suffered as a result of any activity of the Family Defendants. As a result, it is denied that the Joint Liquidators are entitled to relief under section 213(2) of the Insolvency Act 1986 against the Family Defendants. Further or alternatively, the Court should not exercise its discretion to award any such relief having regard to the matters pleaded at paragraph 210.3 above.

D8. Section 423 of the Insolvency Act 1986

245. In the premises, paragraph 157 is denied. The Joint Liquidators have no basis for bringing a claim under section 423(a) of the 1986 Act against the First to Fourth and Sixth Defendants and therefore any entitlement to relief under section 425. Further or alternatively, the Court should not exercise its discretion to award relief under section

423 and/or 425 of the 1986 Act having regard to:

245.1 the matters pleaded at paragraph 210.3 above; and/or

245.2 in the event that (contrary to paragraph 208.4 above) claims under s. 423 of the 1986 Act are not subject to a 6-year limitation period, the Claimant Companies' failure to bringing claims in their own names within the relevant limitation period, as set out at paragraphs 207 to 209 above and the Voluntary Further Particulars of Paragraph 209 dated 30 January 2026.

[...]

E. ALLEGED ENTITLEMENT TO RELIEF

255B. Further and in any event, the Family/IIA Defendants have a complete defence to all of the Claimants' claims by reason of circuitry of action for the reasons given at paragraph 263A below.

F. COUNTERCLAIM IN CONSPIRACY

[...]

263A. The Family/IIA Defendants further counterclaim against the Joint Liquidators by reason of the Joint Liquidators' participation in the GT Conspiracy as pleaded at paragraph 210AA, in consequence of which the Family/IIA Defendants have suffered loss and damage including (without limitation):

263A.1 Any amount by which they are found liable pursuant to the Claimants' claims in these proceedings.

263A.1. Their full costs of defending these proceedings.

263A.2. Losses resulting from the Worldwide Freezing Orders obtained by the Claimants in these proceedings.

263A.3. Reputational damage and consequential loss of business opportunities resulting from their being named as defendants in these proceedings.