



Neutral Citation Number: [2021] EWHC 2416 (Ch)

IN THE HIGH COURT OF JUSTICE

Claim No. BL-2018-001625

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (CHD)

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

Date: 6 September 2021

Before: Mr M H Rosen QC, sitting as a Judge of the Chancery Division

BETWEEN:-

MARS CAPITAL FINANCE LIMITED

Claimant

-and-

(1) MR ZAHID HUSSAIN

(2) MR COSTAS PAPACHRISTOFOROU

(3) MRS KYRIACOULLA PAPACHRISTOFOROU

~~(4) MR DEMITRAKIS TSOLAKIDES~~

~~(5) MRS SOPHIA KTORI~~

Defendants

Mr Thomas Grant QC and Mr Laurie Brock of Counsel
(instructed by Teacher Stern LLP) appeared on behalf of the Claimant

The First Defendant appeared in person. The Second and Third Defendants did not appear and were not represented

Hearing Dates: 21, 22, 23, 26 and 27 July 2021

JUDGMENT

Covid-19 Protocol: this judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 6 September 2021 at 10:00 am.

MR M H ROSEN QC, SITTING AS A JUDGE OF THE CHANCERY DIVISION:

(1) Introduction

1. In these proceedings, the Claimant finance company ('Mars') on one side, and the First Defendant Mr Zahid (also known as John) Hussain and the Second and Third Defendants Mr and Mrs Costas and Kyriacoulla Papachristoforou on the other side, seek opposing declarations relating to various loans and mortgages originally taken by the Defendants from the UK branch of the Cyprus Popular Bank Public Company Limited ('the Popular Bank') trading under the name 'Laiki Bank'. Mars alleges and the Defendants deny that such loans and mortgages have been validly transferred via the Bank of Cyprus to Mars and that it is entitled to take enforcement action as regards the same.
2. The proceedings were issued on 18 July 2018 and the original five defendants served a Defence and Counterclaim dated 10 October 2018 subsequently amended on 30 March 2020. During at least that period, when disclosure and exchange of witness statements and experts reports took place, their solicitors were Emms Gilmore Liberson ('EGL', later called Knights). The Fourth and Fifth Defendants Mr Demitrikis Tsokalides and Mrs Sophia Ktori settled their dispute with Mars by a consent order dated 7 June 2021, after those solicitors had come off the record for the First to Third Defendants in January 2021, seemingly due to some perceived conflict of interest.
3. The trial, first listed for May 2020 but adjourned for COVID-related reasons to January 2021 (when Mars served its then skeleton) was further adjourned to late July 2021 in the light of the First to Third Defendants' difficulties without their former solicitors. In the event the First to Third Defendants did not engage new solicitors thereafter. A further adjournment application was refused by Mr Justice Michael Green on 22 June 2021 and Mr Hussain then conducted the (remote) trial for himself, with the assistance of his brother Masud Husain, whom he described as a banker in Amsterdam and who co-authored Mr Hussain's written submissions. Mr and Mrs Papachristoforou did not attend or otherwise participate, or even respond to the notifications of trial.
4. In the result, the trial might be said to have been in a number of ways 'one-sided' or unbalanced. Mars were represented throughout by Thomas Grant QC and Laurie Brock of counsel instructed by Mars' solicitors Teacher Stern, who fully addressed

the pleaded issues. Mr Hussain gave and made little if any coherent evidence or submissions going directly to those issues. Instead he devoted himself orally and in writing to repeated collateral attacks, some long-standing and others still evolving, on the conduct of the Popular Bank, Mars, its solicitors and others, alleging fraud and forgery at every conceivable (if often irrational) turn.

5. The function of the trial judge in such circumstances was to ensure that fairness and justice still prevailed. This required significant endeavour to assist Mr Hussain to understand, identify and explain any relevant points and to allow him to develop whatever might reasonably support or oppose the rival declarations sought. This judgment seeks to explain the legal issues and the documented facts as they unravelled. As always, the superior legal resources of one side compared to the other should not allow for its case to pass without critical scrutiny and the inability of the opposing party to concentrate on relevant matters without diversions should not be allowed to overwhelm any case on the merits. Mr Husain's case did not grapple with those issues or facts but instead depended on his, in the event unwisely, seeking to sweep away all the documents as fabricated. That was a task which, for a host of reasons, was entirely beyond him. But that was of necessity not the end of the determination of Mars' title to the loans and mortgages which the Defendants had put into question.

(2) Background - the loans and mortgages

6. The relevant documents of the Popular Bank, for which alleged copies were put into evidence, show in the case of Mr Hussain, two loans under letters dated 6 June and 1 December 2006 initially for £168,000 and £330,000, and a current account (no. 81079816 (allegedly at one point over £47,000 overdrawn); and four legal mortgages in standard form over four separate properties in Sutton Coldfield, West Midlands dated 13 December 2002, 3 November 2005, 7 August 2006 and 5 March 2007. One of these was in respect of Mr Hussain's residence at 57 Stonehouse Road, Boldmere B73 6LL, and the other three were over buy-to-let flats which he acquired (respectively Flats 1, 2 and 15 Arbor Court) at 295, 293 and 301 Penns Lane, Walmley B76 1NA.
7. In the case of Mr and Mrs Papachristoforou, there were ten loans under facility letters dated between 19 May 2005 and 8 May 2009 for varying amounts of between £65,000 and £220,000; and two standard legal mortgages dated 7 October 2002 and 3 June 2003 in respect of their home at The Lodge, Quarry Park Road, Norton, Stourbridge DY8 2RE and another property at 107 Bromford Lane B24 8JR respectively.

8. Each of the loans was governed by the Popular Bank's standard terms and conditions, updated from time to time, referred to in and attached to the facility letters. At trial Mr Husain denied that any of what appeared as his signatures on these copy documents were his. He said that he was dyslexic and had learnt to read only during these proceedings and in preparation for the trial. He denied that the copy facility letters and terms and conditions relied on by Mars were genuine, in the absence of its producing the Popular Bank's originals and given what he claimed to be documentary anomalies such as page numbering and line spacing.
9. He did not produce any alternative documentation but claimed among other things that an earlier version of the standard terms and conditions in a letter offering previous facilities, which did not contain a provision relating to the transferability of the loans, went to prove that later alleged versions were false.
10. However there was little put in dispute on the pleadings as regards the loans and the mortgages. Whilst the Defence denied four out of the ten loans to Mr and Mrs Papachristoforou, and Mr Hussain said that he had long disputed with the Popular Bank and since, the amounts outstanding on his loans, he admitted taking the loans alleged, for which he ceased making any repayments after they were allegedly transferred from the Popular Bank and from at least 2014 (whilst continuing to receive the rents totalling over £1,500 per month from his three buy-to-let properties).
11. Mr Hussain also claimed that, in or about November 2009, the manager of the Popular Bank's UK branch a Mr Tasos Dimitriou orally agreed to release the mortgage over 295 Penns Lane; but he adduced no documents as would usually be necessary in support of this otherwise bare assertion. Indeed, on 20 December 2012, in proceedings 1BM73006 ('the 2012 Birmingham possession proceedings') a District Judge of the Birmingham County Court made a possession order in favour of the Popular Bank against Mr Hussain in respect of this and the other two Arbor Court flats, wholly inconsistent with any such assertion.
12. Similarly whilst the Amended Defence and Counterclaim contained a bare denial of Mr Hussain's current account, he could not and did not maintain that in evidence, and indeed a complaint letter written to the Popular Bank on Mr Hussain's behalf in March 2012 expressly mentioned it. I must unfortunately refer separately below to some of the other outlandish and groundless allegations made by Mr Hussain.
13. As for Mr and Mrs Papachristoforou, their witness statements expressly accepted that their ten loans were made and the bank statements show repayments. Unlike Mr Hussain, they did not deny accepting the standard loan terms and conditions; indeed,

in several cases, these were specifically and separately signed. Mr Papachristoforou's witness statement said only that he did not recall signing or accepting them.

(3) The transfer from the Popular Bank to the Bank of Cyprus

14. By early 2013, the Popular Bank (second in size in Cyprus only to the Bank of Cyprus) was at imminent risk of insolvency, part of a critical state of collapse for Cyprus' entire economy and banking system, apparent from a judgment of the Supreme Court of Cyprus in the case of *Christodoulou* referred to further below.
15. In response to that situation, the Cyprus parliament enacted the Resolution of Credit and Other Institutions Law of 22 March 2013 which provided for a 'Resolution Authority', namely the Central Bank of Cyprus ('the CBC', to be distinguished from the Bank of Cyprus) with an executive 'Resolution Committee' as its decision-making body: their primary responsibility was 'the implementation of the provisions of this Law, the taking of decisions and the issue of decrees and/or directives, as the case may be, pursuant to the provisions of this Law'. Their powers under the 2013 Resolution etc Law included:-
 - (a) The power to adopt 'resolution measures', with a view to achieving one or more of identified objectives including ensuring continuity in the provision of critical banking or financial services; preventing the creation or propagation of risks which could have possible adverse effects on the stability of the financial system in the Republic of Cyprus or in other jurisdictions; and safeguarding confidence in the stability and smooth operation of the financial system; and serving the public interest.
 - (b) The exclusive power to adopt and implement resolution measures on 'affected institutions' which included banks, and where resolution measures were adopted in connection with an affected institution, all powers, duties and responsibilities of that affected institution's shareholders or board members could be exercised by the Resolution Authority or by 'Special Administrators' appointed under the Law.
 - (c) The power, for the purpose of achieving the objectives of the Law, to issue general or specific directives or decrees, provided that in relation to an affected institution the CBC decided that (i) the affected institution was no longer viable or was likely to no longer be viable, thereby giving rise to a credible risk that the affected institution might not meet its obligations and/or continue to operate as a going concern (ii) in the absence of resolution

measures, any other actions that could be taken within a reasonable period of time by the affected institution or by the CBC would be insufficient to enable the institution to observe its capital adequacy and/or liquidity requirements; and (iii) the ‘resolution measure’ was necessary to safeguard the public benefit or serve the public interest.

- (d) The power of the Resolution Committee, with the consent of the Minister of Finance, and taking into consideration a report by the CBC on the current financial status of the affected institution, to order the affected institution to implement a number of resolution measures, either individually or in conjunction with one another, including a sale of operations or a ‘bail-in’.
- (e) The power of the Resolution Authority to require, through the issuance of a decree, the sale of operations of ‘an institution under resolution’ to one or more credit institutions or other persons, duly authorised to carry on such operations, excluding bridge banks, even without the consent of that affected institution’s board or shareholders or members, provided that the Resolution Authority could exercise control over the institution under resolution so as to manage and dispose of its assets and property.
- (f) The power of the Resolution Authority to require (once or more, and consecutively or simultaneously), the transfer of some or all of the assets, rights or liabilities of an institution under resolution to one or more credit institutions or other persons, inviting all such persons which, in its view and according to the information available to it, were suitable for the relevant acquisition in the context of the sale of operations of the institution under resolution, to take part in an informal and confidential tender procedure in relation to that acquisition, and determining the consideration for the sale, on the basis of the tenders submitted, taking into account the procedure for the valuation of the title deeds, assets, rights or obligations to be transferred, or, provided that it obtained the consent of the Minister of Finance, to restructure, through a decree, the debt and obligations of an institution under resolution, in a wide variety of specified ways.
- (g) The power through a decree issued by the Resolution Authority to provide for the transfer of all securities, assets, rights or liabilities, such that any such transfer of securities, assets, rights or obligations would be fully valid vis-à-vis third parties, irrespective of compliance with any restriction imposed under law or contract terms or otherwise and in the event that the transferred assets, rights or liabilities were governed by the laws of another member state

(of the European Union) or third country, then, if those laws permitted such a transfer, the institution under resolution would do everything required by that law to give effect to the transfer,

16. This last power was subject to a condition under the Law to the effect that where a resolution measure affected the ownership rights of a shareholder, creditor or other stakeholder in an institution under resolution, the Resolution Authority would ensure that any loss caused to the affected party would not be higher than that which would have been caused if the institution under resolution had been placed, as a whole, into liquidation; and if a shareholder, creditor or other stakeholder in an institution under resolution deemed that the financial position it was in, had significantly deteriorated compared to that which he or it would have been in if no resolution measure had been taken and the affected institution had been placed directly into liquidation, then that financially affected party could claim compensation (by way of judicial review proceedings) but only for the losses caused to it due to the implementation of the resolution measures; and any such claim would not affect any act, measure or transaction concluded on the basis of the law and could not be against the person to whom any transfer thereunder was made, so the rights were to pecuniary compensation only.
17. On 25 March 2013, pursuant to the 2013 Resolution etc Law, the Popular Bank and the Bank of Cyprus were both placed under resolution by the CBC (and so became ‘institutions under resolution’ and could be subjected to ‘resolution measures’ under the Law; and on 29 March 2013, the CBC (as Resolution Authority) issued a suite of decrees under the Law including Decree 103 for the ‘Bailing-in of Bank of Cyprus Public Company Ltd’ and Decree 104 for the ‘Sale of Certain Operations of Cyprus Popular Bank Public Co Ltd’. The recitals to these Decrees recorded that they were issued by the Resolution Authority in the exercise of its powers and according to the aims, conditions and procedures specified in the Law.
18. Decree 103 contained measures for the recapitalisation of the Bank of Cyprus to restore its capital adequacy by way of bail-in, intended as reorganisation measures within Directive 2001/24/EC of the European Parliament and Council of 4 April 2001 on the reorganisation and winding up of credit institutions.
19. Decree 104 contained measures to impose the sale of certain operations of the Popular Bank (defined as ‘Laiki Bank’) also intended as reorganisation measures falling within Directive 2001/24/EC. The Popular Bank thereby transferred all assets, title deeds and rights (other than those specified in an Annex I) and certain of its liabilities to the Bank of Cyprus, entering into force, having legal effect and

being enforceable against third parties as from the ‘Transfer Date’ of 29 March 2013 (at 06:10am).

20. Under Decree 104:

- (a) following the conclusion of a valuation process, the Resolution Authority was to determine whether the final value of the transferred assets, title deeds and rights exceeded the final value of the transferred liabilities and, if they did, the Resolution Authority would, by further decree, require the Bank of Cyprus to issue to the Popular Bank such an amount of Class A shares (as defined in Decree 103) fairly to compensate the Popular Bank;
- (b) as from the Transfer Date, and save as otherwise provided therein and in the 2013 Resolution etc Law, the transfer by virtue of Decree 104 was to be deemed valid, have the intended legal effect and be enforceable against third parties, irrespective of the provisions of any other law, the (absence of) consent of the Popular Bank or the Bank of Cyprus’s board of directors, shareholders or creditors, or the existence of any restriction imposed under provisions of law or contract terms or otherwise in relation to the transferred assets, including the compliance with legal or other procedures or formalities; and the Bank of Cyprus was to be regarded as being the same person as the Popular Bank as regards the transferred assets;
- (c) the Bank of Cyprus and the Popular Bank were obliged to take any necessary action to complete the transfer of the title deeds, assets, rights and liabilities which were the object of Decree 104 and which were subject to the law of another member state of the European Union or third country; and
- (d) as at the Transfer Date, the Bank of Cyprus took over all rights and obligations related to the transferred assets and was substituted for the Popular Bank in relation to any legal or other proceedings related to titles, assets, rights or liabilities which were transferred.

21. On 30 July 2013, the CBC (acting as Resolution Authority) issued the ‘Issuance of Share Capital of Bank of Cyprus as Compensation of Cyprus Popular Bank Decree of 2013’ under which the Bank of Cyprus issued and granted to the Popular Bank an amount of Class A shares such that the Popular Bank held, as at 17:15 pm on 30 July 2013, 18.056371% of the total share capital of the Bank of Cyprus. The recitals recorded that a valuation report had been completed and submitted to the Resolution Authority pursuant to the 2013 Resolution etc Law and Decree 104, that the final value of the assets, title deeds and rights of the Popular Bank transferred to the Bank

of Cyprus by Decree 104 had exceeded the liabilities of the Popular Bank which had also been transferred to the Bank of Cyprus thereby, and that the Resolution Authority had issued the decree having considered the opinion of the Minister of Finance.

22. On 13 May 2013, the Popular Bank (as assignor) and the Bank of Cyprus (as assignee), each acting by its Special Administrator entered into a Deed of Assignment, according to Mars, as an additional precautionary step so as to put matters beyond any possible doubt, although the relevant transfer had already been effected by Decree 104 (subject only to registration of Bank of Cyprus as the proprietor of the legal charges over the relevant properties in England). The recitals recorded that pursuant to Decree 104 the rights under the ‘Loans’ and the ‘Security’ as defined had been transferred from the Popular Bank to the Bank of Cyprus and that the deed (and completion of the matters referred to in therein) provided ‘for the implementation and completion of the sale and transfer of Security securing the Loans, as contemplated by the Decree’. Clause 2 provided that ‘The Assignor with full title guarantee hereby ASSIGNS AND TRANSFERS to the Assignee ALL of its legal and beneficial title to and interest in the Security related to the Loans and the Ancillary Rights TO HOLD the same unto the Assignee absolutely.’
23. The Deed of Assignment provided for either the Popular Bank or the Bank of Cyprus to take such steps as were necessary to complete or give effect to the transfer and/or assignment including registration and the provision of a notice of the said transfer and/or assignment to each borrower. The Bank of Cyprus was registered as proprietor of the legal charges over the Defendants’ various properties on the various dates shown in the historic land title registers and sent letters to the Defendants, with respect to each of their respective loans by reference to the individual account numbers, being two letters to Mr Hussain dated 4 October 2013 and ten letters to Mr and Mrs Papachristoforou dated 10 July 2013.
24. It may be noted here (although discussed further when the pleaded issues are analysed below) that under the May 2013 Deed of Assignment ‘Security’ was defined primarily but not exclusively by reference to a Schedule which in the form redacted for the purpose of this litigation did not include Flat 1 Arbor Court at 295 Penns Lane; but Mars says that the relevant charge was still transferred to the Bank of Cyprus under Decree 104, on the proper construction of the whole Deed, and by virtue of the completed registration at the Charges Register (see further below).

(4) The transfer from the Bank of Cyprus to Mars

25. On 17 September 2014, after it had received approval for the same from the CBC, the Bank of Cyprus entered into a Portfolio Sale Agreement ('the PSA') expressly governed by English law, with Mars and Camael Mortgages Limited ('Camael'). This provided that the Bank of Cyprus agreed to sell all its legal interest in the 'Purchase Portfolio' to Mars and all its beneficial interest therein to Camael with effect from the 'Cut-Off Date'. The 'Purchase Portfolio' included the Defendants' loans and mortgages, details of which were set out in the 'Purchase Portfolio Data Tape', and 'Related Security' which meant any charge by way of legal mortgage over a freehold or leasehold property securing repayment of a Portfolio Loan, including the benefit of all covenants and undertakings from the relevant mortgagor thereunder and of all causes or rights of action thereunder or in relation thereto.
26. On 31 October 2014, the Bank of Cyprus and Mars executed the Land Registry TR4 Form pursuant to the PSA. This transferred (subject to registration) various charges relating to UK properties listed on an annexed continuation sheet, which included all of Mr Hussain's four properties and the freehold title to part of one of Mr and Mrs Papachristoforou's properties.
27. Subsequently on 4 November 2014, Mars sent letters to the Defendants regarding its acquisition of each of their loans. (The Bank of Cyprus had probably already done so but no copies are available.) The Defendants' witness statements admitted receipt of Mars' notices, leaving no doubt as to compliance with section 136 of the Law of Property Act 1925 as regards the assignment of the loans.
28. In due course, Mars was registered as the proprietor of the legal charges now in dispute over the Defendants' various properties, as the land registry entries show, as follows:

Owner	Address (shortened)	Title nos.	Popular Bank mortgage - date	Date of Mars' registration
Hussain	Flat 1 Arbor Court, 295 Penns Lane B76 1NA	WM375009	13 Dec 2002	24 Nov 2014
Hussain	293 Penns Lane B76 1NA	WM386548	3 Nov 2003	24 Nov 2014
Hussain	Flat 15 Arbor Court, 301 Penns Lane B76 1NA	WM390505	7 Aug 2006	25 Nov 2014
Hussain	57 Stonehouse Road B73 6LL	WK214620	5 Mar 2007	24 Nov 2014

Papachristoforou	The Lodge, Quarry Park Road DY8 2RE	WM359900 WM70460	7 Oct 2002	14 Mar 2016
Papachristoforou	107 Bromford Lane B24 8JR	WM785169	3 June 2003	14 Mar 2016

29. At the trial Mr Hussain appeared to believe that in the case of the flat (1 Arbor Court) at 295 Penns Lane, registration of the Popular Bank’s mortgage in favour of Mars could not have been lawfully effected because there was another existing mortgage with Santander Bank. He was unaware of the possibility of two mortgages or other charges on real property and maintained that Santander Bank’s mortgage must have been improperly removed, indeed so removed by Mars or its solicitors, from the registry because, despite confirming to Mars’ solicitors by letter dated 28 March 2017 that it no longer held such a charge, Santander Bank had as recently as 30 June 2021 provided Mr Hussain with redemption figures. The latter inconsistency was not resolved at the trial but did not need to be. In this as in his many similar unpleaded allegations, some of which I must address later below, Mr Hussain offered no reasonable grounds for alleging that Mars had improperly changed the register, or how or why.

(5) The Proceedings

30. Following Mars’ purported acquisition of the loans and mortgages, Mr Hussain ceased making any repayments (having he said, agreed to repay £170 per month with the Popular Bank). He wrote a series of letters making extreme complaints and demands, seeking original documents relating to himself and other customers and Mars’ business generally, including obviously confidential and apparently irrelevant documents such as tax records, and castigated the copy documents available to and produced by Mars, campaigning against it and threatening action against its individual employees.
31. By 2017 Mr Hussain was in touch with other Mars customers and a solicitor, Richard Cooper of EGL. He made an application for pre-action disclosure based on a witness statement of Mr Cooper dated 23 March 2017 which challenged Mars’ title to his loans and mortgages, and sought five documents or classes of documents. On 2 November 2017 the Deputy District Judge at Birmingham County Court ordered disclosure of one of these, namely notices of the purported assignments to Mars.

32. The present proceedings were issued on 18 July 2018 and in the Particulars of Claim Mars sought declarations (a) that the legal title to the loans and mortgages (being those now listed in the table above) and the rights thereunder had been validly transferred from the Popular Bank to and is owned by Mars; (b) that Mars is entitled to take enforcement steps including but not limited to the appointment of receivers, in relation to the loans and/or mortgages and/or properties; and (c) that Mars is entitled to be replaced as claimant in the 2012 Birmingham possession proceedings referred to above.
33. In their Defence and Counterclaim dated 10 October 2018 and their Amended Defence and Counterclaim dated 30 March 2020 the Defendants sought declarations in the opposite, negative terms, and rectification of the Charges Register in respect of their properties to delete Mars and reinstate the Popular Bank as owner of the mortgages. The Defendants' pleadings, as examined below, were answered by a Reply and Defence to Counterclaim dated 21 November 2018 and amended on 26 May 2020.
34. Until that point, 26 May 2020, the usual steps in proceedings such as these were taken by way of disclosure and otherwise. At the Case Management Conference on 9 April 2019, a directions order was made by Deputy Master Arkush including at paragraph 8 provisions regarding the PSA. As explained in Mars' witness statements for that application, certain details in the PSA were considered commercially sensitive and Mars was concerned that these should not enter the public domain, and that the Defendants should not be able to disseminate it. But since the PSA in general (but without all those details) was clearly relevant in these proceedings, and the Defendants having complained about a substantially redacted version of the PSA initially provided, Mars then provided them with a further version containing only minimal redactions (as to eg price) and its application under CPR 31.22(2) was then unopposed, indicating no further dispute as regards that redacted production.
35. In October 2019 the parties exchanged witness statements for trial, in the case of Mars from Ms Erin Sheridan, described as Mars' Director of Asset Management (UK & Ireland), from a Cypriot lawyer Ms Despina Americanou and from a partner in its solicitors Teacher Stern with conduct of the case, Ms Nazia Hussain. The Defendants' only witness statements were from themselves.
36. Permission was given for expert opinion evidence on Cypriot law, and reports were exchanged in December 2019 from Mr Andreas Haviaras for the Claimant and Mr Nicolas Theodorou for the Defendants, followed by a constructive joint report dated 31 January 2020. Mr Haviaras but not Mr Theodorou attended at the trial and his

cross-examination served mainly to confirm his reliability and that of his opinions where they differed in any significant way (which was hardly at all) from Mr Theodorou.

37. Following the adjournment history which I mentioned in the Introduction above, the trial took place ‘remotely’ online from 21 to 28 July 2021. Mr Hussain was assisted throughout by his brother Masud. Apart from oral opening and closing submissions and the oral evidence of the witnesses I have mentioned, there was a written opening (and chronology) and two written closing notes from Mr Hussain (and Masud) submitted after Mars’ opening skeleton and closing note respectively.
38. There were 22 trial bundles, not very helpfully indexed, and Mr Hussain added some documents *ad hoc*, as well as what he called ‘the Unagreed Bundle’ of documents regarding an application dated 8 July 2021 by which he sought (a) the issue of witness summonses against two former employees of the Popular Bank Mr Dimitriou (mentioned above) and a Michael Michaels; and (b) production of 13 documents or classes of original documents, beginning with the unredacted PSA and ending with ‘all HMRC documents..., documents relating to my dispute with Laiki Bank ... [and] any other relevant documents which we have not seen yet...’.
39. Mr Hussain’s application was heard and dismissed on the first day of the trial at the end of the oral openings for the reasons then briefly given: it was too late and flew in the face of the Court’s rules and orders, and sought unknown and probably irrelevant oral testimony from the two witnesses sought to be compelled without notice, and swathes of documents which appeared unnecessary and/or disproportionate, and for which the reasons were at best obscure, and possibly disruptive.
40. In my opinion there was no good reason to doubt the honesty of Mars’ witnesses under Mr Hussain’s cross-examination, which did not challenge them on their statements and many other material points, whilst maintaining his wide-ranging accusations of impropriety. Ms Americanou’s testimony seemed to me to the point and properly restrained. Ms Sheridan and Ms Hussain were sometimes less precise but given the way they were questioned, the detail, the passage of years and the number of other matters with which they much have dealt in the meantime, that is far from surprising.
41. I will have to come to aspects of Mr Hussain’s evidence, entangled with his submissions, later in this judgment. However, in short, I could not find him a reliable witness. His recall was very poor (allowing again for the detail and passage of time), and in his case he had no documents to rely on (other than his allegations), and his

misunderstandings and apparent suspicions seriously distorted whatever recollection he retained. There was an obvious possibility that, as Mars contended he was deliberately lying in the hope of evading his liabilities, which I shall address directly below.

(6) Pleadings issues – the transfer from the Popular Bank to the Bank of Cyprus

42. The Defendants’ four objections to the validity and effectiveness of Decree 104 to transfer their loans and mortgages from the Popular Bank to the Bank of Cyprus in paragraph 22 of their Defence, were met by Mars with two preliminary obstacles. First, Mars contended that the Defendants’ challenges to Decree 104 are non-justiciable as foreign acts of state, since it was enacted by the Resolution Authority as exclusively empowered under the 2013 Resolution etc Law enacted by the Cyprus parliament, as a ‘reorganisation measure’ within the meaning of the 2001 EU Directive 9(mentioned in paragraph 19 above), with the necessary consent of the Cypriot Minister of Finance and as part of a set of measures implemented to rescue the Cypriot economy and financial system from disaster.

43. In *Belhaj v Straw* [2017] AC 964, the UK Supreme Court per Lord Mance JSC identified three categories of “foreign act of state”, the third of which required

... that a domestic court will treat as non-justiciable – or, to use language perhaps less open to misinterpretation, abstain or refrain from adjudicating upon or questioning – certain categories of sovereign act by a foreign state abroad, even if they occur outside the foreign state’s jurisdiction.

44. According to Lord Mance, this third category (a) unlike the first two, is not limited territorially to actions which had effect only within the foreign state’s jurisdiction; (b) needs for its application to be considered on a case by case basis and is fact sensitive, and does not depend upon there being an absence of judicial or manageable standards by which the relevant issue or issues could be determined; and (c) quoting from *Shergill v Khaira* [2015] AC 359, refers to a case where an issue is said to be inherently unsuitable for judicial determination by reason only of its subject matter (even though it would otherwise be within the English courts’ jurisdiction):

... such cases generally fall into one of two categories: the first is where the issue is “beyond the constitutional competence assigned to the courts under our conception of the separation of powers”, of which the ‘paradigm cases are the non-justiciability of certain transactions of foreign states and of proceedings in Parliament’. The distinctive feature of such cases is that

‘once the forbidden area is identified, the court may not adjudicate on the matters within it, even if it is necessary to do so in order to decide some other issue which is itself unquestionably justiciable.’

45. Whilst the first two categories of the ‘foreign act of state’ are limited to acts affecting property within the foreign state’s jurisdiction, the present proceedings are concerned with loans and mortgages agreed and advanced, and charges over properties situate not in Cyprus but in England. However, Mars emphasised that Decree 104 was largely concerned with the transfer of the assets and liabilities of the Popular Bank in Cyprus and was certainly not limited to its assets in England or elsewhere; and the arguments pleaded by the Defendants in these proceedings concern the validity, effect and/or constitutionality of Decree 104 as a whole. This, Mars submitted, falls foul of the foreign act of state doctrine both insofar as Decree 104 affects property in the foreign state itself, and also, even if limited to its validity or effect only outside Cyprus and in England, would still fall within the third category which is not territorially limited to the effect of the relevant actions of and in the foreign state.
46. Foreign act of state is a notoriously difficult doctrine to apply in respect of property disputes outside the state concerned. Mars’ arguments were not addressed by Mr Hussain and I would be reluctant to find that the Defendants’ challenge to the application of Decree 104 to their loans and mortgages are non-justiciable on that ground alone, in the absence of more balanced argument.
47. However that is not the case as regards Mars’ second preliminary obstacle in the way of the Defendants’ challenges to Decree 104, based on the decision of the Cyprus Supreme Court in *Myrto Christodoulou & ors v the Central Bank of Cyprus & ors*, in which Justice Hatzihambis handed down the majority judgment. Mr Haviaras and Mr Theodorou, the parties’ respective Cypriot law experts, appear (subject to a minor wrinkle, resolved below) to be in agreement as to the effect of this case.
48. In *Christodoulou* depositors of the Popular Bank sought the annulment of Decree 104 and various other decrees. The Supreme Court of Cyprus, sitting *en banc*, held that:
 - (a) Decree 104 only directly concerned the Popular Bank and the Bank of Cyprus, and it was therefore only those institutions which could have sought to challenge its validity. The depositors and other persons who were in a contractual relationship with the Popular Bank were not the subject of Decree 104, had no legitimate interest which had been directly affected by it, and

were not entitled to challenge its validity whether in those proceedings or by way of judicial review; and

- (b) whilst it was open to the depositors of the Popular Bank to bring private civil proceedings against the Popular Bank and/or the Bank of Cyprus (or, potentially, the Republic of Cyprus) founded on a contractual relationship, that would have to be based on financial loss allegedly sustained as a result of the Decrees pursuant to the remedy provided by the 2013 Resolution etc Law, section 3(2)(d) of which required claimants to prove that they sustained greater losses and/or were ‘worse off’ as a result of the resolution measures than they would have sustained or been had the resolution measures not been taken and the Popular Bank and/or the Bank of Cyprus instead been placed into liquidation.

49. Mr Haviaras concluded in paragraph 35 of his report that accordingly:

... it is not open to the Defendants to challenge the validity or legality of Decree 104 in this Action...or to suggest that Decree 104 was not a ‘resolution measure’ within the meaning of the Resolution Law...such a challenge could not be raised by the Defendants before the courts in Cyprus, let alone in the UK.

50. Paragraph 11 of the experts’ Joint Statement recorded that they were in agreement ‘as to the content and effect of the ruling of the Supreme Court in *Christodoulou*’. Mr Theodorou’s agreement at paragraph 11(b) was limited to paragraphs 25 to 34 of Mr Haviaras’ report; paragraph 18 stated that paragraph 35 of Mr Haviaras’ report was not agreed solely because Mr Theodorou considered that it was outside the scope of this court’s Directions Order as not related to Cypriot law. On its face, Mr Theodorou was wrong in this: Mr Haviaras’ conclusion resulted from his previous paragraphs, with which Mr Theodorou agreed, and Mr Theodorou did not express any other conclusion.
51. The Defendants have not particularised any financial loss as a result of Decree 104 and they cannot have sustained any given that they were debtors, rather than creditors, of the Popular Bank. The only effect which Decrees 103 and 104 had on them was that instead of being debtors of the Popular Bank they became debtors of the Bank of Cyprus, along with no doubt many other borrowers.
52. Mr Hussain’s claim that he would have done better dealing with the Popular Bank (or the Bank of Cyprus) in liquidation reflected his eccentric and even fanciful views as to how to deal properly with and seek to obtain reduction of his debt. His repeated

complaints that his debt was ‘being moved back and forth between Cyprus and the UK’ and ‘bought up by a vulture fund for a low price’ were similarly devoid of the slightest merit when it came to deciding the principle of Mars’ title.

53. I am persuaded that the Defendants’ challenges to Decree 104 and its application to this case fail *in limine* because of Mars’ second preliminary objection at least. However since we were at trial, the substance was pleaded on both sides and argued by Mars, and in case my preliminary view is wrong, I will deal with the substance of their four pleaded challenges in paragraph 22 of the Defence.
54. First, the Defendants purport not to admit that Decree 104 was validly enacted as a “*resolution measure*” within the meaning of the Resolution Law, because Decree 104 did not itself make or include provision for a tender process as referred to in section 9(4) of the 2013 Resolution etc Law. And paragraph 26 of their Defence purports not to admit the validity of the appointment of the Popular Bank’s Special Administrator (who executed the May 2013 Assignment Deed on its behalf) on the sole basis that a Special Administrator could only be validly appointed to an affected institution which had been the subject of a ‘resolution measure’ and the Defendants do not admit that Decree 104 was such a measure.
55. However Mr Theodorou not only failed to support the Defendants’ position but positively agreed (in section 5 of his report and paragraph 15(a) of the Joint Statement) that the Popular Bank’s Special Administrator was validly appointed. This entails an acceptance that Decree 104 was a ‘resolution measure’ and it obviously was, since Decree 104 was expressly stated to be a ‘resolution measure’ and the Defendants are wrong to suggest that Mars bears the burden of proving that the express basis upon which Decree 104 was promulgated, was in other unspecified respects legally incorrect.
56. Mr Haviaras explained (in paragraphs 36 to 41 of his report) that there is a presumption of validity under Cypriot law such that the courts in Cyprus would proceed on the assumption unless displaced that Decree 104 was (as stated on its face) a ‘resolution measure’.
57. The only pleaded basis upon which the Defendants suggest that the burden of proof lies on Mars in this regard is that ‘contrary to the requirements of s7 and s9 of the Resolution Law, Decree 104 did not provide for a tender procedure to be run before the transfer of the relevant assets’.
58. However:-

- (a) That is not so. Section 9(4) of the Resolution etc Law 2013 provided for an informal and confidential tender process but did not stipulate that Decree 104 itself had to contain provisions for or relating to such a process. Paragraph 49 of Mr Haviaras' report spelt that out and Mr Theodorou did not suggest otherwise.
 - (b) Nor do the Defendants themselves assert that there was no tender procedure. The evidence of Ms Americanou supported Mars' pleaded position that, prior to Decree 104 and pursuant to section 9(4) of the 2013 Resolution etc Law, the CBC approached three credit institutions and invited them to submit a tender (which invitation they declined). That evidence was not challenged and I accept it.
 - (c) Mr Haviaras also explained (in paragraph 56 of his report) that the 2013 Resolution etc Law did not require the CBC to make open invitations for tenders or openly market the relevant assets and that that process, assuming it occurred, would have satisfied it. Section 9(4) of the Law only required the CBC to invite tenders from those credit institutions which it considered were suitable for the relevant acquisition. The CBC had a discretion as to whom to invite to submit a tender and could have been entitled to extend such an invitation to only one institution (for example, the Bank of Cyprus) if it considered that appropriate.
 - (d) Section 9(5) required the CBC to determine the consideration for any sale of operations: that was what paragraph 6 of Decree 104 stipulated that the CBC would do, and what the subsequent decree anticipated by paragraph 6(2) of Decree 104, that is Decree 279, expressly recorded had been done as at 30 July 2013.
 - (e) Even if there was no tender under section 9(4), paragraph 69 of Mr Haviaras' report, with which Mr Theodorou expressly agreed (see paragraph 9(c) of the Joint Statement) was that the tender process did not need to be followed if the two conditions referred to in section 9(9) were met; and given the background, it is likely that, if and to the extent that Mars is wrong and the CBC did not follow the tender process, that was or would have been because it considered that those conditions were indeed met.
59. Further, paragraph 76 of Mr Haviaras' report (which was again unchallenged in Mr Theodorou's report) stated that even if Decree 104 was not a 'resolution measure' (whether because a tender process was required to be but was not followed, or for any other reason), that would not have rendered Decree 104 invalid or ineffective.

The only consequences would have been, as above: (a) a possible ground of challenge to its validity by the Popular Bank or the Bank of Cyprus, neither of which have made any such challenge; or (b) a possible claim by depositors or creditors of the Popular Bank that the absence or omission of the required tender process caused them financial loss.

60. Secondly, in paragraph 22(3) of the Defence, the Defendants purport to require Mars to prove that Decree 104 was in accordance with the constitution of Cyprus. However, although Mr Theodorou stated in his report (see paragraphs 3.22 to 3.56) that there are arguments in litigation pending in Cyprus that Decree 104 was unconstitutional which he considers have a good chance of success, he expressly accepted each of the matters set out in paragraph 13(c) of the Joint Statement; and the last of those matters (see sub-paragraph (viii)) was that ‘as matters currently stand, [Decree 104] is (as a matter of Cypriot law) considered or presumed to be constitutional.’
61. Although Mr Hussain asked Mr Haviaras in cross-examination about this matter of common ground between the experts, that merely emphasised the point. Apparently Mr Hussain could not grasp that a postulated later Cyprus Supreme Court’s decision against its constitutionality would still not change the legal regime as it currently stands, according to which the present case must be judged.
62. Thirdly, the Defence pleaded in paragraph 22(1) that Decree 104 was not a ‘reorganisation measure’ within the meaning of the 2001 EU Directive, because it was not aimed at ‘preserving or restoring’ Popular Bank. Mars had alleged (but the Defence denied) that Decree 104 had effect in the United Kingdom as if it were part of the general law of insolvency of the United Kingdom, pursuant to section 5 of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004, which were passed to implement the 2001 EU Directive.
63. The 2001 EU Directive:
 - (a) defined ‘reorganisation measures’ under Article 2 as *...measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties’ pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;*
 - (b) provided by Article 3, that (as regards credit institutions which had their head offices within the European Community) the home member state was alone empowered to decide on the implementation of one or more

reorganisation measures in a credit institution, including branches thereof established in other member states; and

- (c) provided further that such reorganisation measures would *...be fully effective in accordance with the legislation of that Member State throughout the Community without any further formalities, including as against third parties in other Member States, even where the rules of the host Member State applicable to them do not provide for such measures or make their implementation subject to conditions which are not fulfilled... The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken.*

64. Regulation 5 of 2004 Regulations entitled: ‘Reorganisation measures and winding-up proceedings in respect of EEA credit institutions effective in the United Kingdom’ provided that an ‘EEA insolvency measure’ (meaning ‘as the case may be, a directive reorganisation measure or directive winding-up proceedings which have effect in relation to an EEA credit institution by virtue of the law of the relevant EEA State’) had effect in the United Kingdom in relation to (a) any branch of an EEA credit institution (b) any property or other assets of that credit institution; and (c) any debt or liability of that credit institution, as if it were part of the general law of insolvency of the United Kingdom.

65. The Defendants’ denial that Decree 104 had effect pursuant to Regulation 5 starts from an implausible premise - that even though Decree 104 was issued by the CBC, in conjunction with the Cypriot Minister of Finance, on the express basis that it was such a measure, they and all others involved with it (and in the successful attempt to save the Cypriot banking system and economy) were wrong.

66. Given the evidence on Mars’ side, and the lack of any contradiction thereof on the Defendants’, that must fail:

- (a) pursuant to section 6(1) of the 2013 Resolution etc Law, the CBC was only entitled to issue Decree 104 if it considered that (among other things) Popular Bank was “no longer viable or likely to no longer be viable”. The Defendants did not suggest (nor could they) that this pre-condition to the issuance of Decree 104 did not exist;
- (b) on the contrary, the Popular Bank was at “*imminent risk of insolvency*” (as put by Ms Americanou) and at “*certain immediate risk of failure*” (as put by Justice Hatzihambis in *Christodoulou*). Ms Americanou was not challenged

on her evidence that but for Decree 104 (and the other surrounding measures) the Popular Bank would inevitably have been placed into liquidation; and

- (c) Decree 104 prevented that imminent (and otherwise inevitable) outcome through a mechanism whereby the Popular Bank could be allocated assets, by way of consideration for the sale and in the form of shares in Bank of Cyprus - and that is, in fact what happened, pursuant to Decree 279. In the words of the Eurogroup (see paragraph 2 of the Annex to its Statement) the measures announced therein (including Decree 104) allowed the ‘bad bank’ part of the Popular Bank to be ‘run down over time’.
67. Decree 104, which was thus clearly aimed at preserving if not restoring the Popular Bank, was also aimed at preserving and restoring the Bank of Cyprus and that is enough to qualify as a reorganisation measure under the 2001 Directive. Moreover its status as such cannot be assessed in isolation. Decrees 103 and 104, issued on the same date, represented in effect a collective measure and/or combined course of action, as again stated in the Eurogroup Statement and Annex. Section 7(1) of the 2013 Resolution etc Law entitled the CBC to issue the various resolution measures set out thereunder ‘either individually or in conjunction with one another’. The ultimately successful outcome of these combined measures was announced by the Bank of Cyprus on 31 July 2013.
68. This analysis accords with Mr Haviaras’ report (see paragraph 82) and is consistent with Mr Theodorou’s report, in paragraph 6.1 of which he defines the measures that were taken by the CBC against and/or relating to and/or in respect of both the Bank of Cyprus and the Popular Bank (that is, Decrees 103 and 104) as ‘restructuring measures (essentially “bail in measures”)...’.
69. Finally, and in any event, even if Decree 104 was not a ‘reorganisation measure’ within the meaning of the 2001 EU Directive and did not have effect as if it had been part of UK law, that would have no impact on its validity or effectiveness as a matter of Cypriot law, as Mr Haviaras explains at paragraphs 83 and 90 of his report.
70. Fourth and last, paragraph 22(4) of the Defence pleads that Decree 104 could only have been effective (in terms of its scope) to transfer the Defendants’ loans to the Bank of Cyprus, and not the mortgages. But that again is contradicted by the evidence of Cyprus law including the Defendants’ expert, Mr Theodorou, who expressly agreed in paragraph 10(b) of the Joint Statement with paragraphs 93 to 97 of Mr Haviaras’ report.

71. This explained that, on the assumption that the loans were originated by the Popular Bank's UK branch (which is correct):
- (a) paragraph 2 of Annex I to Decree 104 expressly provided that 'the rights of [the Popular] Bank in respect of loans' originated by that branch were included in the transfer, the effect of which was to include (in or as part of the transfer) the mortgages which were entered into by the Popular Bank as security for those loans; and
 - (b) even if that is wrong, the mortgages were taken over and/or acquired and/or obtained by Bank of Cyprus pursuant to paragraph 13(a) of Decree 104 which made it clear that the 'result' of the transfer effected by Decree 104 was that, as at 06:10am on 29 March 2013, the Bank of Cyprus took over (from the Popular Bank) all rights and obligations 'related to' those assets and rights which had been transferred.
72. Turning to paragraph 26 of the Defence, this pleads three challenges to Mars' alternative case as to the transfer of the loans and mortgages to the Bank of Cyprus, under the May 2013 Assignment Deed. First it purports to put Mars to proof as to the validity of the appointment of the Special Administrator who executed that Deed on Popular Bank's behalf. Again this seems improbable. For a foreign court to treat the acts of the administrator appointed by the CBC over the Popular Bank's assets and received generally as valid at the time, as a nullity so many years later would be a recipe for anarchy.
73. Be that as it may, the Defendants' position is again indeed untenable on the material before this court. As summarised above, Mr Theodorou expressly accepted that the Popular Bank's Special Administrator was validly appointed; and in paragraphs 5.12 to 5.16 of his report, that the May 2013 Assignment Deed was validly executed by her on behalf of the Popular Bank, provided only that the execution thereof was not contrary to her letter of engagement, act of appointment or equivalent conditions - which are not pleaded by the Defendants and which he does not suggest were breached (nor that there were any grounds for such suggestion). On the contrary he concludes at paragraph 5.16 that the Special Administrator 'appears to [have been] acting within her powers and [to have] acted *intra vires* as the Special Administrator' when she executed the May 2013 Assignment.
74. The Popular Bank's Special Administrator was appointed on 25 March 2013 via an 'Individual Administrative Act'(No.197 of 2013) passed by the CBC as Resolution Authority. As Mr Haviaras' report stated in paragraph 99, a challenge to that Individual Administrative Act was made in *Christodoulou*, and dismissed. The only

pleaded basis on which the validity of the Special Administrator's appointment is put in issue by the Defendants is by reference to the issue of whether Decree 104 was a '*resolution measure*' but this is contradicted by their evidence from Mr Theodorou referred to above.

75. Secondly, paragraph 26(2) of the Defence pleads that the May 2013 Assignment Deed '*only purported to address formalities in respect of assets transferred by Decree 104*' and that if Decree 104 was not effective to transfer the loans and mortgages (subject only to formalities) then the May 2013 Assignment Deed in and of itself cannot have done so.
76. This contention is also hopeless. The legal effect of the May 2013 Deed of Assignment turns on its operative clauses and not on the correctness or otherwise of the recitals so even if Recital (C) was wrong in recording (entirely consistently with Mars' primary case) that (i) the rights under the "*Loans*" and the '*Security*' had been transferred from the Popular Bank to the Bank of Cyprus by Decree 104 and (ii) the definition of '*Security*' as including all security "*expressed to be transferred pursuant to the terms of the Decree*" was inappropriate, that would have no impact on the validity or effect of the May 2013 Deed of Assignment or its operation and ability to effect that same transfer, if Decree 104 for some reason failed to do so.
77. Thirdly, paragraphs 26(3) and (4) plead that any transfer effected by the May 2013 Assignment Deed did not extend to the loans. Mr Hussain spends paragraphs 35 to 65 of his witness statement on this point but it is at best peripheral to the outcome of this case.
78. The Defence did not allege that the May 2013 Assignment Deed did not, on its face, cover or extend to the Security as defined therein including the mortgages identified in the Schedule thereto and in any event, registration of the transferee as proprietor of a legal charge is the key event in the context of the transfer of mortgages (as explained further below with reference to Mars' registration).
79. There can be no realistic dispute but that the Bank of Cyprus was in due course registered as proprietor of the legal charges over the properties. So it would still be clear that title to both the loans and the mortgages was transferred from the Popular Bank to the Bank of Cyprus through a combination of Decree 104 for the loans and the May 2013 Assignment Deed and registration for the mortgages (which also provided for repayment).
80. In any event, the Defendants' attempted construction of clause 2 of the May 2013 Assignment Deed is wrong. The clause provided that the Popular Bank assigned and

transferred to the Bank of Cyprus all ‘of its legal and beneficial title to and interest in the Security related to the Loans and the Ancillary Rights’ and ‘Ancillary Rights’ were widely defined as including ‘the right to demand, sue for, recover, receive and give receipts for all amounts due...under or in relation to the Loans or the Loan Agreements...together with any other right, title or interest of [the Popular Bank] in relation to the Loan Agreements or the Loans or the Security’.

81. Accordingly, clause 2 of the Deed plainly did (at least purport to) transfer the Defendants’ loans. The fact that the term ‘*Loans*’ in the Deed was defined as ‘*the loans...secured by the Security*’ (see AD [26(4)] [C/43/75]) supports rather than contradicts that conclusion, since it is clear that the term ‘*Security*’ in the Deed included the Defendants’ mortgages.
82. The Defendants’ construction would involve reading clause 2 as if it provided for the assignment and transfer of the Popular Bank’s ‘legal and beneficial title to and interest in the Security related to the Loans and the Security related to the Ancillary Rights’. However that is not what clause 2 of the Deed says; and this construction would make the end of the definition of the term ‘Ancillary Rights’ entirely circular. That is why seeking to chop up the transfer of the loans on the one hand, and related security on the other, is so unrealistic.
83. Mr Hussain places great reliance (in paragraphs 47 to 64 of his witness statement) on the fact that in 2014 one of the lawyers who acted for Mars in connection with the transaction pursuant to the PSA, a Mr Hickman, appears to have expressed support for a possible construction of clause 2 of the Deed as the Defendants now wish it, and requested that an additional deed of assignment be prepared to put the matter beyond any possible doubt.
84. But the exchanges between Mr Hickman and Mr Cahill referred to by Mr Hussain show in reality no more than a reasonable disagreement between two lawyers. Mr Cahill supported the construction of clause 2 of the Deed advanced by Mars. Mr Hickman advocated a more cautious approach. But the construction of clause 2 of the Deed is an issue for the Court to decide. Neither Mr Hickman’s historic opinion, nor the contrasting opinion of Mr Cahill, carry any real weight or even relevance, and nor does even what they both wanted – the meaning which Mars submits.
85. So none of the Defendants’ pleaded arguments relating to or against the transfer of the loans and the mortgages from the Popular Bank to the Bank of Cyprus has any substance. Most were contradicted by their own expert Mr Theodorou and were unsustainable.

(7) The transfer from the Bank of Cyprus to Mars

86. In paragraph 30 of their Defence, the Defendants first put Mars to proof that the Bank of Cyprus received the necessary approval for the transaction pursuant to the PSA under Cypriot law from the CBC; but Mr Theodorou expressly accepted in section 4 of his report (and paragraph 14 of the Joint Statement) that the letter from the CBC to Bank of Cyprus dated 11 August 2014 satisfied Cypriot law and was sufficient to prove the requisite consent from the CBC.
87. Secondly the Defence alleged (by way of amendment introduced in March 2020) that the PSA was void and unenforceable because it failed to comply with section 2(3) of the Law of Property (Miscellaneous Provisions) Act 1989, since it did not bear Mars' company seal and was signed by only one director of Mars, unwitnessed, and therefore failed to comply with the formalities required under section 44(2) of the Companies Act 2006.
88. Sections 43 and 44 of that 2006 Act provide that:
- 43. Company contracts.** (1) ... a contract may be made:(a) by a company, by writing under its common seal, or (b) on behalf of a company, by a person acting under its authority, express or implied. (2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.
- 44. Execution of Documents.** (1) ... a document is executed by a company: (a) by the affixing of its common seal, or (b) by signature in accordance with the following provisions. (2) A document is validly executed by a company if it is signed on behalf of the company: (a) by two authorised signatories, or (b) by a director of the company in the presence of a witness who attests the signature. (3) The following are "authorised signatories" for the purposes of subsection (2): (a) every director of the company, and (b) in the case of a private company with a secretary or a public company, the secretary (or any joint secretary) of the company. (4) A document signed in accordance with subsection (2) and expressed, in whatever words, to be executed by the company has the same effect as if executed under the common seal of the company.
89. Section 2(3) of the 1989 Act provides that, as regards contracts for the sale or other disposition of an interest in land - *the document incorporating the terms or, where contracts are exchanged, one of the documents incorporating them (but not*

necessarily the same one) must be signed by or on behalf of each party to the contract. It is common ground that the PSA was a contract for the sale of interests in land and that it was not executed by Mars in compliance with the formalities set out in section 44.

90. Mars submitted that it was not necessary for the PSA to be executed in accordance with section 44 of the 2006 Act in order for it to satisfy section 2(3) of the 1989 Act. Rather, it was sufficient, in order to satisfy section 2(3), for the PSA to be signed on behalf of Mars in accordance with section 43(1)(b) of the 2006 Act - which the PSA was. I tend to agree with that submission.
91. The PSA was a contract. Under section 43 of the 2006 Act a contract can be made *on behalf of* a company by any (single) person acting under its express or implied authority. The effect of this is that, subject to the point considered below, the single signature of, for example, a company director on what purports to be a written contract is enough for the company to enter into a valid written contract.
92. Thus in the case of contracts, a single signature (from an authorised signatory) suffices, even if that signature is unwitnessed and there is no company seal: see for example *Signature Living Hotel Ltd v Sulyok* [2020] EWHC 257 (Ch). As summarised in *Palmer's Company Law* at paragraph 3.103: *... most commonly, [a] contract may be made under hand or even orally on behalf of the company by any person having its authority to do so. In short, when ss.43 and 44 are put together, there are three, not two, methods of contracting by or on behalf of companies.*
93. There is authority, *Williams v Redcard Ltd* [2010] EWHC 1078 (Ch), suggesting that it makes a difference that the PSA was a contract for the disposition of an interest in land, and was therefore subject to the requirements of section 2(3) of the 1989 Act. During the course of his judgment at first instance Lewison J (as he then was) stated - 12. *The effect of section 43(2) [of the 2006 Act] is that a contract for the disposition of an interest in land must be signed by or on behalf of a company. Since a company cannot sign anything in the ordinary sense of that word it follows that such a contract must be signed on behalf of a company. How that is to be done is laid down by the next section, section 44.*
94. However, as Mars submitted for the reasons below, paragraph 12 of Lewison J's judgment in *Redcard* (a) was *obiter* (b) appears to have proceeded on the basis of an agreed position or a common assumption of the parties in that case (c) was unreasoned and (d) is, with great respect, probably wrong.

95. In *Redcard* the company owned the freehold of a house divided into five flats, leases of which were owned by each of the company five directors and shareholders. The issue was whether a contract of sale of the whole was valid when those five individuals had signed on behalf of the company as freehold owner. Both Lewison J and the Court of Appeal at [2011] Bus LR 1479, which upheld his decision using slightly different reasoning, found that, on a proper construction of the contract, it had been signed by at least two of the leasehold owners on behalf of the company.
96. Neither the judgment of Lewison J nor the judgment of the Court of Appeal contained any discussion or consideration of whether the sale agreement complied with section 43; the focus was on compliance or otherwise with section 44. Part of the reason for this may be that the issue in *Redcard* was not (as it is in this case) whether a single director's signature was sufficient: either there were two (or more) signatures which counted as the company's (in which case section 44 was complied with anyway) or there were none. The issue was not the number of signatures on the contract but the capacity in which the signatures were affixed.
97. The reason for the focus on section 44 appears to have been mainly because the parties and the Court proceeded on the unchallenged basis that in order for the sale agreement to have complied with section 2(3) that is, to have been signed by or on behalf of the company, it needed to have been 'validly executed' by the company pursuant to section 44(2). There does not appear to have been any argument (either at first instance or on appeal) that section 43 provided a separate basis for a company to enter into a contract or any detailed consideration of the interrelationship between sections 43 and 44.
98. Be that as it may, Lewison J's approach seems at odds with the editors of *Palmer's Company Law* – if he is right, that section 44 sets out exhaustively how a contract is to be signed 'on behalf of' a company, then there would be only two, and not three, ways in which a company can validly contract in writing, since it is very difficult to see how else a written contract could be 'made' on behalf of a company under section 43(1)(b).
99. It would be anomalous, in circumstances where section 43(1)(b) provides that a contract can be made 'on behalf of' a company by a single authorised individual, if that were overridden in the case of contracts covered by section 2(3), which allows contracts for the disposition of an interest in land to be signed 'on behalf of' a party. If Lewison J was right, then the result would be that all company contracts, insofar as they have to be in writing, have to comply with section 44. But that is not what sections 43 and 44 say.

100. The answer is that section 2(3) does not create a special restriction on the execution formalities (by contrast with the formalities identified in section 2(1)) applicable to contracts falling within the ambit of the 1989 Act, as well as prohibiting oral or partly oral contracts: it expressly states that such contracts may be signed *either* by *or* on behalf of the contracting parties.
101. Furthermore, Lewison J's analysis appears inconsistent with the Court of Appeal's decision in *Hilmi & Associated Ltd v 20 Pembridge Villas Freehold Ltd* [2010] 1 WLR 2750, not cited to Lewison J and cited but not discussed in the Court of Appeal in *Redcard*. *Hilmi* was a case about the validity or otherwise of a non-contractual notice that was required to be signed by each of the tenants by whom it was given, including a company which purportedly signed the notice by a single director. It was argued that the notice had not been validly signed by the fourth tenant because it had failed to comply with section 36A of the Companies Act 1985, the predecessor to section 44.
102. The Court of Appeal held in *Hilmi* that section 36A and the formalities it set out regarding the execution of documents, could properly be said to apply to a document like the non-contractual notice in that case and that there was a distinction between the signing of a document 'by' a company and the signing of a document 'on behalf of' a company; and that section 36A of the 1985 Act, which set out the requirements for 'execution' of a document by a company, thereby set out how a document was to be signed 'by' a company, as opposed to 'on behalf of' a company.
103. *Hilmi* goes against Lewison J's analysis. Having noted that section 2(3) read with section 43(2) meant that a contract for the disposition of an interest in land had to be signed by *or* on behalf of a company, Lewison J stated that it was impossible for such a contract to be signed 'by' a company and that it could *only* be signed 'on behalf of' a company. But that is contrary to the Court of Appeal in *Hilmi*. The law recognises that a contract or other document may be executed by *or* on behalf of a company and that these are different concepts. Lewison J then stated that Section 44 laid down how a contract was to be signed 'on behalf of' a company. But in *Hilmi*, the Court of Appeal held that the predecessor to section 44 set out how a document was to be signed 'by' as opposed to 'on behalf of' the company.
104. Mars submitted that the Court of Appeal's approach in *Hilmi* fits better with the language of section 44 than Lewison J's approach in *Redcard*. Section 44(2) cannot be read as laying down how (or one way in which) a document can be signed 'on behalf of' a company, when what it actually says is that two authorised signatures, or one witnessed signature, 'on behalf of the company' will amount to valid

execution ‘by’ a company – that is, it is directed at what counts as valid execution, not what counts as signing on behalf of the company.

105. Section 44(4) states that a document signed in accordance with subsection (2) and expressed to be executed by the company has the same effect as if it had been executed under the common seal of the company. Section 43(1)(a) provides that a contract can be made ‘by’ a company by writing under its common seal. So again there seems force in the distinction, that section 44(2) is concerned with how a document (including a contract) is signed ‘by’, rather than ‘on behalf of’, a company.
106. Left to myself and if necessary, I would hold that since section 2(3) allows a contract for a company’s sale or acquisition of land interests such as the PSA to be signed either ‘by’ or ‘on behalf of’ a company, it is sufficient if such a contract is signed by a single director, and thereby made on behalf of the company (here Mars) in accordance with section 43(1)(b). However, I am again loathe to decide this case solely on that basis, given the views of Lewison J in *Redcard* and exacerbation of the risk of error on my part by reason of the Defendants’ inability to present relevant submissions, and so an imbalance in the arguments before me.
107. However, that does not require to be finally decided, because it is clear that section 2 of the 1989 Act is ultimately irrelevant in this case, because the transfer from the Bank of Cyprus to Mars was completed and Mars registered with the legal title to the charges over the properties concerned. Section 2 applies only to executory contracts and becomes irrelevant after completion.
108. Thus in *Tootal Clothing Ltd v Guinea Properties Management Ltd* (1992) 64 P&CR 452, Scott LJ stated:

As Hoffman J. put it in Spiro v Glencrown Properties Ltd: ‘Section 2 was intended to prevent disputes over whether the parties had entered into a binding agreement or over what terms they had agreed’. However, section 2 is of relevance only to executory contracts. It has no relevance to contracts which have been completed. If parties choose to complete an oral land contract or a land contract that does not in some respect or other comply with section 2, they are at liberty to do so. Once they have done so, it becomes irrelevant that the contract they have completed may not have been in accordance with section 2.

109. This statement was approved by the Court of Appeal in *Keay v Morris Homes (West Midlands) Ltd* [2012] 1 WLR 2855 at paragraphs 42 to 43:

In Tootal, Scott LJ, probably wishing to eschew pedantry, nevertheless referred in para 2 to such a non-complying transaction as being a 'contract' which the parties are at liberty to complete. He was, I understand, there saying no more than that the fact that any agreed land transaction may not be compliant with section 2 does not prevent the parties proceeding to its practical completion (for example, in the most conventional case, by an assurance of the land interest against payment of the price). I respectfully agree. The only effect of non-compliance with section 2 is that, in default of such an outcome, neither side can sue the other for specific performance or for breach of the transaction purportedly incorporated in the written agreement. That is because there is no contract upon which such a claim can be founded... Scott LJ explained how, in the event, the parties did complete the lease agreement. Once they had done so, the question whether that agreement was compliant with section 2 became irrelevant. In principle, I again respectfully agree.

110. Rectification of the title register (as sought by the Defendants) is only available where the relevant entry on the register was made pursuant to a void disposition. Even if the PSA did not comply with section 2 and was therefore void, the PSA was not the disposition pursuant to which Mars was entered on the title register as the proprietor of the legal charges over the Defendants' Properties. The PSA was the contract for the disposition, the disposition itself being the October 2014 TR4 Form.
111. Section 2 applies only to contracts for the sale or other disposition of interests in land, not to documents which create or transfer legal estates or interests in land: see *RollerTEAM Ltd v Riley* [2017] Ch 109 referring at paragraph 31 to *Helden v Strathmore* [2011] Bus LR 1592 at paragraphs 27 to 28. Accordingly, any non-compliance of the PSA with section 2 would have had no impact on the validity of the disposition pursuant to which Mars was registered as proprietor of the legal charges over the Properties; and would therefore provide no basis for rectification of the title register.
112. In *Promontoria (Oak) Limited v Emanuel* [2020] EWHC 104 (Ch), [2020] EWHC 563 (Ch) Marcus Smith J gave two judgments on a claim by Promontoria to have acquired the relevant rights by way of an assignment from the original mortgagee and registration as the proprietor of the relevant legal charge. In the first judgment he held that a redacted deed of assignment relied upon by Promontoria should not have been admitted into evidence and that it had not made out title to sue based on that deed of assignment in the form in which it had been tendered as evidence. In

the second judgment he held that Promontoria nonetheless succeeded in its claim for possession of the defendants' property and for the sums owed under the secured loan facilities, on the basis that Promontoria was the registered proprietor of the legal charge over that property.

113. The analysis in paragraphs 19 to 30 of Marcus Smith J's second judgment was to the effect that a mortgage is or confers security for a debt, in the form of an interest in real property and also contains or includes an obligation to repay the monies secured; once the transferee is registered as proprietor of the legal charge, the transferee obtains title to *both* parts and was able, based simply on the fact of its registration, to advance a claim against the mortgagor for both possession of the charged property and any outstanding (secured) debt; whilst it was also possible to transfer a debt by way of an assignment under section 136 (and this was apparently what the original mortgagee and Promontoria had tried to do by the deed of assignment) the fact that Promontoria had failed on the deed did not mean that it could not recover the debt (as well as possession of the property) by virtue of its registration.
114. Of course, in the present case the Defendants pleaded that no transfer of the loans or the mortgages took place, that the Popular Bank as the original mortgagee remained their owner and that the title registers relating to the properties should be rectified (by reason of a mistake) so as to restore the Popular Bank as registered proprietor, as sought in the prayer to the (amended) Counterclaim.
115. However, not only is there no merit in the Defendants' pleaded challenges to the chain of transfers to Mars, but once registration was effected, it is conclusive pursuant to section 58 of the Land Registration Act 2002, subject only to the limited powers in or pursuant to section 65 and Schedule 4 of the 2002 Act.
116. The leading decision of the Court of Appeal in *NRAM Ltd v Evans* [2018] 1 WLR 639 established that an entry in the title register can only be rectified pursuant to Schedule 4 on the grounds of mistake, if that entry was made pursuant to a void, and not merely voidable, disposition; and under paragraph 3 of Schedule 4, an order for rectification can only be made without the registered proprietor's consent if he has by fraud or lack of care caused or substantially contributed to the mistake or it would for any other reason be unjust for the alteration not to be made. That is not established in the present case.
117. In that regard, by way of end note to this section and precursor to the next, the lack of any reliable grounds for Mr Hussain's attack on the authenticity and 'merits' of the PSA

became more-and-more obvious during the trial as he demonstrated how misguided had been and was his approach to and conduct of that aspect:-

- (a) Even Mr Hussain had to accept (as he did by Day 2) that the price paid by Mars for the ‘Purchase Portfolio’ (as defined in the PSA) was irrelevant regardless of what he thought that price might have been from what Mr Michaels had allegedly told him (and which Mars said was incorrect).
- (b) Whilst Mr Hussain’s skeleton complained that he did not know what was paid for his debt (alone), that information was contained in the disclosed PSA, in Part A of Schedule 2 “Loan by Loan Pricing at Borrower Level” which was not redacted as regards the Defendants’ loans and can be compared with the figures in the extract from the Purchase Portfolio Data Tape exhibited to Ms Sheridan’s witness statement.
- (c) Although Mr Theodorou accepted that the CBC’s letter dated 11 August 2014 was sufficient for the purposes of providing the requisite approval for the PSA (and Ms Papaconstantinou of the CBC provided a further letter to demonstrate this) Mr Hussain still questioned Ms Hussain on this point (although it must again be noted that throughout his cross-examinations of Ms Sheridan, Ms Americanou and Ms Hussain, no specific aspect of their respective witness statements was actually challenged).

(8) Mr Hussain’s position

- 118. One of the most curious turn of events during a trial concerned with title to the Defendants’ debts and mortgages, but not the amounts owing, was Mr Hussain’s express position from Day 3 of the trial onwards, that if the amount he owed was independently verified, he would not be contending that he owed that figure to anyone other than Mars.
- 119. However, there was nothing previously in these proceedings, or even before the proceedings (eg in the letter from Mr Hussain’s former solicitor Mr Cooper dated 15 December 2017) to suggest that Mr Hussain’s only dispute with Mars was as to the *amount* owing – which has not been the pleaded subject of these proceedings at all.
- 120. To the contrary, Mr Hussain set out to dispute Mars’ title; and he has done so not merely by way of purported non-admissions, but by way of a positive case (backed by a plea for declaratory relief) that his loans and mortgages remain with the Popular Bank. Indeed Mars considered that Mr Hussain has encouraged other borrowers (perhaps Mr and Mrs Papachristoforou and previously the Fourth and Fifth Defendants Mr Tsokalides and Mrs Ktori) to do the same. It submitted that his previous stance – that he wished only to pay whatever was his true debt to the right creditor – was in effect a sham.

121. Another curious position taken by Mr Hussain at trial was (to quote his skeleton) that Decrees 103 and 104 are '*being used heavily as a form of mis-directions*' and '*may be [of] no relevance*'. Again, that was not the thrust of Mr Cooper's pre-action letters or the pleaded Defence, analysed as above.
122. This confusion was compounded by Mr Hussain's failure to challenge relevant evidence for example that his loans and mortgages were included within the Purchase Portfolio, as defined in the PSA and that the tender process undertaken by the CBC as Resolution Authority was as set out by Ms Americanou, resorting instead to collateral, unpleaded allegations which do not directly give rise to any defence. It is as if he abandoned for whatever reason any legal answer to Mars' proof of its title.
123. Mr Hussain made lengthy appeals for sympathy based on his financial and emotional vulnerability, the stress and suffering of many years of dispute, and fear of losing his home, all of which was understandable. But the resulting depth and desperation in some of his headline allegations was unfortunately extreme.
124. It is still not necessary or desirable that I spell out each and every deficiency in his case. His animosity and literalness meant that instead of understanding aspects which were obvious in practice and thoroughly endorsed over many years, he was almost bound to take a contrary view. Thus among numerous other examples:
 - (a) he accused the Popular Bank and others of losing their identities and/or duplicity because of normal, well-recorded changes of corporate names (even suggesting that 'The' Popular Bank of Cyprus was a different bank from 'Popular Bank of Cyprus'); and
 - (b) he misconstrued and sought to misapply out of context, previous judicial remarks during interlocutory argument which were inapplicable at trial, as if they could be used in any way against Mars – for example, as to whether it had previously accounted for its attempts to obtain documents, or whether these High Court declaratory proceedings were a 'test' case which might affect other Mars customers.
125. However in my judgment, Mr Hussain, despite his apparent determination at evasion and diversion, was more naïve than devious, dominated by wishful thinking at to what he mistakenly thought might help him or harm Mars, without any common sense or perspective. He made his misconceived allegations and arguments because he wished at all costs to avoid or reduce his debts, when Mars, however distressing he found it, was inevitably the legal owner. But I am still not satisfied that he deliberately and consciously lied. Rather he convinced himself of his fallacious suspicions and was, sadly, unable to accept the unpleasant truth,

however starkly it stood before him and however much in reality, his campaign against Mars was likely ultimately to cost him.

126. As well as gratuitous and groundless allegations of wrongdoing against Mars and others, Mr Hussain persisted, even when offered the opportunity to modify or temper them, in indiscriminate, ubiquitous allegations of forgery and fraud, to only the most significant of which I will revert below. These allegations should never have been made, let alone pursued and even added to during the trial under scrutiny. None of those allegations was pleaded, perhaps because Mr Hussain's counsel and solicitors declined to do so, perhaps because Mr Hussain only decided to pursue them when he felt he had to. No notices under CPR 32.19, whether by the prescribed time or at all, were ever served challenging the authenticity of any document disclosed by Mars, so they were deemed to be admitted under the rules - but certainly not as far as Mr Hussain was concerned.
127. I come back therefore to some of Mr Hussain's more significant, baseless charges relating to the facility letters of 2006/7. He insisted that his signatures on the facility letters had been forged and the contents cut and pasted, but was unable to advance any sensible support for that position, not least given his acceptance (a) that he had borrowed money from the Popular Bank in 2006 and 2007; (b) that the narrative which appeared from the first facility letter was essentially what had, to the best of his recollection, occurred at the time; (c) that he had loan accounts with the Popular Bank from 2006 and 2007, albeit he disputed the amount owing on those accounts; and (d) that he purchased the flats which were mentioned in the facility letters with the benefit of lending from the Popular Bank 'between 2006 and 2007'.
128. Mr Hussain claimed that he kept (and had disclosed to his lawyers) every document he had received from the Popular Bank but accepted that he had not produced in the proceedings any alternative and supposedly genuine facility letters whether signed or unsigned from those two years. That would mean that from 2006 the Popular Bank advanced hundreds of thousands of pounds to Mr Hussain without sending him any facility letters, let alone requiring them to be signed.
129. Further, along with the absence of any postulated reason why employees of the predecessor banks or of Mars would take the extraordinary step of fabricating the only applicable facility letters produced, other aspects of Mr Hussain's various bases for suggesting that his signatures on the 2006/2007 Facility Letters had been forged also verged on the absurd:-
 - (a) He said that certain of his signatures were different from others but (in the absence of his ever requesting forensic comparisons) the various signatures

appear to be similar and the existence of slight differences may be more consistent with their being genuine than having been 'cut and pasted'.

- (b) He said that the date of the signature from the Popular Bank representative was different from the date of his own signature, but that is exactly what one would expect where a document is sent out by a bank by way of an offer to be signed and returned by its customer if that customer chose to accept the offer, and where on the face of the document the customer had a period of time to consider that.
 - (c) He said that there were font and spacing differences in the facility letters and in the terms and conditions - as is however so common in such documents and their copies - and that the page numbering re-started with the Popular Bank's alleged attached Standard Loan Terms and Conditions - but that is again unsurprising, given that although referred to in the facility letters, they were separate documents.
130. Mr Hussain's allegation that Mars had 'cut and pasted' the 'transferability' clause 8 of the terms and conditions attached to the facility letters was described by him in writing as 'one of the most egregious behaviours that Mars Capital undertakes'. His only ground for this was that this clause had not been contained in a completely different, earlier (and apparently unsigned) 2004 facility letter from the Popular Bank. It was obvious that he had been sent subsequent facility letters by the Popular Bank with different terms and conditions in respect of different loans. But as so often, he stuck to this allegation and refused to withdraw it even when this was pointed out.

(9) Conclusions

131. These proceedings have been unusual. The Defendants have not disputed that they borrowed large sums from the Popular Bank, or that they are in default under the relevant loans and mortgages. Instead they have sought to avoid the inevitable consequences of that default first by seeking to challenge every step in Mars' title, beginning with the decrees issued by the Central Bank of Cyprus pursuant to a Cypriot law made as long ago as March 2013; and secondly, when their Cypriot law expert contradicted their pleaded case, by persistently making, in Mr Hussain's case, misguided and improper aspersions on Mars and others. Throughout he made no attempt to make any payments on account to his original or subsequent creditors and resisted to the last, in the face of the court, sensible concessions.
132. In the event, and for the reasons set out at some length above, there will therefore be judgment for the Claimant against the First to Third Defendants, and the First to Third Defendants' Defence (as amended) will be dismissed. The Court will make

the first two declarations sought by the Claimant, as to its title and rights in respect of the properties.

133. I am not persuaded that a third declaration, regarding the 2012 Birmingham possession proceedings, is necessary or appropriate. In the first instance the County Court is the master or mistress of its own proceedings and it is not for the High Court usually to tell the County Court what to do through separately initiated action, even if, as the Claimant urged, that might be more ‘helpful’ for a busy lower court. This court’s order making the first two declarations, and this judgment if needed, should be sufficient for that purpose, without disrupting the established division and organisation of court business.
 134. The parties should file and exchange written submissions including a proposed draft order and addressing costs and any other consequential matters, within 14 days of the handing down of this judgment in approved form, indicating at the same time whether they wish for a further online hearing as regards any dispute as to those matters.
-