

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

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

Date: 27 September 2023

Before :

HHJ JOHNS KC

Sitting as a Judge of the High Court

Between :

(1) NEXT GENERATION HOLDINGS LIMITED

(2) AMBON BROKERS LIMITED

Claimants

- and -

(1) ALEC FINCH

(2) ROBERT ANDREW FINCH

(3) KEELY DALFEN

Defendants

MR JAMES POTTS & MS ANCA BUNDA (instructed by Devonshires Solicitors LLP) for the
Claimants

MR YASH KULKARNI KC (instructed by Ward Hadaway) for the **First and Second**
Defendants

MR ROBIN SOMERVILLE (by Direct Access) for the **Third Defendant**

Hearing dates: 15-16, 19-23, 26-27 & 29-30 June 2023

APPROVED JUDGMENT

This judgment is handed down by email to the parties' representatives and release to The National Archives at 10.30 am on Wednesday 27 September 2023

HHJ JOHNS KC:

A. Introduction

1. Under a share purchase agreement dated 14 September 2017 (**the SPA**), Mr Alec Finch (**AF**) sold and Next Generation Holdings Limited (**NGHL**) bought 58 percent of the share capital in a company then known as AFL Insurance Brokers Limited (**AFL**) for the sum of £2,119,900. By these proceedings, NGHL complains that it was the victim of a fraud by AF, as well as his son Robert Andrew Finch, known as Bob Finch (**BF**), and the company accountant Keely Dalfen (**KD**). A false picture, it is said, was given of AFL's financial position. Among other things, a list of debtors provided before the sale overstated the sums then owed to AFL and, contrary to the company accounts, there was a £3.5 million – size hole in its client money account.
2. Over a period of 3 weeks in June, I heard the trial of the claim by NGHL and AFL (now known as Ambon Brokers Limited) against AF and BF, and of the additional claim under CPR Part 20 by AF and BF against KD seeking a contribution. The Claimants' claim against KD was stayed, having been compromised following her open admission of liability, though not loss. She gave evidence for the Claimants, supporting their claim against AF and BF.

B. Brief background

3. AFL was in the business of wholesale insurance broking. Its customers were therefore other brokers. AFL would place risks with insurers in the Lloyds market for retail brokers unable to place the risk themselves. Typically, AFL would then receive the premium (often after deduction of the retail broker's

commission), deduct its own commission, and pass the resulting net premium onto the insurer.

4. AFL was, accordingly, conducting business in a highly regulated area. It was authorised by the Financial Conduct Authority (**FCA**) (prior to 1 April 2013, the Financial Services Authority) to do so. As part of that authorisation, AFL was required to comply with CASS 5, being Chapter 5 of the FCA's Client Assets Sourcebook, when handling client money. Client money is held on statutory trusts and CASS 5 required, among other things, client money to be held separately from the company's money (unless otherwise permitted), and that the total amount of client money held for each client was positive; that is, sufficient was held for that client to meet that client's entitlement. Further and as part of those requirements, client money calculations (**CMCs**) were to be carried out at least every 25 days, with any surplus revealed being paid out to AFL and any deficit revealed being made good by a payment in by AFL to the client account.
5. While I will refer in this judgment to AFL's client money account for the sake of simplicity, it in fact had client money accounts for each of the currencies in which it traded. It also had an office account for its own money.
6. AFL's business involved binders. Binders are an annual facility under which individual risks are placed over the contract period.
7. Under the relevant accounting standards, income should only be accrued once earned. Under binders, the right to commission arose only on the binding of each specific risk during the period of the binder. Before then, such commission was a contingent asset only.

8. Cash received was paid into AFL's client account. That should result in reversal of a corresponding accrual. That is because the income was no longer merely expected, being earned but not received. It had arrived and so should be recorded as received income. Further, sums for AFL's commission should not be paid out of the client account into the office account unless cash representing the commission had been received. It should not be paid out on a mere accrual.
9. AFL had auditors throughout the period; an annual audit of its accounts and financial statements, as well as a client money audit, being carried out by a team from RSM UK Audit LLP (formerly Baker Tilly UK Audit LLP).
10. NGHL entered the scene in early 2017 as a potential purchaser of shares in AFL. It was a revised offer made on 14 April 2017 which ended up forming the basis of the SPA. The offer sum of £2,119,900 represented 8.5 times AFL's EBITDA for 2016/2017. That revised offer was followed by a period of due diligence. That included a meeting on 6 July 2017 between BF and Mr Esser, a director of NGHL, at which aged debts were discussed; those having been set out on a spreadsheet produced by KD.
11. Around that time, there was a move to a new accounting system. The original system was known as TAM. The new system as RiskPro. From 1 July 2017 all new business was processed on RiskPro. But both systems were operated for a while; TAM continuing to be used after 1 July 2017, for business already recorded on TAM.
12. AF was, at the time of the sale and for several years previously, a director and the chairman of AFL. BF was, at the time of the sale and for several years previously, a director and managing director or CEO of AFL. They were the

FCA approved persons for the purposes of the conduct of AFL's highly regulated business.

13. At the time of the share sale, KD was CFO of AFL, having previously been the financial controller. She was replaced in that role by a Mr Chris Gagg around a year after the share sale and remained with AFL dealing with financial matters until 31 July 2019.
14. Also around the time of the sale, one of AFL's brokers, a Mr Andrew Clowes, went to a competing company – Iris Insurance Brokers Limited. Some of the client accounts with which this case is concerned went with him and agreement was reached between Iris and AFL for AFL to share in new commissions on those accounts in the first year after Mr Clowes's departure.
15. There was a disclosure letter with accompanying documents given by AF to NGHL at the time of, and referred to in, the SPA. Those documents included unaudited management accounts as at 30 June 2017; the last audited financial statements being for the period to 30 June 2016.
16. Following the sale, BF's shareholding was increased. A further 12 percent was added on 2 January 2018, making his total shareholding 22 percent. There were also equity capital raises. A £2.5m raise in 2018 and a £750,000 raise in 2019. NGHL contributed to both.
17. It also contributed to a further raise in April 2020. But later that same month, and in the following month (May 2020), Mr Gagg produced important memoranda for AFL's executive committee. They were to the effect that accruals of income had been incorrectly posted in AFL's financial records and

that the CMCs had been consequentially amended to enable transfers from AFL's client account to its office account. The result, he and a Mr Goodings (a consultant appointed to investigate) considered, was a hole in the client money account of around £3.6m.

18. The Finches say that conclusion is flawed. That is a central area of dispute I must resolve.
19. These proceedings were commenced not long after Mr Gagg's apparent realisation; the claim form being issued on 21 August 2020.
20. But before that, the Claimants' solicitors wrote to KD by letter of 22 June 2020. The letter alleged wrongdoing by her as well as the Finches and invited her to come clean and cooperate so as to mitigate the consequences she may face. Those were said to include FCA investigation and action and civil recovery proceedings. She has since cooperated.
21. AFL raised a sum totalling in excess of £3.6m between July and October 2020. That sum was required, it is said, to make good the shortfall in cash held on trust for customers in the client account.
22. Parts of AFL's business have since been sold. The remainder is in a solvent wind-down.

C. Parties' cases in broadest outline

23. The Claimants allege a fraud which they describe as having three aspects:

“Phase 1: False income accruals were recorded in AFL's accounts, overstating its income and creating the false impression that AFL was profitable. ... Phase

2: The false income accruals were carried into AFL's balance sheet, making it appear to have positive net assets when in fact its net assets were negative. ...

Phase 3: AFL's client money calculations ("CMCs") required to be prepared under CASS 5 ... were falsified in order to make it appear that AFL had surplus funds in its client trust accounts each month, rather than the reality which was that it had a substantial shortfall each month. On the basis of the falsified CMCs showing surpluses, the Defendants then transferred money from AFL's client trust accounts to its office accounts to meet AFL's business expenses despite the company in fact being insolvent." – the Re-Amended Particulars of Claim at [15].

24. The legal bases on which the claim is put are these: Dishonest and fraudulent breach of warranty; Fraudulent misrepresentation; Breach of duties owed to AFL; Unlawful means conspiracy.
25. The Finches deny any such wrongdoing. They say they "*believe that there is no trust cash shortfall and in the event that there is a shortfall it is not of the First and Second Defendants' making*" – the Re-Amended Defence at [39.1]. By the additional claim against KD, they lay the blame for any wrongdoing proved squarely at KD's door. "*If, which is denied, and contrary to the First and Second Defendants' case, it were found that the Claimants' allegations were correct as to income being falsely accrued or carried over to AFL's balance sheet, or as to accounts or client money calculations being falsified, or as to client monies being used to enable AFL to trade when insolvent, these were all matters for which the Third Defendant/Third Party was responsible.*" – the Notice of Additional Claim at [7].

26. KD's case on the additional claim is encapsulated in her Defence to the additional claim at [8]:

“Against her verbal and written reluctance, reservations and protestations in discussion and correspondence with them, the First and Second Defendants instructed Ms Dalfen to manipulate the Company's financial reporting to make its performance appear better than it was. Ms Dalfen denies that the First and Second Defendants relied on her entirely in these regards. Whilst it is admitted that Ms Dalfen made the relevant accounting entries and prepared the relevant statements, it was under the instruction, control and direction of the First and Second Defendants.”

D. Evidence

27. I heard from the following witnesses:

Jonathan Turnbull. He was retained in the period May to September 2017 by Mr Esser of NGHL to conduct due diligence in connection with the proposed purchase of shares in AFL. His evidence was taken remotely by video.

Toby Esser. He is the chairman and a director of NGHL and dealt with the negotiations for the purchase of AFL's shares.

Keely Dalfen. She gave evidence for the Claimants against the Finches. Much turns on my assessment of her evidence.

Alec Finch.

Bob Finch. He gave evidence by video from the United States in accordance with permission granted by Zacaroli J at the pre-trial review. Indeed, given he

was a party, I directed that the trial be a hybrid hearing so that he could be attend, by remote link, throughout.

28. Both the Claimants and the Finches relied on expert accounting evidence.
29. The Claimants' expert was Mr Noel Lindsay. The Finches' expert was Mr Robert Parry. Mr Parry's report addressed Mr Lindsay's report. There was a significant measure of agreement, later reflected in a joint statement. That was followed by supplemental reports. Both experts gave oral evidence.

E. Law

30. As Mr Kulkarni KC submitted, this case is not really about the law. But it is important to be clear about how the evidence is to be approached as a matter of law.
31. Mr Kulkarni submitted that the more serious the allegation the more cogent is the evidence required to prove it. He pointed to the following statement by Richards LJ in *R (N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605 at [62] quoted with approval by Lord Carswell in *In re D* [2008] UKHL 33 at [27]:

“Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of

probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”

32. But there is no proposition of law that the more serious the allegation the more cogent is the evidence required to prove it, as Eder J spelled out in *Otkritie International Investment Management Ltd v Urumov* [2014] EWHC 191 (Comm) at [88(ii)]. Rather, the true position is as described by Eder J in [89] of that decision:

“I accept, of course, that the court should take into account the inherent probability of an event taking place (or not taking place) ... However, as it seems to me, the court must in each case consider carefully what is – and is not – inherently probable having regard to the particular circumstances – but the standard of proof in civil cases always remains the same i.e. balance of probability.”

F. A client money hole?

33. I start with what became the central issue, being the issue of the alleged client money hole. The key questions are these: Was there a deficit in the client money account at the time of the share sale? If so, was it known to AF and BF? And, if there was a deficit, how large was it?
34. On the first of those questions, I have reached the clear conclusion that there was a very significant deficit in the client money account at the time of the share sale.

35. There are two key features of the evidence which have led me to that conclusion. They provide support for each other. And neither has a convincing alternative explanation.

36. First, there is clear witness evidence that there was a client money deficit from the person acting as financial controller and then CFO for AFL in the years preceding the sale, namely KD. She told me during her cross-examination, “100% there was a client money hole”. That reflected her witness statements:

“... the client money gap grew over time, getting bigger and bigger, reaching a situation where AFL was simply unable to repay the trust monies as the money had been transferred to the office account and already spent (to meet business expenses etc)” - KD’s first witness statement at [62].

“I was having to use one client’s money to pay money AFL owed on behalf of another client” - KD’s first witness statement at [68].

“At this stage”, being late 2012, early 2013, *“it was fully known by me and the Finches that there was a gap in the client money account.”* - KD’s first witness statement at [76].

As at 2016/2017, *“The brokers at AFL were aware of the issues in paying premium to insurers. However, there was a misconception that the reason payments were being missed and/or paid late was due to accounting failures, rather than the reality which was that there was simply no money in the client account to pay the premium from.”* - KD’s first witness statement at [117].

“... we were only able to continue trading by putting in baseless accruals and drawing down client money on this basis ...” - KD’s first witness statement at [117].

“I ... genuinely wanted to believe Alec’s promises that as AFL grew and became more successful the accruals could be reversed out, the client money gradually repaid and the black hole reversed.” - KD’s first witness statement at [117].

“Alec and Bob used to speak about ... investors as having a ‘war chest’. I was repeatedly told not to worry about the client money shortfall as AFL was small fry for these investors and there would be ample money available to plug the gap once they were onboard.” - KD’s first witness statement at [136].

Speaking of adjustments made to RiskPro CMCs, *“Had I not of done this, the CMCs would have revealed the very substantial deficit in AFL’s client account.”* - KD’s first witness statement at [156]. And, *“... the making of the manual adjustments to the CMCs on RiskPro did not cause the financial black hole to worsen, but it had the effect of concealing it from the new management.”* - KD’s first witness statement at [159]. Referring to the January 2018 CMC as an example, *“... What it does not, however, do is take into account the trust account deficit which has built up over time from the false accruals previously made which has been disguised by bringing across the legacy TAM debtor data. If it did, it would show that AFL was not solvent and reveal the accounting black hole.”* - KD’s first witness statement at [159].

For 2018, she referred to *“... the Finches wanting me to stay to continue to mask the historic client account deficit ...”* - KD’s first witness statement at [165].

In June 2019, *“At this point I did not know how much the trust account black hole was, but thought it was around £1.5 million (although I had never actually sat down and worked it out as this seemed a fruitless task given I knew it was a very large amount of money).”* - KD’s first witness statement at [177].

Referring to BF’s evidence, *“... Bob describes frustrations between the brokers and the finance department, largely due to delays in paying insurers. It is correct that such frustration existed. However, Bob fails to mention the primary reason why, namely the trust account deficit meaning we simply did not have the funds to pay insurers until more client money had been received for alternative business. Bob was well aware of this, because we had frequent discussions about it.”* - KD’s second witness statement at [12].

37. There is no convincing alternative explanation for all this evidence. It is evidence which is given by KD against herself, in that it reveals she was part of any such fraud and exposes her to a risk of liability to the Finches. In that regard, KD does not even, under the settlement of the Claimants’ claim against her, obtain an indemnity for any liability to the Finches. And they do now bring the additional claim for a contribution against her. Clause 3.5 of the settlement agreement between the Claimants and KD dated 23 April 2021 is in these terms:

“KD acknowledges and agrees that the Claimants are not providing KD with any indemnity in respect of any claim that may be brought against her (for contribution or otherwise) by AF, BF, the Auditors or any other non-Party to this Agreement”.

38. Mr Kulkarni was able to point only to KD’s agreement under the settlement to assist the Claimants in their claim. She was, he said, just going along with the

Claimants' case so as not to breach her obligation to assist. But that is a wholly inadequate explanation for her very striking evidence; detailed evidence of a major fraud by the Finches, in which she was involved, and which exposes her to a claim by the Finches. No circumstances which might begin to explain why she would concoct such a story were identified for me.

39. Second, when around £3.6m was paid into the client account to address the apparent problem, only £130,000 remained. This is something of a litmus test. While AFL was trading, any deficit would not be readily apparent. The continuous flow of money into the client account would mean that insurance creditors continued to be paid, albeit probably with some delays. But when the clock was stopped by the company being run down, any surplus or deficit would be revealed. What that stopping of the clock showed was that, despite an injection of around £3.6m into the client account, the account was all but emptied by paying out sums owed to insurance creditors.

40. Again, there was no convincing alternative explanation for that evidence. Even Mr Parry seemed to be of the view at the close of his oral evidence that this showed there was a deficit in the client money account, though it did not establish how it had come about. When I asked him what the cause could be, other than the accruals identified by the Claimants, he said only "*Some other misaccounting of some sort*", describing that suggestion as "*a speculative point*".

41. No positive case was made by the Finches that any client money deficit was the result of some later wrongdoing by Mr Esser and/or his new management team. No such case was pleaded. But that possibility is one, in my judgment, which

they are entitled to raise – as a possibility – in seeking to resist a finding that the deficit was the result of their wrongdoing. Aikens J in *Seashore Marine SA v Phoenix Assurance plc* [2001] 2 Lloyd’s Rep 719 held that while the defendant underwriters could not, in the absence of pleading an alternative cause of the loss claimed, pursue any positive case as to such an alternative cause, they could raise it as a possibility.

42. In this case it is a possibility I can safely exclude. Such wrongdoing is inherently unlikely. June 2018 accruals referred to by Mr Parry were confirmed by BF in his oral evidence to be proper. The arrival of Mr Gagg in September 2018 saw a crackdown on accruals. Emails from him in October 2018 included the following:

“... items included in accruals should only be committed and can be evidenced e.g. via written or email confirmation, signed binder/facility etc. What we think, might do, promises are pipeline only and not something we can justify booking.”

- from email of 12 October 2018.

“...basically we need an auditor approach and refuse to include without justification – otherwise what happens is we get to y/e and audited accounts showing a much worse performance than people thought ...” - from email of 15 October 2018.

And, after the share sale, KD ceased her old practices of taking client money using CMCs. Her oral evidence included this:

“...it was a sort of turning point for me. I was never going to ever take a penny of client money. It was completely transparent. And that was the reason why I

put the Z code on every accrual because I wanted complete transparency that new management knew exactly what was going on in and that it couldn't affect the client money".

43. Certainly, given all that, and when contrasted with the strong evidence of wrongdoing on the part of the Finches, the suggestion of this possibility provides no real answer to a conclusion on the balance of probabilities (which is the appropriate standard) that the client money hole was there at the time of sale; being the product of wrongful use of client money under the Finches.
44. Finally on this point, while one hypothetical exercise conducted by Mr Lindsay, the Claimants' expert, involved £4m being transferred from the client money account following sale, it did not seem to me an exercise of any real value, and I accede to Mr Kulkarni's invitation made in closing to ignore it.
45. It will be apparent from my judgment so far that this is not a case where the allegation of fraud relies entirely, or even principally, on inferences from the documents or expert accounting evidence. Rather, KD as the accountant in post for AFL at the relevant time gives clear evidence that there was a client money hole. And when around £3.6m was paid into the client account to address the apparent problem, only £130,000 remained. Those two key features of the evidence support one another. Together they have led me to the clear conclusion that there was a client money deficit at the time of sale, certainly when considered alongside the rest of the evidence.
46. There is a third feature of that remaining evidence which I consider is very significant. The period of the alleged false accruals is bracketed by two brazen raids on the client money account. These show that at least AF was prepared to

resort to client money in order to prop up the trading of AFL. It means that wrongful use of client money by the Finches was not at all unlikely.

47. The first of those was in August 2011. There being insufficient funds in the office account to meet expenses (payment of those expenses would take it beyond the overdraft limit), AF emailed KD on 17 August 2011 in these terms:

“My proposal, borne out of expediency, is that once you have done a reconciliation on Friday (or Monday if you have the time) you draw down, from the client accounts , sufficient of the commissions/fees we anticipate being receivable over the next few weeks , to cover our needs over the next two weeks or so. I will then make arrangements in September to rectify the position if those commissions/fees are still, by then, outstanding.”

48. KD obliged; emailing as follows on the same day:

“I think the most sensible thing for me to do is prepare a FSA compliant reconciliation on Friday then on Monday transfer any shortfall. I would never propose doing this ordinarily but in the circumstances I think we live with a transfer that is perhaps an 'accounting error' and then correct it at the next compliant money reconciliation in September.

This email will self destruct in 5 mins.”

49. She made clear by a later email, responding to a question from AF, that she was not joking about the need to destroy the email:

“... potentially I could get kicked out of the Institute if they found I had done it with intent. I think we should cover our backs and make sure it's a one off.”

50. The raid occurring at the end of the period was to pay a liability to HMRC. KD's evidence in relation to this was as follows:

“I remember being forced to transfer client monies to pay HMRC as they were threatening to wind us up in a matter of days unless payment was made. It is my recollection that we received a final warning from HMRC and I called Alec, who was on holiday in Italy at the time, saying I had no idea what to do and I was convinced we were going to be wound up. Alec told me to transfer the money from client money and that he'd sort it the week after when he was back in the UK. I felt very uncomfortable about this and called Bob telling him what Alec had told me to do. I remember Bob being extremely relieved and thanking me profusely for 'resolving' the situation.” – see KD's second witness statement at [41].

51. I accept that evidence. One, it finds a reflection in AF's own evidence. He referred to such an incident in 2017, as well as the occasion in 2011 I have already detailed, in his first witness statement at [15].

“Once in the very early days we did anticipate some monies coming in and transferred. It was a one-off incident. There is a further incident that I am aware of in 2017 when there was a tax bill that needed paying and the same thing happened then.”

52. Two, it finds support in the documents. There was on 23 October 2017 an HMRC demand for unpaid tax going back to 2014 which would therefore be AF's responsibility under the warranties in the SPA. And payments to HMRC on 3 November 2017 out of the office account coincided with a transfer out of the client account to the office account that same day in the sum of £80,000.

53. Three, AF said in cross-examination that he was aware of this at the time or shortly afterwards. His failure to alert the board of AFL to this obviously wrongful treatment of client money despite that knowledge points to AF having been behind it.

54. These raids on client money took place despite both AF and BF being aware it was vital to treat client money separately. There was this exchange during the cross examination of AF:

“Q. You would have understood ... that clients’ money is held in trust accounts?”

A. Yes.

Q. And that means client money is sacrosanct?”

A. Yes.

Q. And it must be kept separate from office money. You only take money out of the client account when it is actually received and due to AFL?”

A. Yes.”

55. For his part, BF told me that from at least the time he became a board member of AFL in February 2012, *“I was aware of the need for strict separation and that client money could not be taken until earned”* - his second witness statement at [59].

56. The further reasons for my conclusion, on the whole of the evidence, that there was a client money hole at the time of the share sale are these.

57. That client money was being taken leading to a deficit is reflected in a number of contemporaneous emails. The following are examples:

“I have done a client money so that there is enough for salaries tomorrow but have had to do the inevitable and take some commissions early again from the USD account.” - KD to AF, 25 January 2012.

“This morning I have therefore transferred money between the accounts to 'balance the books'. Its all wrong, but we cant afford to fund it. It also means that I cant transfer legitimate commissions from the accounts into the office account. Nevertheless the office account is £15k over the facility this morning and as its month end it will get flagged with credit which we don't need. I have therefore also transferred enough to cover this shortfall ... It just means that all the accounts not just the USD are holding insufficient amounts” - KD to BF and AF, 28 September 2012.

“Re the cash we had in £26k from Prime Global on Friday which is one of Javiers, our commission is £3k shall I 'borrow' £20k of it? I wont usually pay insurers until the end of the month anyway. I really need to pay Steve B's fees too and that will sort the office account out and allow me to send him his money” - KD to AF, 3 December 2012.

“We are in a worse situation with client money now than before (which was 294k euros) as we took euros 45,000 out of the Centrale GPA money of 200,000 and although paid back the full amount the deficit is still there, plus we had the RP of euros 160,000 where we lost commission of 8,000 euros that I'd already taken to the office account and again we haven't had the money to transfer it back.” - KD to BF, 7 June 2013.

“If we can keep the momentum up and not replicate the July-Dec 12 figures this year but get some new business then things are moving in the right direction and we can sort out the client money, pay HMRC and get back on track” - KD to BF, 4 September 2013.

“We are really struggling for cash, so badly that I definitely won’t have enough legitimately for wages next week. However please do not worry as there is nothing you or Bob can do and I will make sure that come next week there is enough in the office account to cover it.” - KD to AF, 18 October 2013.

“I’m putting my neck on the line and could get into serious trouble by propping the business up and using client money”, - KD to BF, 10 June 2016.

“London Market department is ‘paying’ back for the years where we have booked income that has never materialised and now we have a black hole accounting issue. ... the income generated from the dept is going towards repaying a deficit that they have built up over the last 5 years.” - KD to BF & AF, 26 May 2017.

58. There is clear and detailed evidence as to the mechanism by which client money was taken; KD describing the making of false accruals, being accruals which had no proper basis, the use of those in CMCs resulting in the transfer of money to the office account, and later replacement of these accruals with even larger ones. And of how it was masked both before and after the share sale transaction. There was a netting off process when false accruals were made.

“When making the accruals I would usually net off the debtor and creditor amounts so as to just show a debtor amount for AFL’s commission. If I had not

done this, the accruals would result in AFL having huge debtor figures which would have instantly raised alarm bells to anyone looking at AFL's accounts including its auditors or potential buyers and investors.” - KD's first witness statement at [59].

And adjustments were later made to RiskPro CMCs.

“In broad terms, the process was as follows: (a) produce a draft CMC via RiskPro; (b) generate a printout of insurance debtors, insurance creditors and unearned commission from TAM; (c) adjust the draft CMC to reflect the TAM printout; (d) adjust the client money cash balances figures on the draft CMC to reflect the actual balances on the client accounts; and (e) adjust the insurance creditors figures on the draft CMC to reflect the false accruals. I knew that by doing this process I was drawing the false TAM balances through to the CMCs generated by RiskPro. Had I not of done this, the CMCs would have revealed the very substantial deficit in AFL's client account.” - KD's first witness statement at [156].

59. The Claimants have been able to identify and list in a Scott schedule a number of these false accruals. These represent concrete examples of the practice which KD described, and of which she said *“It ... eventually became clear to me that Bob was doing this spuriously and there was no justification for the accruals being made in the first place.”* – KD's first witness statement at [88].
60. On the basis of that evidence of KD and my further reasons below, my findings in relation to those examples, referred to by account or client name, are as follows.

61. IAM. Accruals totalling 3 million Norwegian krone (NOK) were entered on 11 August 2016. Those were largely reversed and replaced by accruals totalling around 5.2 million NOK on 21 June 2017. But as at 21 June 2017, less than 600,000 NOK had in fact been invoiced. Given that performance, there was, as I find, no proper basis for accruing the sum of 5.2 million NOK on 21 June 2017. Further, AF told me, in relation to this, only that “*I am sure there was a firm reason and I am sure there is an explanation. But I can’t give you one*”, and “*There must be an explanation. I don’t know enough about this to be able to comment but there must be an explanation. It doesn’t make sense otherwise*”. There is no evidence at all that this account performed at anything like the level of the 21 June 2017 accruals. And Mr Maytum of AFL (one of the accounting staff) refers to the accruals when made as “*massively inflated*” – see his email of 23 June 2017. While BF sought to justify the accruals in his oral evidence, his attempts were not supported by the documents and relied on suggestions not found in his witness statements. He was also unable to explain why accruals went in on 21 June 2017 when the latest binder for IAM was entered into in March 2017. The underperformance and the fact that the reversal and replacement follows the pattern for false accruals described by KD, also satisfies me that the 2016 accruals also lacked any proper basis. I take into account too a readiness, apparent in the contemporaneous documents, to accrue such figures as seemed necessary to show AFL’s business as profitable. By way of example, BF emailed KD on 3 June 2014 (albeit in connection with management accounts), “*We’re basically going to be in a position end of June where we decide how much we want/need to accrue and then attribute it to Schengen. Obviously the less the better.*”

62. L'Estienne. Accruals totalling 255,000 EUR were entered on 12 May 2016. Those were reversed on 21 June 2017 and replaced by accruals totalling over 550,000 EUR. That was despite the sums invoiced as at 21 June 2017 coming to a little over 200,000 EUR only. Given that performance, there was no proper basis for accruing the sum of over 550,000 EUR on 21 June 2017. And neither AF nor BF were able to give any convincing explanation for those accruals. Rather, their attempts to justify the figures relied on suggested documents which were not in evidence.
63. Bunda/Chaucer. There are accruals totalling \$96,000 by 21 June 2017, with a further accrual on 30 October 2017 of 100,000 EUR. No income or documents supporting accruals in those sums were in evidence. Given that and KD's evidence, I therefore find that there was no proper basis for these accruals.
64. DCH/Pig Protect. This is a particularly instructive example. There was an accrual entered on 16 December 2015 in the sum of 42,000 EUR. Board minutes from the following June referred to "*business wins on the Danish pig product*". The broker concerned, Andrew Clowes, asked by email of 27 July 2016 for this reference to be removed as the account had not been won. But AF emailed BF that same day to say, "*I think we need the minute to justify the accrual.*" I conclude from those emails, and the fact there is no evidence of any income received referable to this accrual, that there was no proper basis for this accrual. It is also apparent from the emails that that was known to BF and AF.
65. AON. There was an accrual of \$54,000 entered on this account on 16 August 2016. It was replaced by a fresh accrual in the same sum on 21 June 2017 and added to by a further accrual in that sum on 30 October 2017. When AF was

asked whether there was a basis for these accruals he said only, “*I don’t know*”. BF said “*I don’t know what the accrual was based on*” and, again, suggested the answer may lie in further documents which were not, however, in evidence. Given the lack of supporting documents and KD’s evidence, I find there was no proper basis for these accruals.

66. Norsk. 2.1 million NOK was accrued on this account on 21 June 2017. That replaced accruals totalling a little over 800,000 NOK entered in May 2016. Again, there was no convincing explanation for this accrual. Just an appeal by BF to other suggested documents which were not in evidence, in particular a fifth binder. When it was put to AF that there was no possible basis for the accrual of 2.1 million NOK he said, “*Not unless there is some other explanation which I can’t offer you.*” I find, on that evidence and this account fitting the pattern described by KD, that there was no proper basis for these accruals.
67. IOMA. Accruals totalling £176,000 were entered in August of 2016 on this account. And added to by further accruals in a similar total sum in 2017. But only £3500 was, on the evidence, received. And BF said during cross-examination that income had not really started by May 2017 and the account was performing badly. This example is also instructive in that money received on other accounts was, as appears from the expert accounting evidence, posted wrongly against this account. I infer that was to give some false justification for the accruals. I arrive at that inference because such repeated accounting errors are unlikely and BF and AF acted elsewhere so as to justify accruals which were known to have no proper basis (see para.64 above). And when such an inference was put to AF he said, “*I am sorry, I just have no answer to that. I don’t know*”.

68. The Re-Amended Particulars of Claim complained of “other adjustments”, as well as those false accruals. Mr Potts made clear in closing only one of those was pursued, being under the name Blink. A sum of £60,000 was entered in July 2017 for a period of AFL acting as Blink’s agent, but only a part of that sum was in fact later received as Blink became, in December 2017, FCA authorised in its own right. While this may have been in breach of accounting standards, I am not satisfied there was no proper basis for this accrual. When the sum of £60,000 was entered, there was no thought, on the evidence, that Blink would later become authorised.
69. If accruals were used in CMCs under TAM, then a client money hole would be the inevitable result, even if they were reversed to the extent that cash was received against them. That is because it is accepted there was underperformance; cash received not matching the level of accruals. And, with some rare exceptions, there were no payments in the other direction, namely from the office account back to the client money account. Accordingly, money would have been taken out of the client money account as commission which never became properly due and was not replaced.
70. There was certainly the opportunity to use accruals to withdraw money using CMCs under TAM. The CMCs were created manually in TAM, unlike with RiskPro (RiskPro CMCs being generated largely automatically after December 2017).
71. And there is some correspondence as to timing. In particular, the accruals entered on 21 June 2017 were followed by a CMC on 22 June 2017 and transfers out of the client money account on 23 June 2017.

72. There is one example of a TAM document relating to a CMC expressly referring to at least the Norsk accruals identified by the Claimants, being the TAM report for December 2017. I do not, of course, ignore that other allegedly false accruals are not expressly referred to. But it is simply unclear, on the evidence, why they do not appear.
73. Mr Kulkarni worked hard to cast doubt on the evidence of KD. He highlighted the terms of the letter dated 22 June 2020 requesting her cooperation, which raised the spectre of the consequences she may otherwise face. He emphasised too her subsequent interview in which she did not accept some allegations she now supports. But these points are, in my judgment, wholly insufficient to undermine her clear evidence; evidence given against herself, and which accorded with her witness statements. Had there been no fraud she could be expected simply to have said so and maintained that, despite the letter and following her interview. Most significantly, there is nothing in these points which provides a credible explanation for her evidence. I have already dealt with the suggestion that her agreement to support the Claimants' claim can somehow furnish that explanation. It does not. I would add that the settlement agreement was entered into by KD with the benefit of legal advice from a direct access barrister. That makes it even more unlikely that she has somehow been trapped into now concocting a story.
74. Mr Kulkarni also criticised the investigation begun by Mr Gagg and continued by Mr Goodings. And bemoaned the failure of the Claimants to call at least Mr Gagg to give evidence. But the Claimants do not rest their case on that investigation. Nor have I reached my conclusion by relying on it. It is merely

that the detailed investigation possible at trial has resulted in a not dissimilar conclusion.

75. One of the main objections to a finding that there was a client money hole as at the date of sale was this: that it is very unlikely that, in a small company, a large client money hole went unnoticed. Brokers and insurers would, it was argued, have been banging the door down had they been kept waiting for years for their money. Mr Parry, the Finches' expert, supported this point. He gave the opinion in his report that a shortfall of over £3m "*would have to mean that client monies due to insurers, clients and other intermediaries of over £3million had been transferred to AFL's office account. In such circumstances, I would have expected to see substantial contemporaneous correspondence (pre-Transaction) from such parties chasing overdue funds*" [10.12]. But the force of the point is largely removed once it is appreciated how the client money account works. As it is used to receive client premiums, which are many times greater overall than the commission due to AFL, and is a general account in that money for each client is not held separately, the turnover in the client money account means that insurers are not waiting years. They will simply be paid out of new receipts if a portion of their premium has been wrongly taken, so that - at most - payment to them would be a little delayed rather than denied. As Mr Esser explained it during his cross-examination, "*... the client money is mingled. It isn't separated ... The money goes into the pot ... everybody was being paid ... Nobody waits two years, three years. On average, everybody would have been waiting a couple of weeks.*"

76. This appreciation of how the client money account works is also the answer to an argument that the client money hole was inadequately evidenced by the Claimants as they had not provided details of the insurers to whom the injected £3.6m was paid out. Such a list would, as Mr Esser said, have been meaningless. It would not help in any way with identifying which insurers' premiums had been taken wrongly by means of false accruals. The list would show simply which insurers were being paid when the clock stopped or was running down.
77. It was also argued that later cashflow problems arising from attempts to grow AFL's business may explain any client money hole or the perception of one. But that ignores the difference between the client money account on the one hand and the office account on the other. It is the office account which would be affected by cashflow issues, as it is that account which contains AFL's trading money. The client money account does not represent AFL's money and so should be unaffected by AFL overreaching itself in terms of expenditure resulting in cashflow problems. Mr Esser was right to deal with this suggestion in cross-examination in the way he did, answering, "*You can't just tuck into client money and use it to pay your bills ...*".
78. A point which has some significant force is this. That there was a client money audit each year and the client money auditors could be expected to identify a client money deficit. But there is some explanation for their failure to do so. KD was not being properly forthcoming with them. She told me that there was a report available on TAM which would reveal overdue creditors and make it obvious that there was a client money deficit. The auditors, however, did not know about that report she said and never asked for it. This failure to give the

auditors the full picture is reflected in a contemporaneous email. On 10 June 2016 KD wrote to BF about this information on TAM and her refusal to give it to one of the broking team. *“It already exists in TAM but he can't have it and I won't let him access it because it would just unveil the extent of the financial black hole. I don't even let auditors get to that level of transparency.”* That the auditors did not dig deeply enough beyond what KD gave them is apparent from her assessment of them well before these proceedings. She wrote of the auditors in an email to AF on 13 January 2018, *“They are rubbish Alec, however that is a good thing!”*.

79. One further suggestion made in closing by Mr Kulkarni held some attraction. It was that the funding lock in RiskPro should have revealed any client money hole early on. That funding lock function apparently stops one client's money being used for another client. But to have any real weight, this suggestion ought to have been put to KD and Mr Lindsay so that their answers to the suggestion could be weighed. Mr Kulkarni accepted, however, that it was not one of his lines of cross-examination.
80. Mr Kulkarni also questioned Mr Lindsay's independence, arguing that his background as a fraud investigator meant he was too ready to arrive at a conclusion of fraud. I am entirely satisfied, having heard from Mr Lindsay, that he was properly independent. Indeed, he was slow to reach any conclusion of fraud. As he told me, *“I would approach it from the other end ...”*; meaning that he started with a presumption against fraud. In any event, my conclusion that there was a large client money hole is based on other evidence, as I have sought to explain. The proper place of expert evidence in this case is, in my judgment,

as an aid to examining whether that other evidence of fraud is consistent or inconsistent with the accounting documents. Taking the evidence of both experts, that evidence is, overall, consistent rather than inconsistent with the other evidence which has driven me to my conclusion.

81. That expert evidence was that the accruals identified by the Claimants as examples were at least in breach of the relevant accounting standards, that at least those from 2015 ended up in the statutory financial statements and had a material impact on those statements (both the profit and loss accounts, and the balance sheets – Mr Parry recording that the misstatement arising from the false accruals resulted in posting an overall profit instead of an overall loss for the financial years ending in 2016 and 2017, and net assets instead of net liabilities), there were manual adjustments to the RiskPro CMCs after December 2017 which have been identified and which Mr Parry is unable to explain (on his evidence, the identified adjustments for some months were around £3m), that there would indeed have been a netting off process on TAM of the sort which KD described (insurance creditor and debtor entries being set off so as to leave only AFL’s accrued commission recorded on the system), and that there are on the system (as KD testified) accruals which are later replaced by further accruals, often for a larger amount (which Mr Lindsay referred to as an unusual characteristic). The experts were unable to assist at all in relation to the alleged false accrual figures for the period to 2014 and the 2014/2015 year, being £700,000 and £480,000 - £500,000 respectively. There were no accounting records for these periods, and the figures come solely from KD’s evidence and an email of hers dated 16 December 2015. There is therefore no expert

accounting evidence inconsistent with there having been false accruals leading to a deficit in those earlier periods.

82. Mr Kulkarni suggested in cross-examination of Mr Lindsay that there may have been a mistaken failure by AFL after the sale transaction to apply cash then received and recorded on Riskpro against the earlier accruals on TAM said by the Claimants to be false. But this suggestion went, at least most directly, to the subsidiary point as to whether those accruals had any proper basis. Not whether there was a client money deficit at the time of the share sale. In any event, I am not persuaded there were such failures, save possibly in relation to the treatment of sums received under the agreement with Iris (Mr Parry reporting in relation to funds received from Iris that “*it appears possible that some of this income relates to the alleged false accruals posted on TAM*”). No concrete example of such a failure was given, despite second reports from the experts dealing with RiskPro data. Mr Kulkarni did explore with Mr Lindsay later receipts from the same clients. But he was unable to show him anything specifically tying those receipts to the earlier accruals pointed to as false by the Claimants. There is the further point that such a failure would not be likely to have happened during KD’s time, had the accruals been proper and the cash received genuinely related to them. That is because she knew of the accruals. Indeed, she told me she kept a tally of the unpaid accruals. As Mr Lindsay said during cross-examination, “*if there was a connection with an accrual, I would expect the accrual to be reversed and to be replaced by an invoice and that is not what I see...I don’t ever see any instances where monies are directly applied in effectively settlement of an accrual.*” It was put to him that he hadn’t undertaken any checks to see if invoices recorded on RiskPro relate to the accruals on TAM, he

reasonably made two points: *“Firstly, the amounts don’t equate; and secondly, there are no reversals of the accruals to suggest that invoices had replaced them.”* He added, *“The fact that monies were received from the same client nine months later, possibly even longer, does not in any way legitimise what I saw as a false accrual in the first place.”*

83. In truth, the cross-examination of Mr Lindsay was in the nature of seeking to introduce doubts; including by suggesting that money may also have been received in respect of the false accruals but not recorded at all on Riskpro.

84. What is certainly clear to me is that nothing in these suggestions is capable of outweighing the evidence which I have already outlined. That evidence establishes amply on the balance of probabilities that there was a very significant client money hole as at the date of sale.

85. Mr Kulkarni also argued in closing that the fact the identified changes in RiskPro were to insurance creditors, rather than debtors, pointed to there being cash balances moving across, rather than the adjustments being related to accruals. But I cannot give this point any real weight given that it was not, as Mr Kulkarni accepted, put to KD or the accounting experts.

86. There was then, as I find, a very significant deficit in the client money account.

87. It is necessary to ask next: Was that known to AF and BF? It is plain to me that the fact of the very significant client money deficit was known to AF and BF.

88. That was the clear evidence of KD. Having accepted her evidence about the existence of the client money hole, I accept too her evidence as to the knowledge of AF and BF. She told me:

“Alec and Bob knew there was a client money shortfall at times but didn’t bother to try and rectify it” – KD’s first witness statement at [68].

“Bob knew that the black hole lay within the TAM data ...” - KD’s first witness statement at [130].

89. This evidence was reflected in emails sent at the time.
90. An email as early as 21 June 2012 from KD to BF describes having to use one client’s money (AON) to pay a sum due to a different client (QBE), thus highlighting that there is a client money deficit. BF even said of this email in cross-examination, *“that’s how it looks with hindsight”*. Further, the emails referred to at para. 57 above reflecting the taking of client money resulting in a deficit were all sent by KD to BF and/or AF.
91. There are two other factors supporting KD’s evidence that AF and BF were aware of the client money hole.
92. One, this was a small company with AF, BF and KD working closely together. AF and KD even shared an office. The evidence given by BF during cross examination included this: *“The fact is Keely and my dad shared an office, so Keely would very often speak to my dad, go through things with him and then come to me and say, ‘This is what I talked to with your dad. This is his opinion, what do you think?’”*. It is improbable that in such a corporate setting, AF and BF were unaware of how shortfalls in the office account were being met and the deficit in the client money account that was leading to.

93. Two, both AF and BF were, on the evidence, intimately involved in the detail of the accruals. There are numerous emails between AF, BF and KD discussing such detail.
94. I do not, of course, ignore the oral evidence of AF and BF that they simply relied on KD as financial controller or CFO. But that oft-repeated theme was, on the whole of the evidence, just a hollow mantra.
95. There was, then, at the time of the share sale a very significant deficit on the client money account of which AF and BF were aware. It remains to ask: What was the size of the client money hole?
96. My assessment is that the client money hole was in a total sum of £3,510,000. That is the sum which, on the evidence, needed to be put back into the client money account to ensure all insurance creditors were paid; £3.64m being paid in, of which all but £130,000 was used. While that was a later exercise, in the absence of any evidence of wrongful extractions from the client money account by Mr Esser or his team it is the best guide to the size of the deficit at the time of the share sale. Further, it is supported somewhat by the false accruals which the Claimants have identified. They have an overall net impact, at least according to Mr Lindsay's calculations, of a little under £3m. That they do not produce the same figure suggests only, given all the evidence, that the Claimants have not successfully identified, or taken sufficient account of, all of the improper withdrawals from the client money account. That may also explain the lower figure of a little under £3m for the client money hole appearing in the Re-Amended Particulars of Claim at [44]. I do not ignore that the examples of improper accruals include some in October 2017 but, on KD's evidence (which

I accept, having accepted her evidence on the other key issues), she did not use accruals in CMCs to take client money after the share sale.

G. The list of debtors and meeting of 6 July 2017

97. I consider next the question whether there was a fraudulent misrepresentation about AFL's debtors. Again, I have reached the clear conclusion that there was.
98. The spreadsheet was sent to Mr Turnbull under cover of an email dated 5 July 2017 from KD, copied to BF and Mr Esser, with the subject heading "*Uncollected Brokerage in Debtors Analysis*". The email read, "*Dear Jonathan, Please find attached the aged analysis of uncollected brokerage in debtors, by client/agent and by division. Bob will be going through this with Toby in the morning. Kind regards, Keely*".
99. The spreadsheet showed for each listed client the "*Sum of debtor*", which sum was then broken down into columns which appeared to show the number of days for which each portion of the sum was outstanding; the headings of those columns being "*Sum of <90*", "*Sum of 91-120*", "*Sum of 121-150*", "*Sum of 151-180*", "*Sum of 181-270*", "*Sum of 271-360*", and "*Sum of +360*". There was a final column in bold which showed for each client the "*Total Over 90 days*".
100. In fact, the figures on the spreadsheet included accruals for which no corresponding debt had fallen due and which had been reposted on 21 June 2017. Without that being pointed out, I consider the spreadsheet with the covering email did involve a representation that these were outstanding debts; indeed recent outstanding debts. Such would be a misrepresentation. These debts were being shown as real and recent. In truth, they were neither.

101. Mr Esser's evidence was certainly not that this was pointed out at the meeting with BF on 6 July 2017. On the contrary, there was, he said, an express representation by BF that these were genuine debts. He accordingly regarded the entries on the spreadsheet as booked debts, so money owed to AFL. I accept that evidence.
102. It fits with the terms of the spreadsheet. The spreadsheet referred expressly to each "debtor". And even gave the number of days for which each part of the debt was outstanding. Further and importantly, his evidence fits with the contemporaneous record of what he thought following the meeting of 6 July 2017; that being contained in an email of KD to the Finches dated 8 August 2017 (underlining added).

"I get the impression that both Jonathan and Toby think we have cash tied up in old debtors and the problem is credit control. That's not true - there is £1.4m of unpaid brokerage in debtors but out of that amount we have £800k of accruals that will get paid over the course of the next 12 months if they are accurate (certainly not in the next 60 days), we have £72k of Integro (aviation consideration) debt, £30k of old Dubai brokerage, £300k at least of old balances (segregated cell, europroperty, RDD, assemblies of God etc etc that we booked 2014/5 but ive hidden – I'm being prudent on this figure, Im not sure of the exact figure –its well hidden!!). That leaves around £200k of uncollected brokerage to actually go after – and this will pay for this months wages and rent and that's about it"

103. It fits too with the purpose of the meeting. That purpose appears from an email of 5 July 2017 from BF to KD. "Toby wants to go through any individual

account over £10k which is over 90 days". BF told me during his cross-examination that, *"that chimes with my recollection of the meeting to be honest"*.

104. Further, the impression recorded in the email of 8 August 2017 and the evidence of Mr Esser was also supported by the evidence of Mr Turnbull. He was engaged by NGHL to carry out the financial due diligence on AFL. He told me there were concerns as to the level of aged debtors, but this was thought to be due to poor credit control, and that it never crossed his mind the debtors weren't real. He added, *"we could if necessary have gone back to the source documentation to ensure the debts were real. However, at the time there was no perceived need and this would have been a highly unusual step to have taken in a due diligence exercise of this nature, where no foul play was suspected"*. His evidence in connection with the meeting of 6 July 2017 included this: *"I recall Mr Esser speaking to me after his meeting and reassuring me that, based on the explanations he had been given, he was satisfied the debts were going to be paid to AFL. He therefore did not see this as a reason not to proceed with the sale and thought post-sale he could sit down and sort things out by implementing new systems to improve credit control."*

105. BF's oral evidence was that he explained the spreadsheet as including binder accruals rather than booked debts. But I reject that evidence. It is very hard to square with the terms of the spreadsheet. It was contrary to the other evidence I have just outlined, including the contemporaneous recording in the email of 8 August 2017 of Mr Esser's understanding. And it was also absent from his witness statements. Paragraph 19 of his second witness statement described the discussion at the meeting. That description makes no mention of this important

point. Finally, it was not, in my judgment, put squarely to Mr Esser in cross-examination.

106. These misrepresentations came, as I find, from both BF and AF. Both, as I find, were involved in the preparation of the spreadsheet for the meeting. KD's evidence included this:

“It is my recollection that a conference call was ... held between myself, Alec and Bob when we went through and finalised the spreadsheet, specifically discussing the way I had dealt with the accruals (reversing them out and putting them back in so they were not showing as overdue). I thereafter sent a revised final version of the spreadsheet back to Bob and, following Bob's final approval, I sent this onto Mr Turnbull and Toby. As I have confirmed in my first witness statement, during all due diligence exercises I was involved in, Bob and Alec never wanted me to send anything out before they had checked it. It was the same for this spreadsheet.” – KD's second witness statement at [37].

107. I accept that evidence, having no reason to doubt it and having accepted her other evidence (for the reasons already given) on the key points in this case. It is also consistent with emails between BF and KD on 4 and 5 July 2017 in the run up to the meeting. Those emails contradict the impression which BF sought to give in his evidence, namely that the email to Mr Turnbull with the spreadsheet was all KD's doing of which he only became aware once it was done. The emails even contemplate a telephone discussion about the spreadsheet; KD's email timed at 22:24 on 4 July 2017 including this: *“I know you're not in tomorrow but once you've had a look if you need to go through them on the phone then we'll just find a convenient time before your meeting”*.

108. Further as to the representations coming from AF as well as BF, the spreadsheet and meeting with Mr Esser did relate, after all, to the sale of AF's shares.
109. Plainly, both AF and BF knew the misrepresentations I have found were made were false. That is because they both knew these were not actual debts, not money in fact owed to AFL. That knowledge was reflected in BF's attempts to suggest in evidence that he pointed the fact out at the meeting.
110. It was submitted for the Finches that there was no reliance by NGHL on any fraudulent misrepresentation as to debtors. The contention was that NGHL was simply purchasing a platform rather than being interested in AFL's existing business.
111. The issue is probably more properly described as one of inducement. And the Finches' argument is a difficult one to make. It involves saying that whereas I set out to defraud you, my fraud had no influence on you. The task facing a defendant making such an argument was described in this way by Longmore LJ in *BV Nederlandse Industrie Van Eiprodukten v Rembrandt Enterprises Inc* [2019] EWCA Civ at [43]: "... *there is an evidential presumption of fact (not law) that a representee will have been induced by a fraudulent representation intended to cause him to enter the contract and ... the inference will be 'very difficult to rebut' ...*".
112. It is not an argument that succeeds here. The factual presumption is not rebutted. Mr Esser for NGHL was interested in AFL's debtors. That was his clear evidence, which I accept. When it was put to him that the deal was not really about AFL's profitability or its old debtors, rather he saw AFL as a strategic purchase, he made clear he did not agree. Yes, he saw AFL as a strategic

purchase but the deal was also about existing brokerage and profitability. That made sense. The meeting with BF is otherwise difficult to explain. As are the successful attempts made to hide the accruals as debtors. And the purchase price of the shares was negotiated by reference to the EBITDA of AFL's business. Overall, Mr Esser for NGHL was, as I find, influenced by the fraudulent misrepresentations. They induced the SPA.

113. Having made those central findings, I move to consider the question of liability under each of the heads of claim, making such further findings as are necessary to my decision.

H. Breach of warranty

114. The SPA contained in schedule 5 the following warranties by AF which are relied on by NGHL in these proceedings:

“2.1.1. The Accounts were prepared in accordance with the requirements of all relevant statutes and Accounting Standards.

2.1.2. The Accounts give a true and fair view of the assets and liabilities and state of affairs of each Group Company and of its profits or losses for the period ended on the Accounts Date.”

“Accounts” is a defined term referring to the audited financial statements for AFL. The “Accounts Date” is 30 June 2016.

“2.1.6 The Completion Statement is an accurate statement the matters contained therein.”

“*Completion Statement*” was a statement at completion showing, among other things, cash to which AFL was entitled and AFL’s bank borrowings.

“2.2.1 The Management Accounts have been prepared with reasonable care and on a basis consistent with that adopted in the 12 months prior to the Accounts Date and, given that they are unaudited and not prepared on a statutory basis, present a reasonable view and show with reasonable accuracy the profit and loss, and financial position of the Group as at the date to which they have been prepared and for the period to which they relate.”

The “*Management Accounts*” refers to the unaudited profit and loss and balance sheet documents up to the date of completion, 14 September 2017, and provided with the Disclosure Letter.

“3.1.1.2 Since the Accounts Date the Company has carried on its business in the ordinary and usual course ...”

“3.2.1 There is and has been no material violation or material default by any Group Company with respect to any statute, regulation, order, decision or judgment of any court or central or local government agency of the United Kingdom and each Group Company has conducted its business and corporate affairs in all material respects in accordance with applicable laws, regulations and rules.”

“3.4.1 No order has been made and no resolution has been passed for the winding-up of the Company or for a liquidator to be appointed in respect of any Group Company and, so far as the Seller is aware, no petition has been presented and no meeting has been convened for the purpose of winding-up the

Company and no other process has been commenced whereby the business of any Group Company may be terminated or the assets of any Group Company may be distributed amongst creditors and/or shareholders, or other contributors, and there are no cases or proceedings under any applicable insolvency reorganisation or similar laws in any relevant jurisdictions, and so far as the Seller is aware no events have occurred which, under applicable law, would be reasonably likely to justify any such cases or proceedings”.

“3.4.5 No Group Company is insolvent or unable to pay its debts as they fall due.”

“3.5.2 The Company is not in material breach of any of the terms and conditions of any Licence. The Seller is not aware of any circumstances which indicate that any of the Licences may be suspended, varied, limited, revoked, not renewed or otherwise materially affected, in whole or in part, whether or not in the ordinary course of events.”

“Licence” as defined would include AFL’s licence from the Financial Conduct Authority to conduct its business.

“3.5.4 All material returns, reports, annual accounts and applications required in respect of each Group Company to be filed with or otherwise provided to a relevant Regulatory Authority have been duly filed or provided within the time periods prescribed by applicable Regulatory Requirements.”

115. Schedule 6 to the SPA set out agreed limitations on a claim for breach of warranty. The value of a claim was capped and a time limit by which any claim must be brought was imposed. But by clause 5.5 it was agreed that *“none of the*

limitations set out in Schedule 6 shall apply where the liability arises as a result or in connection with any fraud of the Seller.”

116. It was submitted for the Finches that this is, in truth, a claim for breach of warranty which has been dressed up as a civil fraud in order to avoid the contractual time bar in clause 5.5 of the SPA. I have been alive to that possibility. But the reality, on my findings, is that there has been a fraud by the Finches on NGHL.
117. That fraud has all three of the aspects alleged by the Claimants in their Re-Amended Particulars of Claim. There were accruals made which had no proper basis. In case it is of relevance, I make clear that these were not honest overestimates. The Finches knew, as I find, they had no proper basis. In that regard, as well as there being in fact a lack of a proper basis, KD realised they were spurious, the Finches knew of the client money hole which these accruals were causing, the Finches were prepared to act dishonestly in relation to them (fraudulently misrepresenting by the spreadsheet that they were real and recent debts), and there are instructive examples which I have already referred to of attempts to provide some false justification for them. Those accruals did make it into the company accounts, distorting the stated income and the balance sheet of AFL. Indeed, that was part of the purpose of the Finches in making such accruals. As KD said and I accept (having accepted her evidence on other key issues), *“This process of making larger and larger accruals was done, predominantly, to make it look like AFL was a profitable and successful business to potential buyers and investors, and disguise that it was, in actual fact, balance sheet insolvent and operating at a loss”* - KD’s first witness

statement at [91]. And the accruals were used to move money illegitimately to the office account, leaving a gaping hole in the client money account.

118. The fraud amounts to a breach of warranty. That was accepted for the Finches in closing; Mr Kulkarni accepting that if the alleged fraud was established, no separate breach of warranty analysis was really required. A conclusion of breach of warranty and, indeed, breach of directors' duties to AFL, would automatically follow.
119. That acceptance seemed to me correct. On my findings, the last audited accounts of AFL and the later management accounts did not, as AF and BF knew, give a fair or reasonable view of AFL's financial position. They did not show the liability AFL had to repay a very significant sum to the client money account. They showed, instead, income and assets improperly inflated by the false accruals. The fraud therefore put AF in breach of at least the warranties in paras. 2.1.2 and 2.2.1 of schedule 5 to the SPA. The taking of client money to pay business expenses resulting in the client money deficit also meant that, as AF and BF knew, AFL had not conducted its business in accordance with FCA regulations and was putting its FCA licence in obvious jeopardy. The fraud therefore also put AF in breach of at least the warranties in paras. 3.2.1 and 3.5.2 of schedule 5.
120. There was some debate as to whether these matters also involved implied fraudulent misrepresentations by AF given that the accounting documents were provided with the disclosure letter. But it is unnecessary to resolve any such issue. There were other fraudulent misrepresentations as I have already found. And multiple breaches of warranty given the fraud. It was not suggested that

any implied fraudulent misrepresentations arising from the accounting documents would yield any different result as to the value of the claim by NGHL.

I. Breach of duty

121. As already noted, it was accepted for AF and BF that if the alleged fraud was established, a conclusion that there were breaches of directors' duties owed to AFL would follow automatically.

122. Again, that acceptance seemed to me correct.

123. One of the key duties of a director is to promote the success of the company; s.172(1) of the Companies Act 2006 providing that:

“(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to–

(a) the likely consequences of any decision in the long term,

(b) the interests of the company's employees,

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.”

124. The wrongful taking of client money in order to fund company expenses must surely be a breach of this duty. As I will come on to find, it caused AFL to build up huge trading losses and can hardly be said to be a decision which had proper regard to fostering AFL’s relationships with the insurers and brokers it dealt with or to the desirability of AFL maintaining a reputation for high standards of conduct.
125. Given both AF and BF knew that it was key for businesses such as those run by AFL to keep client money strictly separate, they cannot honestly have believed their actions were in the best interests of the company. If they gave it no thought so that an objective test is the appropriate one, an intelligent and honest director could not have considered such conduct as most likely to promote the success of AFL.

J. Fraudulent misrepresentation

126. I have already recorded and explained my conclusion that the July 2017 spreadsheet and what was said at the meeting on 6 July 2017 involved fraudulent misrepresentations by the Finches which induced NGHL to enter into the SPA.

K. Unlawful means conspiracy

127. The tort of unlawful means conspiracy was defined in this way by the Court of Appeal in *Kuwait Oil Tanker Co SAK v Al Bader* [2002] 2 All ER (Comm) 271 at [108]:

“A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so.”

128. KD has admitted liability to the Claimants. And the Finches are also liable as I have found. The Claimants have suffered loss and damage as a result of their unlawful actions. Further, I consider those actions were taken pursuant to a combination or agreement to injure them. The three Defendants acted together in causing AFL to trade at a loss and giving a false picture to NGHL of AFL’s finances so as to bring about the share sale, knowing the inevitable consequences.
129. The Finches sought to resist this conclusion by suggesting they had no sufficiently close involvement in the preparation of accounts, CMCs and the transfers from the client money account to the office account. But, as I find, they took a full part in, indeed were the driving force behind, those things. That was the evidence of KD which I accept; being in line with her other evidence which I have accepted and the contemporaneous emails already referred to. Further, it is the Finches’ business which they were conducting in an unlawful way. KD was simply a salaried helper in the unlawful activities.
130. It follows that the Finches are also liable to the Claimants in unlawful means conspiracy.

L. Loss

131. The focus in evidence and submissions was very much on the factual dispute as to whether there had been a fraud by the Finches on NGHL. The question of what losses were recoverable by the two Claimants received only modest attention. But at least following some enquiries by me of counsel, I have sufficient material to decide those issues on loss which were within the scope of the trial.

132. Overall, the sums sought by the Claimants as set out in their schedule of loss were as follows:

Loss of purchase price	£2,119,900
Costs of due diligence exercise	£54,125 plus £39,428.70
Client money shortfall	£3,500,000
Trading losses 2015-2018	£5,215,287
Trading losses 2019	£785,613
Trading losses 2020	£(448,454)
Trading losses 2021	£1,330,495
Interest on preference shares	£406,660.63
Coutts loan costs	£28,739.73
Costs of investigation	£24,000 plus £83,216 plus £50,919
Run-off costs	£2,715,745

133. It is important to separate the two Claimants, NGHL and AFL, when assessing what sums are properly recoverable by each. It is also necessary to be alert to the possibility of double counting. For example, the client money shortfall as at the date of sale would have been the result of funding the trading losses to that date, so to give a claimant both sums would appear to involve double counting.
134. With those two points in mind, I start by considering what loss is recoverable as damages by NGHL.

L.1 NGHL

135. As purchaser of the shares in AFL, NGHL seeks as damages the difference in value between the price paid, of £2,119,900, and the actual value of the shares. NGHL's case is that the shares were valueless so that the whole of the sum of £2,119,900 is recoverable.
136. The order made at the pre-trial review by Zacaroli J on 11 May 2023 in relation to this was for the issue of share valuation to be dealt with only following the trial before me:
- “There shall be a split trial, with all issues of liability and quantum to be determined at the trial listed for 12 days in a window from 12 June 2023, except that the issue of valuation of the Shares of the 2nd Claimant as at 14 September 2017 (on the assumption that the Claimants prove some or all of the allegations in the Re-Amended Particulars of Claim) (the “Valuation Issue”) shall be determined, if relevant, following the main trial.”*
137. Mr Potts for the Claimants asked, nevertheless, for an assessment at the trial that the shares had a nil value.

138. I do not take that course. The issue was expressly not one for trial. And while Mr Potts may turn out to be right that the shares were valueless, that is not a conclusion I feel able safely to reach in the absence of valuation evidence. In that regard, Mr Esser agreed that a buyback of shares by an associated company in 2021 did not indicate that the shares in AFL were valueless. That buyback was at £6.15 a share.
139. I will instead give directions for the disposal of that issue and invite counsel to agree those.
140. I can and will deal with the assessment of other losses claimed by NGHL. While it is somewhat unusual to assess what are consequential losses without tackling the issue of primary loss, it was not suggested there was any bar to taking that course. And, in any event, it was accepted for the Finches that there would be some direct or primary loss, i.e. some diminution in the value of the shares. The question being parked was only precisely how much that was.
141. Where, as here, a transaction has been induced by fraudulent misrepresentations, “(6) *In addition, the plaintiff is entitled to recover consequential losses caused by the transaction; (7) the plaintiff must take all reasonable steps to mitigate his loss once he has discovered the fraud*” – see the classic statement by Lord Browne-Wilkinson in *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 of the basic rules to be applied, quoted recently by the Master of the Rolls in *Glossop Carton and Print Ltd v Contact (Printing and Packaging) Ltd* [2021] EWCA Civ 639 at [1].
142. The Claimants sought as damages those sums which were raised and paid into the client money account to cover the deficit.

143. Mr Kulkarni submitted that that was not a loss of NGHL or AFL. It was a loss to the shareholders and they are not party to the claim. I agree with that submission save that, insofar as NGHL provided the sums, NGHL can recover its contribution as damages; being party to the claim and the one to whom the fraudulent misrepresentations were made as well as the company with the benefit of the breached warranties. I therefore asked Mr Potts in closing to identify precisely what the split was between contributions made by NGHL and those made by others. The sum provided specifically by NGHL to cover the client money deficit was £633,508.94. I will therefore award that sum as part of the damages payable to NGHL.

144. NGHL also contributed to other capital raises as follows:

Of the £2.5m raise in 2018, NGHL contributed £1,879,793.49.

Of the £750,000 raise in 2019, NGHL contributed £386,780.12.

Of the April 2020 raise, NGHL contributed £316,753.76.

145. These all represent, in my judgment, consequential losses of NGHL caused by the transaction. They are sums paid by NGHL to fund a business which it was induced by fraud to buy. None can be said to have been the result of unreasonable conduct by NGHL and, anyway, came before the fraud was uncovered.

146. The costs of the due diligence exercise were also claimed as a loss suffered by NGHL. I do not consider that a recoverable loss.

147. These costs were not a loss caused by the transaction. They came before the transaction. Further, the fraudulent misrepresentations were made in the course of the due diligence process, not before it; being made at the 6 July 2017 meeting. I am not satisfied that these are anything other than sums which would have been incurred in any event.
148. It follows from the above that the total sum recoverable by NGHL (before the determination of the issue as to share valuation) is £3,216,836.31, being the aggregate of NGHL's contributions to AFL (including to cover the client money deficit).

L.2 AFL

149. The sum of £3,500,000 was also said to be a loss of AFL. I was unable to agree with that insofar as that sum was approached as the amount wrongly taken from the client money account and used by AFL. It seemed to me that money which had been taken wrongly by AFL and spent by AFL could not be regarded as a loss to AFL. It was instead a loss to those properly entitled to that money, being the insurance creditors.
150. However, Mr Potts also relied on the figure as a proxy for trading losses to 14 September 2017.
151. That trading losses are, in principle, recoverable was accepted by Mr Kulkarni for the Finches. He accepted too that, if the Finches had complied with their duties as they should, including by reporting the use of client money to the FCA, then AFL would have ceased trading.

152. For his part, Mr Potts accepted for AFL that there must be a sufficient connection between the wrongdoing and the particular trading losses claimed for them to be recoverable. There must be more than a mere ‘but for’ nexus. This was by analogy to the wrongful trading cases, for which see *Re Continental Assurance* [2007] 2 BCLC 287 at [378].
153. Pre-transaction trading losses for which the client money deficit is a proxy do, in my judgment, have a sufficient connection with the Finches’ wrongdoing to be recoverable as damages for breach of their director’s duties. The wrongdoing was the taking of client money to fund company expenses. The trading losses that built up were the direct product of that wrongdoing.
154. AFL claimed such trading losses from 2014. That matched one of the ways the Claimants put their case on causation. It was that the 2014/2015 year (ending 30 June 2015) marked the time by which the business of AFL should have ceased. Large losses were being made, and no further funds were being injected by AF. As to the losses, it is apparent from an email of KD dated 15 May 2015 to the Finches that cash losses of £650,000 had been made in the 10 months or so to that point.
155. Given that case on causation, which I accept, and the pleaded case by which trading losses were sought only from 2014, I consider the sum to be awarded to AFL by way of damages for trading losses should exclude any such losses before 30 June 2014.
156. The best guide to determining the amount of that exclusion seems to me to be the figure for false accruals up to that point provided by KD at the time and relied on in these proceedings by the Claimants. That figure is £700,000. It

follows that I will assess damages for the trading losses from 30 June 2014 to 14 September 2017 as £2.81m, being £3.51m less £700,000.

157. I make clear, in case it is of relevance and as the question of solvency appeared in the list of issues for trial, that I find AFL was insolvent from at least 30 June 2014. It was largely agreed between the experts that that was so if AFL's balance sheet was to be adjusted to take out the alleged false accruals. I consider it is, including for the figures of £700,000 and (for 2014/2015) £480 - £500,000. Those figures were supported by KD's email of 16 December 2015. Given that and the view I have taken of her evidence overall, I accept them. I also conclude from my finding that client money was being taken in order to prop up the trading of AFL that it was cash flow insolvent as well as balance sheet insolvent.
158. What of the post-transaction trading losses?
159. Mr Kulkarni referred in closing to the post-transaction trading losses as the product of "separate commercial decisions". But these too flowed, as I see it, from the Finches' wrongdoing. AFL was not, on its true figures, a profitable company. But that was masked by the wrongful taking of client money. That AFL continued to trade and make losses after the share sale transaction, as well as before, was the product of the Finches' wrongdoing. These were precisely the kind of losses that could be expected to flow until the breaches of duty were discovered and the company run down. The Finches have failed sufficiently to identify any unconnected factors such as the bad weather conditions, the consequences of which the judge sought to exclude from the payment to be made under s.214 of the Insolvency Act 1986, in *Re Brian D Pierson*

(Contractors) Ltd [2001] 1 BCLC 275 (referred to in *Re Continental Assurance* at [379]) to which the losses are more properly referable.

160. This is no mere ‘but for’ nexus. Put another way, the wrongdoing was a cause of the loss, not simply the occasion for it.
161. The run-off costs, Mr Kulkarni also submitted, were the result of an “entirely separate commercial decision”, taken not in the light of the Finches’ wrongdoing but by reason of the departure of key personnel leaving in March 2021.
162. But I consider the run-off costs flowed from the breaches of duty. An expensive solvent wind-down could be expected in such a highly regulated area once the breaches were discovered. The departure of the key personnel has, in truth, been part of that wind-down. The departure was part and parcel of the sale by AFL of parts of its business. I accept Mr Esser’s evidence about that, having no reason to doubt it.
163. I will deal briefly with the remaining losses claimed, and start with interest on preference shares. The capital raises in the summer of 2020 to cover the deficit in the client money account included the issue of preference shares. These shares involved AFL incurring a liability to pay interest to the shareholders. That does seem to me a loss of AFL caused by the wrongdoing.
164. So does the cost of the Coutts loan. This loan was additional borrowing of £1m to help cover the client money deficit. Before the borrowing was repaid, interest charges of £18,739.73 were, on Mr Esser’s evidence, incurred. There was also

an arrangement fee of £10,000. In my judgment, the total sum of £28,739.73 forms part of AFL's recoverable losses.

165. Finally, the costs of the investigation. Mr Kulkarni's submission was that these should be characterised as litigation costs rather than damages. Further, the investigations by Mr Gagg, Mr Goodings and a BDO report not having been relied upon, they were irrecoverable costs. But I consider the costs of these steps are recoverable as damages. They were steps caused by the Finches' breaches of duty. Without those breaches there would have been no such steps taken. As to the amount to be awarded under this head, I am satisfied on the evidence that the costs claimed are the proper costs of those steps.

166. In order to arrive at an overall figure for AFL's damages, care must be taken to avoid any double counting present in the elements I have so far considered separately and to give credit for the sale of parts of AFL's business.

167. Taking that care, my conclusions above as to the losses of AFL result (subject to the point at para. 170 below) in a total sum of £6,124,430.02 being payable to AFL by way of damages, calculated as follows:

£2.81m, being that part of the £3.51m client money deficit which provides a proper proxy for the trading losses of AFL to 14 September 2017 (the date of the sale transaction).

Plus £2,663,513, being the trading losses to 29 December 2018 once the earlier period to 14 September 2017 has been stripped out (this figure being taken from the helpful table forming part of Mr Potts's closing submissions).

Plus £1,640,654, being the total of the trading losses for the years 2019 - 2021.

Plus £406,660.63, being interest on preference shares.

Plus £28,739.73, being the costs of the Coutts loan.

Plus £1,421,900.66, being the run-off costs after stripping out the part of such costs appearing in the 2021 accounts and which are therefore included in the trading losses for that year (this figure again being taken from Mr Potts's table).

Less £2,847,038, so as to give credit for the sale of the Manchester and London businesses while adjusting for writing off of inter-company debts (another figure from Mr Potts's table).

168. The investigation costs did not feature in Mr Potts's table. I therefore proceed on the basis those costs are within the trading loss figures and so not separately listed in order to avoid double counting.

169. I have made clear above that some of the figures used represent Mr Potts's calculations from the evidence. Coming, as these did, only in closing submissions, I am concerned the Finches' legal team may not have had sufficient opportunity to check or challenge them. Accordingly, if they are not agreed, then I will receive submissions as part of consequential arguments and make a determination.

L.3 Overall

170. The sum payable to NGHL seems to me to form part of the losses also recoverable by AFL. I understood Mr Potts to accept that. Subject to hearing from counsel in default of agreement, I would propose to make an order in favour of both Claimants for the total sum, as I have assessed it, of NGHL's

claim, and an order in favour of AFL only for payment by the Finches of the balance of its claim.

M. Contribution claim by the Finches against KD

171. It was accepted for KD in closing that she was liable to the Claimants in respect of the same damage. The exercise on the contribution claim is therefore one of assessing the amount of the contribution.

172. Section 2 of the Civil Liability (Contribution) Act 1978 provides at subsections (1) & (2):

“(1) Subject to subsection (3) below, in any proceedings for contribution under section 1 above the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person’s responsibility for the damage in question.

(2) Subject to subsection (3) below, the court shall have power in any such proceedings to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity”.

173. As is apparent from subsection (2), the claim for a contribution may fail entirely if it is not just and equitable for the defendant to a contribution claim to pay any share. A contribution claim failed on that basis before the Court of Appeal in *Dawson v Bell* [2016] EWCA Civ 96 – see the judgment of Tomlinson LJ at [51].

174. Mr Somerville submitted that that should be the result here. There should be no contribution by KD. Mr Kulkarni's submission was that KD should pay to the Finches the majority, so more than 50 percent, of the sums for which they are liable to the Claimants.
175. I agree with Mr Somerville. My reasons are these.
176. The Finches were the persons ultimately responsible for client money compliance. And principally responsible as a matter of fact for the failures to comply. As to their ultimate responsibility, they were the FCA approved persons for AFL's authorised business. KD was not. As to responsibility as a matter of fact for the taking of client money, KD's clear evidence is that she was acting at the behest of AF and BF. I accept that evidence. It is, as already noted, consistent with the corporate arrangements in that AFL was the Finches' business. Not KD's. They were directors and shareholders whereas she was a salaried employee.
177. Further, it was the Finches that benefited from the wrongdoing in that AF secured the sale of his shares at an inflated price and the business of AFL was continued for the benefit of BF as another shareholder. BF also received remuneration at a very much higher level than KD. Whereas her salary was around £40,000 per annum, BF was receiving up to around £150,000 or £160,000 per annum.
178. I also consider the moral blameworthiness of KD is reduced by her coming clean and helping NGHL and AFL obtain the redress to which they are entitled. But even without that, and overall, the Finches were very much the principal players in, and beneficiaries of, the fraud. So much so that it is not just and equitable

for KD to be liable to the Finches for a contribution, despite being liable to the Claimants in respect of the same damage.

179. Mr Somerville asked in the alternative for me to deal with any contribution by KD in this way: reduce the liability of the Finches to the Claimants by that amount and enter judgment against the Finches for the resulting reduced sum, while not entering any judgment for the Claimants against KD for the amount of her contribution as the claim against her was compromised. I make clear I do not consider that an available course. In arriving at a contribution under the 1978 Act where each of the parties are defendants, the court is not apportioning liability as between the claimants and each of the defendants. It is instead fixing the contribution to be made between defendants. That exercise has no impact on the sum which the claimants are entitled to obtain judgment for. But there is no call for any such course. As I have determined, it is not just and equitable for KD to make any contribution.

N. Closing points

180. I will deal with any consequential matters which cannot be agreed at a short further hearing with the benefit of brief skeleton arguments.
181. I conclude by thanking counsel for the high quality of their submissions and their conduct of the trial generally, which included commendable cooperation; reflected in the fact that there were, unusually, no procedural disputes at all in the course of the trial requiring decision.