



Neutral Citation Number: [2022] EWHC 271 (QB)

Claim No: QB-2020-002695

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2022

Before :

MR JUSTICE GRIFFITHS

Between :

AL SAIF GROUP
- and -
ROBERT THOMAS CABLE

Claimant

Defendant

Tom Nixon (instructed by **Eversheds Sunderland (International) LLP**) for the **Claimant**
Christopher Buckingham (instructed by **Mantilla & Stonerwood, Solicitors**) for the
Defendant

Hearing dates: 25-28 January 2022

Judgment

.....
MR JUSTICE GRIFFITHS

THE HON. MR JUSTICE GRIFFITHS :

1. The claimant (“ASG”) brings this action to claim monies due and unpaid under a Settlement Agreement between ASG and the defendant under seal dated 19 December 2013 (“the Deed”). Under the Deed, the defendant was to pay ASG by instalments sums equivalent to a total of 24,630,000 Saudi Arabian Riyals (SAR), which was, at the time the Deed was signed, about £4 million.
2. The defendant claims that the Deed “should be set aside, such contract having been induced by duress” (Defence and Counterclaim prayer for relief, para 1). He also counterclaims for repayment of the only payment he did make, which was £20,000. This is on the basis (in para 13 of the Defence and Counterclaim) that he made the payment as a direct result of “the threats of arrest and imprisonment” alleged to have been made by Mr Al Saif to the defendant on 22 November and 19 December 2013. There was provision for the defendant to cover legal expenses in clause 2.1 of the Deed.
3. The whole case, therefore, turns on whether the defendant can establish, both in fact and in law, his claim that the Deed is unenforceable or should be set aside on the basis that it was induced by duress, and that the £20,000 was paid under duress. (The Defence also pleads that no contract was entered into between the parties and/or that there was no consideration, but these points have been abandoned.)
4. I will also in this judgment refer to a document in substantially the same form as the Deed, but dated earlier, on 14 December 2013 (“the Contract”).

The allegation of duress

5. An important feature of the case is that the duress alleged and relied on is physical duress (duress to the person) and not economic duress. The defendant’s Counsel made that clear in his submissions. Although the defendant gave evidence that he also feared the economic consequences to himself if he did not comply with the claimant’s wishes, these are not pleaded in his Defence and Counterclaim and were not relied upon in submissions, perhaps recognising obstacles to establishing a claim of economic duress in the light of *Times Travel (UK) Ltd v Pakistan International Airlines Corpn* [2021] UKSC 40.
6. The duress to the person alleged in the Defence is that Al Saif Group, acting through its founder and director Mr Al Saif, “contrived a situation whereby the defendant was threatened with arrest and imprisonment by the Police of the KSA [i.e. Kingdom of Saudi Arabia]” (Defence para 3(iii)).
7. The particulars of this duress to the person are pleaded in para 6 of the Defence as follows:

“(e) On the 19th November 2013 the Defendant received an email from Mr Amir Sohail Rammay (Mr A.S. Rammay), the Chief Financial Officer of the Claimant, enclosing a translation of documentation relating to the Saudi Proceedings.

(f) On the 22nd November 2013 [Mr Al Saif] invited the Defendant to a meeting at his Riyadh home address and threatened the Defendant with immediate arrest and imprisonment. Two KSA uniformed Police Officers were present. In fear of the Defendant's liberty, the Defendant signed a document prepared by [Mr Al Saif]... and [Mr Al Saif] instructed the Defendant to hand write a letter, the wording of which was dictated by [Mr Al Saif]... (“the First Meeting”).

(g) On the 19th December 2013 [Mr Al Saif] invited the Defendant to his offices located in Riyadh KSA. At this meeting [Mr Al Saif] presented a typed document to the Defendant [i.e. the Deed] and informed the Defendant that if he did not sign the typed document the Defendant would be immediately arrested and imprisoned. In fear of the threat made by [Mr Al Saif], the Defendant signed the Settlement Agreement [i.e. the Deed]”.

8. The Saudi Proceedings referred to in para (e) of that passage are not defined in the pleading but it is evident from the reference to a translation being enclosed with the email of 19 November 2013, both of which I have seen, that this was a civil claim in the Riyadh General Court (“the Saudi Civil Action”) for the sum of 24,630,800 Saudi Arabian Riyals (SAR). That is, in round figures, the same as the figure of 24,630,000 SAR which the Deed dated 19 December 2013 later required the defendant to pay.
9. I have set out the pleadings in some detail at the outset because the case must be decided on the basis pleaded. Although not settled by Counsel, at least two Counsel for the defendant have been content with the original Defence and Counterclaim and have chosen not to amend it. At a Costs and Case Management Conference before Master Eastman on 29 July 2021, the defendant was represented by Counsel and there was discussion of the issues in the case for the purpose of setting the limits of disclosure (para 4 of the Order of Master Eastman). This included (I am told) discussion of the defendant’s pleading. At the trial before me, the defendant was represented by different Counsel from the same chambers as Counsel who appeared before Master Eastman. Again, there was focus on the precise nature of the case being argued, based on the pleading.
10. The defendant’s Counsel did not attempt to go beyond the pleading, nor did he apply to amend it. Instead, he argued that his case was correctly and sufficiently pleaded as it was. It is therefore, not only correct, but also just, that the case should be decided on the pleaded case and that I should pay attention to precisely what is said in the Defence and Counterclaim to have constituted the duress to the person which entitles the defendant to resist enforcement of the Deed.
11. The Deed upon which this action is brought is dated 19 December 2013 and it is common ground that it was executed on that date. It is now also common ground that, subject to the plea of duress, it is enforceable against the defendant.
12. It will be seen from the plea in para 6 (g) of the Defence (quoted in para 7 above) that the defendant’s case is not that the police were present when he executed the Deed (that being alleged only on 22 November 2013 when he signed the Typed Confession

and the Handwritten Agreement which I consider at para 109 below) but that Mr Al Saif told him that, if he did not sign it, he would be “immediately arrested and imprisoned”, and that he then signed it “in fear of the threat”. This is then the basis of the plea that the defendant was “induced to enter into [the Deed]... by duress” in para 11 of the Defence.

13. The central issue, as to whether the Deed is unenforceable by reason of duress to the person in the form of a threat of immediate arrest and imprisonment if it were not signed, depends on multiple disputes of fact, which I will resolve in the course of my detailed examination of the evidence.
14. I will first find the facts, deciding those which are in dispute, and then consider and apply the law applicable to those facts.

THE WITNESSES

15. I heard evidence from Mr Al Saif and the defendant Mr Cable. I also heard evidence by video link from Mr Jeremy Marshall (Head of Litigation and a partner in Irwin Mitchell LLP at the material times) on behalf of the claimant, and from Mr Lindsay Sales (a former colleague of the defendant in Saudi Arabia) on behalf of the claimant.
16. All four of the witnesses had weaknesses.
17. Mr Al Saif and the defendant were not independent witnesses, of course, but, more than that, both of them said things which were incredible and neither of them persuaded me that they were credible or reliable. I will examine their evidence on the key events in due course, but I will at this point give more general examples.
18. Mr Al Saif queried his signature to documents on the basis that they were in the bundle as copies (although their authenticity was not challenged) and he countered a number of questions with an enquiry about why the question was being asked. He denied having read, seen or received an email dated 19 November 2013 which was from his Chief Financial Officer to Mr Cable and in which Mr Al Saif was the only other person copied in (a document I consider at para 87 below, which is of some importance in the case). He strongly denied in cross examination that he had been (wrongly, it seems) imprisoned in Saudi Arabia between 2009 and 2012, but would not explain how this was consistent with his signed and filed witness statement dated 16 September 2016 in support of an English private prosecution in which he said “On 26 April 2009 I was arrested and detained on account of false allegations of forgery and bribe... I was released on 23 February 2012”. I take account of the fact that his English was not always fluent (and he had some initial difficulties in reading passages of English aloud when asked to do that) but, even so, his wariness meant that he did not present as a witness likely to say or accept anything against his own interests, even when documents appeared to make that unavoidable.
19. Mr Cable admitted signing a false statement in Saudi legal proceedings and presented that as an error of judgment rather than a failure of integrity (see para 180 below). He satisfied Mr Sales that he was “both a credible person and being honest in what he was telling me” at the time of the events in November and December 2013 which are central to the evidence in this case. But Mr Sales was clearly very surprised by what he heard in the course of the trial (before he gave evidence, as the last witness). Mr

Cable had not told him the full story at all, and this was established in Mr Sales' cross examination. For the most part, however, my conclusion that Mr Cable's evidence was not consistent with the documents and the evidence as a whole is based on particular points which I will examine later in this judgment.

20. Mr Marshall was a wholly credible witness, and was not cross examined to the contrary, but he was unfortunately not the fee-earner at Irwin Mitchell who had day-to-day conduct of the dispute between the claimant and the defendant at the material times. His evidence was limited and hardly went beyond what could be seen from the documents. The fee-earner who did have that conduct was Dominique Dolman, who very sadly died in September 2021, with the result that she gave no evidence.
21. Mr Sales was a partisan witness who did not distinguish between hearsay and his own direct evidence, and whose own direct knowledge of relevant matters was also limited. I therefore treat his evidence with caution.
22. There is, however, a relatively full contemporaneous documentary record. In order to decide the factual elements of the disputed facts, therefore, I will undertake an analysis of the documents and use those to evaluate the evidence of the witnesses and, therefore, the evidence as a whole, when reaching my conclusions. This is consistent with good practice: see *R (Dutta) v GMC* [2020] EWHC 1974 per Warby J at paras 39-42.

THE FACTS

23. The facts fall naturally into the following chronological sections: (i) Background; (ii) Events leading up to execution of the Deed on 19 December 2013; (iii) The execution of the Deed on 19 December 2013; (iv) Events after 19 December 2013.

(i) Background

24. The defendant Mr Cable was born and educated in London and in 1985, when he was about 27, started working in Saudi Arabia. In 1999, when he was about 41, he became Vice President of Nukhba Medical Services, one of the companies owned by Mr Al Saif in Saudi Arabia. This began many years of collaboration between them.
25. Mr Al Saif is the founder, owner and Chairman of ASG which he described as an umbrella for his various business interests in Saudi Arabia. Some points were made at trial about inconsistencies between references in documents, especially legal and court documents, as to whether claims were brought by or monies owed to Mr Al Saif personally or his business ASG or, indeed, subsidiaries of ASG such as one called Al Saif Motors.
26. These points have no direct bearing on the claim before me, because it is brought on a Deed in which Mr Cable's counterparty is undoubtedly ASG, the claimant in this action (although it provided for payment into a bank account in Mr Al Saif's personal name, according to clause 2.2). However, the evidence also did not suggest to me that this imprecision had any wider significance, or that it undermined (for example) the reliability of evidence on other matters.

27. It seems from the evidence that distinctions of corporate and legal personality were not important to Mr Al Saif or (so far as the evidence shows) anyone else in his circle, including Mr Cable. ASG bore his name, he was its founder, owner and Chairman, he held power of attorney for it, and he said in evidence (when shown a translation of Saudi proceedings which suggested they were brought in his own name, contrasting with a reference to them in the Deed which said they were brought by ASG as a corporate body), “I don’t know. There were the regulations of the law to tell you. But I am the Chairman that has the power of attorney over the whole Group; and I am here based on that as well.” He said: “When you are the owner and you have the power of attorney then it is you. You are talking to the same person. This is the way we are. Different legal system, different law. And Mr Cable has a lawyer there. He could have protested this in front of the judge.”
28. In my judgment, there is nothing in this point one way or the other. I do not say that there were not, in fact, differences of legal personality. But I do consider that they have no bearing, even evidentially, on the facts and circumstances of this case. For example, I do not accept the submission that Mr Cable’s signature to the Deed (on 19 December 2013), which referred to Saudi Proceedings brought by ASG rather than Mr Al Saif personally, when he had been provided with a translation of those proceedings naming Mr Al Saif personally (attached to an email a month earlier), supports his case that he did not read the Deed before signing it. It was a distinction that could easily go unnoticed, and which would not have seemed important even if it was noticed. The discrepancy is not therefore significant, wherever it appears.
29. Mr Cable eventually became the Group Finance Director of ASG. In 2004, he left that full-time position and went part time until 2007. However, he was still working mostly for ASG or entities in the group, because his remuneration was approximately three quarters of the full-time equivalent.
30. After 2007, Mr Cable continued to work for ASG and Mr Al Saif, although the precise legal nature of their relationship is not clear. The Particulars of Claim described him as providing his services to ASG “on a freelance consultancy basis until February 2012” while the Defence says he acted “as a self-employment consultant advising various businesses”. Mr Cable’s witness statement is vague about his position vis-à-vis ASG after 2007 and in cross examination he said that from 2007 to date he has been working “with and alongside a variety of companies”, which “includes some companies owned by Mr Al Saif”. He also worked for 10 days a month for UK Trade Investment (a department or agency of the UK Government) as a Middle East healthcare specialist. In that capacity he started working with Mr Lindsay Sales, who gave evidence (although none of the projects upon which the defendant and Mr Sales worked together in the hope of some future financial reward came to anything).
31. In cross examination, Mr Cable described his approach to business as being that “I would generally deflect or avoid a fundamental straight-on disagreement”.
32. He also said (in para 4 of his witness statement),

“Saudi Arabia was a country which whilst extremely wealthy it did not have the same notion of the rule of law, as is the case in the UK. Saudi Arabian Nationals would frequently manipulate

their wealth and exploit the Saudi legal system for their own personal ends. Arbitrary arrests and retention of both Saudi and foreign Nationals was common place. An examination of human rights organisations will verify this. Despite all the negatives it was still a place where large sums of money could be earned, and this was one of the attractions for me.”

33. These criticisms of due process in Saudi Arabia were said to be based on Mr Cable’s (unspecified) personal experience and on discussions with numerous UK citizens (unnamed) with whom Mr Cable worked or socialised in Saudi Arabia.
34. Similarly, Mr Sales said (in para 10 of his witness statement) that general discussions with (unidentified) “members of staff at the Embassy” had made it clear to him that “persons could be easily detained in Saudi Arabia without proper due legal process as one would expect in England”. He also said that “persons in Saudi Arabia had disappeared, never to be found”, although, again, without giving any more details either of these events, or of the source of his understanding of them, except “a well established understanding”.
35. This point was not pleaded or raised as an issue in the case. It appeared for the first time in these passages of the defendant’s witness statements, which were served on 17 December 2021, only a few weeks before the trial. There was no reference to a challenge to the due process of Saudi Arabia in a case summary ordered by Master Eastman in para 6 of his order of 10 March 2021 prior to a hearing on 29 July 2021, and at that hearing there was no request for expert or other evidence on this issue.
36. No expert evidence was called on either side.
37. Mr Al Saif was not cross examined on the point, which he had (unsurprisingly, given that it had not been raised) not addressed in his witness statement. Mr Al Saif did say in cross examination “I did not threaten him with imprisonment. We are not living in an outlaw country. Please!” but the cross examination ignored the assertion that Saudi Arabia is not “an outlaw country”, and did not explore that point with him at all.
38. Mr Marshall said (in para 14 of his witness statement):

“...the consequences of being confronted with allegations of the nature made by the Al Saif Group against Mr Cable could lead to very serious consequences in Saudi Arabia, such as having one’s passport confiscated.”
39. This would be a remedy available in English law too, whether by an order requiring surrender of a passport in accordance with the practice examined in *Lexi Holdings Plc v Luqman* [2008] EWHC 2908 (Ch) or the older writ *ne exeat regno* which was granted (for example) by Tudor Price J in *Al Nahkel Trading Ltd v Lowe* [1986] QB 235 against a British businessman accused of corruption in Saudi Arabia who had been met by British police and representatives of his Saudi employers on his arrival at London Airport. Mr Marshall does not say that the “very serious consequences” might also include arbitrary arrest, arbitrary or corruptly procured imprisonment, or disappearance, and he was not cross-examined about any suggestion along those lines.

40. The fact is that Mr Cable was never thrown into jail, although he did in September 2014 (well after he had signed the Contract and the Deed) discover that he was no longer able to leave Saudi Arabia, but his freedom of movement was then restored to him after a legal challenge which he successfully made with the benefit of lawyers based in Saudi Arabia acting on his behalf.
41. It is a serious matter to allege that the legal system of a foreign state is not worthy of trust or respect. Per Lord Collins of Mapesbury in *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7 at para 101:
- “...there is no rule that the English court... will not examine the question whether the foreign court or the foreign court system is corrupt or lacking in independence. The rule is that considerations of international comity will militate against any such finding in the absence of cogent evidence.”
42. I do not regard the issue as being properly raised before me and, even if I were to consider it, I do not regard the sketchy and anecdotal evidence given by Mr Cable and Mr Sales as sufficient to prove such a point to a standard sufficient for me to take it into account. If anything, the evidence suggests that Mr Cable was never subject to anything except due legal process in Saudi Arabia, and that, when he chose to contest it, he was successful.

(ii) Events leading up to execution of the Deed on 19 December 2013

43. Relations between Mr Cable and Mr Al Saif became troubled. For example, in an email dated 1 April 2012, Mr Al Saif complained to Mr Cable about a fee for a report from an outside contractor, and said “I will either get the report which I partially paid for, or I will be claiming these 10,000 UK Pounds back from you personally.”
44. Mr Al Saif’s evidence was that in 2012 he was told by Amir Sohail Rammay (the Finance Director of ASG and one of Mr Al Saif’s senior executives) that Mr Cable had with other named individuals carried out a fraud against ASG by taking secret commissions.
45. Mr Al Saif’s evidence was that, on 18 November 2012, he confronted Mr Cable (who does not mention this in his witness statement) and Mr Cable apologised for his actions and said he would return all the money “he had stolen” (in Mr Al Saif’s words). There is some support for this in an email of the same day from Mr Cable to Mr Al Saif saying:

“I am of course very happy to work with you and Dr Ahmed and your lawyers in the UK to help clear this up. I shall give you my full support in this matter concerning Alan Whaley and Chris Riddell, and any information or evidence I am able to provide concerning their dealings. We agreed we shall keep this a private matter between you and I.

In terms of any amounts you feel are due back to you we shall agree them and arrange a repayment schedule. I shan't be back in Saudi until around the 1 December, in 2 weeks. In the

interim I can correspond with Dr Ahmed, or am quite happy to sit with your UK lawyers if you want to give me their contact details. I'll correspond with Dr Ahmed anyway.

Hopefully we can work together again on some projects in the future, as there are significant opportunities in Kingdom and the Gulf, which can bring benefits to us both..."

46. The reference to "Dr Ahmed" is a reference to Ahmed Twaijri, who was copied in to the email. Mr Al Saif described him in evidence as a lawyer in Saudi Arabia who speaks fluent English. Mr Al Saif said that his involvement was suggested by Mr Cable himself. Mr Al Saif said that in due course Dr Ahmed recommended that he instruct Irwin Mitchell, solicitors in England, because Mr Cable was based in England. I accept that evidence.
47. Mr Cable emailed Mr Al Saif again on 2 December 2012, continuing to offer to pay money over a period of time. He said:

"More than happy to cooperate for Alan and Chris. We do need a methodology to cover any payment that is due from myself.

As I explained in my last email I have to reconstruct the details back to I think 2007, and have asked my accountant to work on this, it may take a couple of weeks but not long.

In terms of a mechanism or combination of methods, they could include,

direct cash payment as time goes by as I earn,

Introducing agencies to Al Saif Group on which you make profits and taking my profit share out of those,

Possibly going back to work for Al Saif group, but not full time as that would restrict my capacity to bring these opportunities."

48. Mr Cable emailed Mr Al Saif on 15 December 2012 saying:

"Shall we meet Saturday or Sunday?

Perhaps Dr Ahmed Twaijri can draw up an agreement which sets out what you want, my full cooperation in your actions with Alan Whaley and Chris Riddell, until they are all completed, which I suppose may be some years. He can also give me his first questions, so I can work on these over the Christmas break. An agreed schedule for repayment of all agreed sums due back from me. In return you are taking no actions against myself.

Then we can both sign this, It's better to have a document we both can work from

Separately we should agree how any new business I introduce is treated, the important question, what is my profit share?

On that subject..." (and he went on to discuss specific opportunities).

49. Mr Cable said about this email, in cross examination: "I wanted an agreement between us which clarified exactly what the position was that would protect me in the future and would keep everything calm". He said: "I wanted to keep away from major conflict which would destroy my opportunities in Saudi Arabia – effectively, a policy of appeasement." Appeasement was his own word; it was not a word suggested to him. This policy was, as he said in evidence and as the record shows, one he adopted consistently until and including his execution of the Deed on 19 December 2013, one year later. At no point did he assert his innocence. At no point did he dispute his liability to pay. At no point, even, did he reject (although he did not at first explicitly accept) the quantum of payments suggested to him as representing what he ought to pay.
50. There is no email or other correspondence between Mr Cable and Mr Al Saif or his colleagues between 15 December 2012 and 10 April 2013. However, in accordance with Dr Ahmed's advice to him, Mr Al Saif instructed Irwin Mitchell as English solicitors in February 2013 and on 10 April 2013 they wrote to Mr Cable at an English address setting out the claims against him.

The Irwin Mitchell letter of 10 April 2013

51. Irwin Mitchell's letter of 10 April 2013 began:

"We have been instructed to act on behalf of Al Saif Group (the "Group") to carry out further investigations into the conduct of various individuals who were either employed by the Group or carried out dealings with the Group.

You currently form the subject matter of our investigations together with Mr Alan Whaley and Christopher Riddell"

52. It then set out details of three separate projects in which Mr Cable was said to have been involved, together with Mr Whaley and Mr Riddell. One was Dragon 2000, which was said to be "a scam" which was secretly owned by Mr Cable and Mr Whaley, and which was said to have caused ASG losses "in excess of £2m". Another was Track 24/7, a new business idea sold to ASG on the introduction by Mr Cable of Mr Riddell to the Group, and in which it invested a total of USD1.6 million "which again turned out to be a total waste of our client's money". The letter suggested that Mr Cable and Mr Whaley had an undisclosed interest in the contract. The third was Plus Four, a consultancy which Mr Cable and Mr Whaley (according to the letter) had persuaded Mr Al Saif to appoint because of its alleged influence within Jaguar and Land Rover, with which ASG had previously had a franchise, although "It later transpired that [it] had no influence...". The letter said that Mr Cable and Mr Whaley had an undisclosed interest in it and "a substantial part of the Group's payment to Plus Four was diverted to yourself and Mr Alan Whaley".

53. The letter then said:

“In total, it is thought that our client has lost in excess of £4m as a consequence of entering into these three schemes and on the information that has been made available to us, it would appear that you played an intrinsic role in each scheme.”

54. The letter concluded by urging Mr Cable to deliver on his earlier promises of offering to repay “an agreed sum of money”, based on a schedule to be provided from Mr Cable’s accountant “of the sums that you thought were due to our client.” It also referred to Mr Cable’s promise of “full co-operation in relation to gathering further evidence against Mr Whaley and Mr Riddell”.

55. Mr Cable said that this letter came “out of the blue” but it is clear from the earlier correspondence I have quoted that it was, rather, the continuation of that earlier correspondence, in which Mr Cable had offered the initiative.

56. Mr Al Saif was cross examined on where the £4 million figure quoted in the letter had come from. He said it was based on figures mentioned by Mr Cable himself in their earlier discussions. I think that is unlikely. I think it more likely that it was produced by those on Mr Al Saif’s staff (such as Mr Rammay) who were more on top of the figures and the details of the various contracts and their financial consequences than Mr Al Saif may have been. There was a document in the bundle, undated but signed by Mr Rammay, which listed six figures totalling SAR 24,630,806 in connection with Dragon, Carter & Carter, Plus Four, Track 24/7 and Mr Cable and his personal company GRS Middle East Ltd. This corresponds to the figure ultimately included in the Deed as representing £4 million and the value of the claim made against Mr Cable in civil proceedings in Saudi Arabia (recital 2 of the Deed).

Response to the letter of 10 April 2013

57. Although the figure of £4 million or SAR 24 million did not come from Mr Cable, in his cross examination he accepted (as the record shows) that he did not at any time challenge any of the allegations in the letter of 10 April 2013 (although he told the court that they are not correct, and there was no scam). He also at no time directly challenged the figure of £4 million as the losses for which (according to the letter) he should be held responsible. In cross examination, he explained his stance by saying “I was concerned that if I were to confront, head on, any of this, I would instantly lose any opportunity in Saudi Arabia. So I did not admit anything. But I was not about to provoke any reaction from Mr Al Saif which would destroy my business. The only money I made was in Saudi Arabia and had been for years. So, I was trying to appease”.

58. This is a logical policy and I have no reason not to accept Mr Cable’s evidence about it. The correspondence is consistent with it. What followed, up to and including the Deed, was in line both with Mr Cable’s policy (of not disputing any allegation or wrongdoing, and not refusing any demand for money) and his aim (of preserving his business opportunities in Saudi Arabia by doing a deal with Mr Al Saif).

59. Mr Cable did say “I had every intention of challenging all these allegations in court”. However, in context, and consistently with the record, I understand this to mean only

that, if he failed to strike a deal, and found himself in court, he would at that point defend any claim. That moment was averted by the agreement in the Deed (for which the way was paved by the Contract and documents he signed before that, on 22 November 2013). Mr Cable's evidence (again supported by what he said in correspondence to Irwin Mitchell) was that he took a deliberate decision not to instruct lawyers at any point between the raising of allegations against him in 2012, down to and after his execution of the Deed. He said he took this decision freely, and he explained it by saying: "I think lawyers can sometimes be expensive and not give value for money."

60. Mr Cable's immediate reaction to getting the letter of 10 April 2013 from Irwin Mitchell was to email Mr Al Saif proposing new business ventures (email of 22 April 2013). To Irwin Mitchell, he replied by email on the same day. After providing a different English postal address, and his own email, for future communications, Mr Cable said:

"You will also no doubt be aware of my various discussions with Khalifa al Saif [i.e. Mr Al Saif], in which we agreed in return for my cooperation and full support in these matters and a mutually satisfactory method of repayment for any sums finally agreed as due to the Al Saif Group. We shall have a formal agreement that no legal actions will be taken against me and all matters will be kept confidential by both parties. Neither would any sanctions be taken against me personally in the GCC [i.e. the Gulf Cooperation Council countries of Saudi Arabia, Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates] as my income is derived from these countries.

The first step should be to agree the form of this agreement, and execute the agreement."

61. He then said:

"There are some inaccuracies in your initial letter, you should be aware of. I was not fully employed by Al Saif group for the period 1998 to 2007. I was full time only for the period October 1998 to March 2004, then went part time until March 2007 when I ceased full time employment.

I did not introduce Chris Riddell to the ASG. The first time I met Mr Riddell was in the offices of ASM, after he had already been introduced to ASG and ASM, I am not sure by whom but believe by Mr Whaley.

Again I did not introduce Dragon, I have no experience of DMS programmes, such as Dragon Automate or Kerridge.

As to the correspondence and material you are reviewing I am interested in the origin of this material.

Setting these matters aside I repeat my full support to the ASG in following these matters, we can arrange to meet soon to commence.”

62. The fact that, in this response, he made any corrections to “inaccuracies” at all makes it even more striking that he did not challenge the principle that there were claims against him worth £4 million. Instead, he repeated his position from 2012 that he wanted, not to argue, but to settle.
63. The next day he emailed Irwin Mitchell again, saying:
- “Just received a call from khalifa [i.e. Mr Al Saif]. You seem to believe I do not intend to cooperate. That is incorrect. I stated clearly that I shall. I am prepared to put forward a schedule of amounts, with suggested timing of settlement based on my capacity to meet the schedule. I understand you are making detailed investigations concerning financial status and so you can verify that it is reasonable. I am expecting from you a binding agreement we can sign to cover this.”
64. He was thereby asking for the very thing he now says was signed under duress, in the Deed executed on 19 December 2013. He wanted a binding agreement based upon his ability to pay.

Subsequent correspondence

65. On 24 April 2013, Mr Cable sent Irwin Mitchell an email attaching an Excel spreadsheet and a letter to Irwin Mitchell in Word. The email itself said:
- “Further comments. The schedule covers the contracts to the best of my knowledge. There are presumably either transactions with Chris Riddell and Alan Whaley that were done between them I didn’t see or know about.”
66. The letter said:
- “I have attached a schedule of the payments received in connection with these contracts. These relate to commissions paid on the projects in your letter. I have also included in this schedule those payments I am aware of for other parties.
- (...)
- I had previously in my email of December 2012, suggested some routes to pay the agreed sums.
- In terms of a mechanism or combination of methods, they could include,
 - direct cash payment as time goes by as I earn,

- Introducing agencies to Al Saif Group on which you make profits and taking my profit share out of those,
- Possibly going back to work for Al Saif Group, but not full time as that would restrict my capacity to bring these opportunities.

Khalifa [i.e. Mr Al Saif] explained to me in the call yesterday morning you were going to refine these into a proposition for me. I have yet to receive that refined version.

(...)

A proposal for you to consider is to pay £25,000 now, this is over 50% of the cash I have on deposit. Then further instalments of £25,000 at 6 monthly intervals. These will be covered from my earnings. As bonuses are paid from projects I am working I shall make further payments against the outstanding amount until it is settled. All the payments will naturally be made to your Client Account.

I am also informed by Khalifa yesterday morning you have conducted an exhaustive review of my financial status, and so will be fully aware of that position, and hence the reasonableness of this proposal.

As to cooperation in your further work on this concerning the individuals I shall as previously committed be available as you may reasonably require to assist as you progress this matter.

I am now looking for your confirmation of how you wish to proceed with this and that no further actions will be taken against myself. We can then move ahead.”

67. This continued Mr Cable’s policy of non-disagreement and appeasement, aiming directly for a concluded settlement agreement and time to pay. It is not suggested that this policy was adopted under duress.
68. However, whilst it did not dispute Irwin Mitchell’s £4 million figure, it did not in terms accept it. The Excel spreadsheet attached to the letter as “the payments received in connection with these contracts” was stated to be the “Primary Ledger” of Mr Cable’s company (GRS Limited) between 11 January 2007 to 1 April 2013 and it was explained by Mr Cable in cross examination. It set out a series of payments received by his company (without naming the source) divided into two sections of the page. At the top, on dates between 12 March 2007 and 28 November 2008 were payments totalling £729,367.75. These were divided into £299,064.10 retained by Mr Cable’s company, and £289,757.10 and £140,546.55 paid on by that company to Mr Whaley and Mr South respectively. At the bottom, on dates between 16 January 2008 and 9 October 2008, were payments totalling a further £97,000. These were divided into £9,492 retained by Mr Cable’s company, and £58,708 and £28,800 paid on by that company to Mr Whaley and Mr Riddell respectively. The total receipts were

(according to this Schedule) therefore £826,367.75, but in evidence Mr Cable paid particular attention to the element of this which the company did not pay on to the other people, which was a total of £308,556.10.

69. These figures were not inconsistent with Irwin Mitchell's figures because Irwin Mitchell's figures were not limited to benefits received by Mr Cable's company but covered, rather, "in excess of £4m" said to have been lost by ASG "as a consequence of entering into these three schemes."
70. Mr Cable did not deny in evidence that he not only received commissions but that he never disclosed them. They were truly secret commissions. On the face of it, this might have been a breach of his fiduciary duty as an agent of ASG or Mr Al Saif, if he was indeed acting as such an agent, which it appears he may well have been. Mr Cable seemed surprised at the suggestion that he should have disclosed his commissions ("Why would I be obliged to declare commission?") but he did not challenge it at the time, or at any time before giving evidence. I do not accept, incidentally, that, even if his liability were to be limited to the amount of secret commission paid to Mr Cable, he should be allowed to discount that part of it which he subsequently paid on to others. This brings the amount up to £826,367.75 from £308,556.10. But I also do not accept that Mr Cable would be free of liability of losses sustained (if they were sustained) as a result of him apparently recommending contracts which were a "scam" or "a total waste of money", in circumstances where his recommendation was tainted by taking a secret commission for himself.
71. However, I do not have to decide the rights and wrongs of the underlying dispute because the action is brought on the settlement of the dispute in the Deed. It is enough to find, as I do, that there was sufficient basis for the claim for it to be worth settling and that it was brought in good faith. This finding is strongly supported, so far as Mr Al Saif's side of the discussion is concerned, by Mr Cable's deliberate failure to dispute it. By not disputing it, he did appear to accept it. There was no reason to think it was an unfounded claim, either as to liability or as to quantum.
72. The correspondence which followed concentrated (as Mr Cable himself had suggested it should) not on how much he was legally liable to pay (as to which he made no counter proposal at all) but on how much he had personally retained and how much he was now able to pay. A fair reading of the correspondence (whether or not this was what Mr Cable was privately thinking) is that Mr Cable's schedule of the payments which he had retained beneficially was put forward, not as representing the limit of his liability, but as showing the extent of his assets.
73. That was certainly the way it was understood by Irwin Mitchell, and in subsequent correspondence they challenged his account of his ability to pay. In a letter of 16 May 2013 they said, in response to the email with its covering letter and Excel spreadsheet of payments received and retained:

"In your letter you put forward a proposal for my client to consider in which you offered to pay £25,000 now and further instalments of £25,000 at 6 monthly intervals. We are at a loss as to why you would consider that my client would be prepared to even contemplate such a derisory offer in circumstances where you owe my client a substantial sum of money.

You appear to justify your offer on the basis that you do not have the necessary assets or finances to make a more realistic commercial offer.

However, your offer does not accurately reflect your true financial position...”

74. It asked various questions about his assets and threatened “appropriate legal action”.
75. In a lengthy reply of 22 May 2013, Mr Cable concentrated entirely on his ability to pay, and made no attempt to limit the amount to be paid save by reference to that. He “set out... a summary of my accurate current position” and listed some 10 projects from which he hoped for future earnings, which he also estimated. He said:

“I am also of course happy to give you such further information on these contracts as you reasonably require subject to the confidentiality provisions of the contracts, and agree with you a mechanism as money is received under these contracts it is first applied to the amount under discussion.

Also to agree if you wish a monthly payment against the retainers I receive as they are received. As opposed to the one-off 6 monthly payments. We both want this put to bed as soon as possible...”

76. In context, and on the evidence, I find that the reference to “the amount under discussion” was to the amount of £4 million put forward in Irwin Mitchell’s original letter of 10 April 2013 which had not been challenged or disputed. It was not a reference to some lower figure that Mr Cable might subsequently negotiate, whether based on £300,000 of commission retained or anything else. The lower figures were put forward as representing the limit of his ability to pay, not the limit of his liability to pay. All the correspondence proceeded on this basis.
77. Mr Cable explained his thinking in para 20 of his witness statement:

“I took the decision that if necessary I would agree to pay a sum to Mr Al Saif, despite the fact that I owed him nothing, and albeit such sums would appear to be substantial on the basis that the actual amount which I would receive from my business dealings in Saudi Arabia would far outweigh [what] I had to pay him. It was critical that I remained in Saudi Arabia to allow me an opportunity to secure substantial payments i.e. £15 - £20 million over 10 years in respect of ongoing payments, and in this regard the information which I conveyed to Irwin Mitchell in my emails of 22nd May 2013... and the information I subsequently furnished would be sufficiently attractive enough to reach an agreement with Al Saif. I adopted a policy of appeasement. I was faced with an extremely wealthy and angry individual on his own soil in Saudi Arabia. I did not have nowhere near the same financial clout to put up an effective resistance, I had to play ball both with him and his

lawyers. My plan was simple. I was engaged and on the verge of making a serious amount of money. If some of it had to go to Mr Al Saif whilst I worked and earned a larger sum of money it was a pain that I could live with.”

78. Although he goes on to express his fears about getting “picked up and... labouring in a Saudi jail for months, if not years”, he does not, at that point, attribute such fears to any threat by or on behalf of Mr Al Saif.
79. His calculation (I find) was that it would be worth paying even £4 million, over as much time as he would need to raise it, in order to preserve his future earning capacity in Saudi Arabia. In cross examination, he accepted that the figure of £15 - £20 million was an estimate based on an assessment of the potential value and estimated likelihood of a variety of deals, which he already had in mind, coming to what might be regarded as a realistic outcome. He said: “I thought I was in a position to earn £15 - £20 million over 10 years, on condition I continued to work in Saudi Arabia and continued to operate as I was doing, with UKTI, and everything else.”
80. This was a calculation which he made as soon as he got the letter of 10 April 2013, if not before. It is in the context of his receipt of the letter of 10 April 2013 that he made the points in para 20 of his witness statement that I have quoted above.

November 2013

81. Between May and November 2013 there was further correspondence between Mr Cable and Irwin Mitchell in which he tried and failed to convince them that the rate of payment he was proposing was at the limit of his ability to pay.
82. In the course of this correspondence, Mr Cable provided (on 8 July 2013) an English address “for service of court papers if that is your preferred course of action”, although he said “Should this be your chosen route I shall not be engaging solicitors.”
83. The correspondence, however, continued, and the first reference to legal process on Irwin Mitchell’s side after that was in a letter of 15 November 2013 when they said: “Sheikh Khalifa is convinced that you are deliberately concealing information from him...” and continued their demands for evidence of Mr Cable’s earnings and other assets. At the end of this letter, they said:
- “Please also provide us details of your legal representative or if you are acting in person, your contact details for the purpose of serving you with court proceedings in relation to the case filed against you in the Saudi court.”
84. This was a reference to proceedings already filed (the letter had earlier said: “To update you, our client has already filed legal proceedings against you in the Saudi Arabia court and we have been provided with a copy of the claim”) and, since it is accepted on the evidence that no criminal proceedings were ever filed, these were civil proceedings, although that is not stated.
85. In his evidence, Mr Cable said that between April and November 2013 he had approximately 10 to 12 telephone conversations with Mr Al Saif and Mr Rammay. He

said that “During three of the telephone conversations direct threats were made by Mr Al Saif and [Mr Rammay]” that “you will be picked up by Police”. I reject that evidence. It is not mentioned in the pleadings. It was not raised in pre-action correspondence or at any time before service of the witness statement on 17 December 2021. It was not put to Mr Al Saif in cross examination. It is not reflected in any of the correspondence in 2013. It is also inconsistent with what happened next, which was that Mr Cable, who had been travelling around, and was not yet in Riyadh, went there as a direct response to Mr Al Saif’s increasing impatience with the lack of progress in correspondence.

86. Mr Cable’s movements were not established with precision at the trial but there are indications in the correspondence. On 4 October he said “I am back in UK next week, then return to Saudi first week of November.” On receipt of Irwin Mitchell’s letter of 15 November, which was sent by email, he replied by email at 3.18 pm saying “I am travelling. I return to UK next week...” This was on a Friday, and he was complaining about a deadline for further documents expiring the following Monday, 18 November. On 16 November, he sent Mr Al Saif a friendly email about four possible business opportunities, and ended “I come to Riyadh 2nd December after my birthday on the 26th November, another year older!”. On 18 November, Mr Cable said in an email to Irwin Mitchell that, if Mr Al Saif was interested in business opportunities, “we can talk in 2 weeks when I go to Saudi”. I asked Mr Cable where he was when he got the email of 19 November (which I am about to come to) and he said he was in Riyadh. But I find on the balance of probabilities, based on the contemporaneous correspondence, that he was not in Riyadh until he changed his plans after receiving that email.

The email of 19 November 2013

87. On 19 November 2013, Mr Rammay sent Mr Cable an email which said:

“Mr Cable

Reference to your discussion with Sheikh Khalifa [i.e. Mr Al Saif] a while ago, find attached scan copy of translation of case filed against you in Saudi court. Another case in criminal courts is also going to be filed in next few days, a translated copy of which will be provided to you once it is done.

Regards,

Amir Sohail Rammay Mohammed

Chief Financial Officer [ASG]”

88. The attached translation consists of two pages, of which the second is a “Review Ticket” or docket with a case number and other administrative details. The first is what appears to be a Claim Form, dated in the Islamic calendar, but agreed to be 25 July 2013, addressed to the “Riyadh General Court” by Mr Al Saif as plaintiff, naming Mr Cable as defendant, and stating the claim as follows:

“I hereby lodge my claim against the defendant whose name is stated herein above, manifesting subject of the claim is as follows:

In reference to the past contractual relation between the claimant and the defendant, and the consequent financial liabilities between both parties,

whereas the defendant has settlement towards the plaintiff of (SAR : 24.630,800).

Whereas the plaintiff claimed the defendant to pay the aforementioned amount and that the defendant avoids playing the aforementioned amounts due to him and has given instead different excuses for sole purpose of procrastination in paying the amount of money mentioned herein above;

Therefore, I hereby request the following:

To force the defendant to pay the claimed amount totalling to SAR 24,630,800 as soon as possible without any procrastination or delay.”

89. This was a clearly a civil claim, and to be identified with the “legal proceedings against you in the Saudi Arabia court” referred to in Irwin Mitchell’s letter of 18 November as having already been filed.
90. However, the reference in the covering email to “Another case in criminal courts... to be filed in next few days” was new.
91. Mr Cable referred to this as a “game changer”, saying in evidence that “The issue of proceedings meant I was at imminent risk of being arrested and detained”. He said “I could not leave the country because I feared Mr Al Saif had my passport details”. He does not claim that Mr Al Saif had his passport, on which he had (as the correspondence shows) been travelling freely at this time without meeting Mr Al Saif or his staff, but, rather, that Mr Al Saif’s knowledge of his passport details could have been used to stop him leaving.
92. None of this is in his Defence and Counterclaim. Indeed, the only passage which refers to the email of 19 November (which is para 6(e), quoted in full at para 7 above), refers to the civil proceedings, which were enclosed. The passage in the email saying that criminal proceedings would be filed in the next few days is not pleaded. It is not, therefore, relied upon as part of the claimant’s case of duress to the person, although it is part of the alleged evidential background to that case.
93. Nothing at all in the correspondence, whether with Mr Al Saif, Mr Rammay, or Irwin Mitchell, constituted a threat, explicit or (I find) implicit to Mr Cable’s freedom of movement. The Claim Form in the Saudi proceedings attached to the email of 19 November did not suggest any relief of that nature. It was a straightforward money claim. The reference in Mr Rammay’s email to criminal proceedings did not include a draft, and said that it was to be filed “in next few days”. It did not say that it would be

accompanied by arrest, or imprisonment, without further notice or hearing. If that was a risk, it could presumably not materialise in conjunction with those proceedings until such time as the proceedings were drafted and filed.

94. Mr Cable's next steps were not consistent with him fearing an imminent risk of being arrested and detained, especially if such a risk was feared at the point when criminal proceedings were to be filed "in next few days" from the email of 19 November 2013, which was a Tuesday. Mr Cable did not flee. He went to meet his accuser.

The meetings and documents of 22 November 2013

95. It is common ground that, on 22 November 2013, there was a telephone conversation between Mr Cable and Mr Al Saif. It is reflected to in an email sent by Mr Cable to Mr Al Saif at 8 am on 22 November, sent (as is also common ground) after the call, in which he said:

"Firstly I want to apologise sincerely, and say I am sorry about these actions. That isn't the way to treat a friend."

96. After a long passage in which, as in the earlier correspondence, Mr Cable offered all his assets in payment of Mr Al Saif's claims (which Mr Cable continued not to dispute), and in which he again put forward business opportunities that might be pursued between them, he ended the email:

"I do appreciate you being decent, and shall see you this morning."

97. Mr Cable's evidence about the phone call is, it seems to me, inconsistent with the tone and the content of this email sent immediately afterwards, especially its final words saying "I do appreciate you being decent" and him promising, as he subsequently did, to go round to present himself to Mr Al Saif in person that same morning, without taking anyone with him, or taking any precautions against a threat, whether actual or perceived.

98. Mr Cable's evidence was as follows (paras 23-25 of his witness statement):

"On the morning of the 22nd November 2013 I attended to a telephone call made by Mr Al Saif. He demanded that I immediately attend to his home that evening. He said to me words to the effect that "I had to go to his house or else". His tone was uncompromising and very stern. I read "or else" to mean I would be picked up by the Police and thrown into jail. That evening [sic] I drove myself to his house which forms part of a large compound with walls some 15 feet high. At the entrance there was the usual security guard. As I drove and parked I noticed the presence of a marked Police vehicle. As I entered the main house complex I noted two uniformed Police Officers. This heightened my concerns as to my safety. I was greeted by Mr Al Saif in person, and he directed me to what is known as his office within the complex..."

Mr Al Saif told me to sit down and turn my phone off. I therefore switched off my mobile. His tone was severe. I felt extremely uncomfortable. In the few minutes during that meeting Mr Al Saif presented me with a document and said to me "you fucking sign this". I instinctively responded "why" and he in turn replied "or you fucking go to jail". These are the nearest words which I can recollect of what was said."

I then signed the document... Mr Al Saif immediately then said "now put your thumb print on it" and presented me with an ink pad. I said "why" and he replied words to the effect "that is what we do here". I therefore followed his orders. Then he demanded that I write in my hand. He dictated verbally to me what to put in which I did to the best of my ability... I signed the document. Mr Al Saif did not read my handwritten statement. He then said "go" and I in turn left. I proceeded to my car. I was emotionally shocked and scared. I proceeded to drive to my accommodation at the compound and I immediately telephoned Lindsay Sales. I asked Lindsay if I could go over to his house. I proceeded thereafter and informed Lindsay of what had happened."

99. This remarkable account was first suggested, so far as the documentary record is concerned (I will come to the evidence of Sales later), seven years after the event, when it was pleaded in para 6(f) of the Defence and Counterclaim dated 11 January 2021 (quoted in para 7 above). It had not been mentioned by Mr Cable himself in any letter, email, text or other written communication, whether to ASG, Mr Al Saif, or their lawyers, or to any personal friend of Mr Cable, with the possible exception (which I will examine later) of Mr Sales.
100. There was pre-action correspondence in this case, starting on 17 July 2020 with a letter before action from the claimant's solicitors to the defendant and his solicitors. On 28 July, the defendant's solicitors responded saying they had received "preliminary instructions", which raised "serious issues concerning the conduct and representations made by [Mr Al Saif]", but with no details. When they wrote again on 19 August 2020, they said "our Client was compelled, due to duress and undue influence, to sign [the Deed]", but there was no mention of the documents of 22 November, or of threats made on that occasion. Rather, the implication seemed to be that it was the legal proceedings which had actually been instituted (that is, civil proceedings) which posed the threat:

"The circumstances leading up to and influencing our Client to, under duress and undue influence, sign the Settlement Agreement, is a matter upon which we are undertaking further and detailed instructions.

Our preliminary instructions indicate that the relationship between our respective Clients was, during the later stages acrimonious, culminating amongst other matters in your Client commencing a number of legal proceedings against our Client, separate to and not related to the Settlement Agreement."

101. The claimant's solicitors asked for more details, but none were given. On 12 October 2020, the defendant's solicitors wrote again, saying:

“We note we were due to respond to you in detail on Friday 9th October in relation to your Client's claim relying on the Settlement Agreement dated the 19th December 2013.

We maintain and reiterate our Client's instructions that our Client's signature as contained on the Deed was obtained by way of coercion and under duress.

During the course of our ongoing investigations we have become aware of a further document created by our Client and signed by our Client on the 22nd November 2013 which we consider to be pertinent to the issues in dispute.

We will therefore require further time upon which to seek our Client's instructions and to respond in detail to your Client's claim in reliance of the terms contained in the Deed. We anticipate no more than 14 days is required.”

102. This is the earliest reference to 22 November 2013. Moreover, it refers to a document “created by our Client and signed by our Client” on 22 November, without alleging that it was dictated to him and imposed upon him by duress. It also appears to turn to the document of 22 November 2013 as a new matter, rather than being part of the original instructions about coercion and duress. It is also interesting that the letter described the document as being “created by our Client”; i.e. created by Mr Cable himself, rather than imposed upon him.
103. Well over 14 days passed without further detail, and proceedings were served on 27 November 2020, six weeks later. The Defence and Counterclaim is dated 11 January 2021.
104. It is a strong point against the credibility of Mr Cable's allegations (that police were physically present on 22 November 2013, and that he signed documents on that day only because of threats and fear of immediate arrest and imprisonment) that he made them for the first time so many years after the event.
105. Mr Cable did not make this claim even when he and Mr Al Saif eventually fell out, and Mr Cable was making other claims against Mr Al Saif. It is absent, for example, from a long email from Mr Cable to Mr Al Saif dated 21 April 2015, protesting “this unfounded case against me in Saudi”, rejecting the wrongdoing he was accused of as “clearly a joke” and counter-punching with a string of allegations which did not include any reference to duress, or a threat or fear of arrest and imprisonment reinforced by the presence of police at the meeting on 22 November 2013 when documents were signed.
106. The email did not hold back. Mr Cable presented a long and detailed list of alleged historic instances of serious wrongdoing by Mr Al Saif, in both his personal and professional life, and threatened Mr Al Saif with a US\$10 million claim for defamation.

107. It looks as if Mr Cable was throwing all the mud he had to hand at Mr Al Saif in this email – but there is nothing about signing documents on 22 November 2013 as a result of duress, the police, or threats of arrest and imprisonment.
108. Mr Al Saif denied Mr Cable’s account and I found his denials to be credible. For example, when it was put to him that he said “You fucking sign this” and “Or you fucking go to jail”, he said it was not true, he had never in his life used that word, and that he would not have been able to keep this long-serving staff for thirty years if he had. This had some support from Mr Cable himself, who admitted “Mr Al Saif does not use the F-word usually” but “occasionally, in extreme circumstances”. The circumstances on 22 November 2013 did not appear to be extreme. Mr Cable had presented himself voluntarily, after a phone call which caused him to say to Mr Al Saif “I do appreciate you being decent”. Mr Cable appeared to be dragging his feet, but he had never offered any denial or resistance, and he was not offering it before or after the meetings on 22 November 2013, on anyone’s evidence.
109. There is no doubt, however, that Mr Cable did sign two documents on 22 November 2013. One was typewritten (“the Typed Confession”), and one was handwritten (“the Handwritten Agreement”). It was common ground by the end of the trial that the typed document came first, and was followed by the handwritten document. This was a point upon which Mr Al Saif’s witness statement at paras 20-21 had been unclear and which para 7.(vii) of the Reply had stated otherwise, but the evidence and the consensus of Counsel at trial was in favour of putting the documents in this order and I am persuaded by the contents of the documents and by what happened before and afterwards that it is the correct order.
110. The parties’ cases as to the circumstances in which the two documents were signed are, however, diametrically opposed. I have already set out Mr Cable’s case, which is that both documents were forced upon him by Mr Al Saif, even the handwritten document being dictated to him under threat. Mr Al Saif’s evidence was as follows:

“Later that day, Mr Cable came to my house to meet me.... Mr Cable was familiar with the property. He had socialised there and also attended meetings there...

When Mr Cable arrived we sat and had a coffee. We spoke and then Mr Cable wrote out a document stating that he owed me the sum of SAR 24,630,800 and that when repayment was concluded the Al Saif Group’s claim against Mr Cable would be dropped.

Mr Cable also signed a typed version of the document that contained additional wording. As I was concerned that Mr Cable might not have used his true signature, I asked him also to include his thumb print if he didn't mind. Mr Cable said he didn't mind and put his thumb print on the document.

I note that Mr Cable alleges that two uniformed KSA [Kingdom of Saudi Arabia] police officers were present at this meeting. This is not true. However, to the best of my recollection my office manager, Ramadan Elsayed Hassanein

Ali Mattar, who lived at the house and usually worked at the home office, was present. I also note that Mr Cable alleges that I threatened him with arrest and imprisonment. This is also not true.”

111. In cross examination, Mr Al Saif claimed that Mr Cable brought the typed document with him “because the amount was agreed before on many occasions” and that the handwritten document was not drafted by Mr Al Saif or Irwin Mitchell but came from Mr Cable.
112. I am not, however, bound to accept either Mr Saif’s evidence that both documents came from Mr Cable, or Mr Cable’s evidence that both documents (or at least their wording) came from Mr Al Saif. This was canvassed in closing submissions. It seems to me most likely that the typed document (which both sides now agree came first) was presented to Mr Cable by Mr Al Saif and the handwritten document was then produced by Mr Cable as a counter-proposal using words of his own choosing. This was an interpretation of the evidence which I discussed in closing submissions.
113. In reaching this conclusion, I have considered, first, the form and content of the documents themselves.
114. The Typed Confession is signed by the defendant “Robert Cable 22.11.2013” at the bottom. Next to his signature is the defendant’s thumb print. The Typed Confession reads as follows:

“I Robert Thomas Cable admit that I have taken without the knowledge or permission of Mr. Khalifa A. Alsaif and or any of his entities the amount is Saudi Riyal 24,630,800 (twenty four million six hundred and thirty thousand and eight hundred saudi riyal) with the full knowledge that I have no right to this amount and I have no previous nor future claim to this amount weather from Mr. Khalifa A. Alsaif or any of his entities and I undertake to return and pay back this amount to Mr. Khalifa A. Alsaif according to a mechanism that is fully satisfactory to him with immediate effect and with no delay and I herby submit my regret and obliges to Mr. Khalifa A. Alsaif for my miss half and wrong doing in taking this amount.”

115. A number of errors in this document are faithfully reproduced in my quotation, including:
 - i) “weather” instead of “whether”
 - ii) “herby” instead of “hereby”
 - iii) “my regret and obliges”, which may mean something like “my regret and obligation”
 - iv) “my miss half and wrong doing”, which appears to mean something like “misconduct and wrong doing”.

116. Although the thumbprint is a striking and, to English eyes, unusual feature, the evidence of Mr Marshall was that he had come across it in another Saudi case, and Mr Cable's evidence in cross examination was that he had no objection to it. He said: "I had never put a thumb print on before. He told me to do it. I asked him why, he said that's what we do. I obliged *because it would help protect me I felt at the time*" (emphasis added). In this, he went beyond his witness statement, which was to the effect that he signed because he was ordered to, and not because he also thought it would protect him too.
117. The Handwritten Agreement is entirely in the defendant's own handwriting and reads as follows:
- "I Robert Thomas Cable agree the cost to Khalifa A. M. Al Saif of S.R. 24,630,800. (twenty-four million six hundred and thirty thousand eight hundred)
- I also agree to propose a mechanism, acceptable to both parties to cover this amount.
- In return for this agreement, when it is concluded, the case in Saudi against me will be dropped.
- Robert Cable
- 22.11.2013
- R. T. CABLE"
118. The words "in Saudi" have been inserted (still by the defendant, writing in his own handwriting) into a sentence which, before those words were added, read "In return for this agreement, when it is concluded, the case against me will be dropped."
119. There are no errors of English grammar, syntax or spelling in the Handwritten Agreement.
120. It seems to me inherently more likely that the Typed Confession originated from Mr Al Saif's side. It was typed, and Mr Al Saif had an office. It was in good English, but not English which appeared to come from a native English speaker. It contained errors that were not limited to typographical errors, and which I would not expect a native English speaker to make.
121. On the other hand, it seems to me inherently more likely that the Handwritten Agreement originated from Mr Cable, and was written in words of his own choosing. It has the appearance of a document that was not dictated (as Mr Cable alleges) but has a couple of additions squeezed into otherwise regularly spaced text. There is the addition of the words "in Saudi" which I have noted in my quotation of it above. The statement of the sum of SAR 24,630,800 in letters, after the numbers, also appears to have been written in afterwards, using what space was left by the original handwritten text. It is in perfect English, with no spelling or other errors. It is written in Mr Cable's own hand.

122. It is also more likely that one came from Mr Al Saif and one from Mr Cable. There are two documents here, and they are not the same. They were executed at the same meeting. If they came from one side only, why were there two? Why were they not the same?
123. I find on the balance of probabilities that the Typed Confession was presented to Mr Cable by Mr Al Saif already prepared, and Mr Cable was told to sign it, and add his thumbprint, and did so. I find on the balance of probabilities that, by way of counter-proposal, Mr Cable then hand-wrote the Handwritten Agreement which moved the agreed position more in the direction that he himself preferred, and obtained Mr Al Saif's agreement to it. Two refinements were added to the original handwritten text, as can be seen from the way they are squeezed in to the original writing. The first was that the principal sum due (SAR 24,630,800) was stated in words as well as in figures, as it had been in the original Typed Confession, so that there could be no mistake or alteration. That is something that Mr Al Saif may have wanted. The other is that when Mr Cable stipulated "In return for this agreement, when it is concluded, the case against me will be dropped", he later added the words "in Saudi", so that there was no doubt that he would no longer be at risk of proceedings against himself in Saudi Arabia. This was of no benefit to Mr Al Saif, and is more likely something that Mr Cable wanted. It is not a point covered in the Typed Confession.
124. I have said that the Handwritten Agreement moved the position towards what Mr Cable wanted as compared with the Typed Confession.
- i) The Typed Confession was a confession to "taking" money, and the amount "taken" was not limited to Mr Cable's commissions but extended to the full SAR 24 million stated in Irwin Mitchell's letter of 10 April 2013 (for example) as the amount of losses, not of benefits to Mr Cable personally. The Handwritten Agreement, on the other hand, agreed the SAR 24 million as "the cost" to Mr Al Saif. As well as being more consistent with the facts alleged in the Irwin Mitchell correspondence, this was a less loaded admission than an admission that Mr Cable had "taken" money, which sounds more like theft than a damages claim. This distinction is one later made by Mr Cable himself in an email to a third party the following year, in which he said "it is not money taken by me it is costs/losses he says he suffered" (Cable email to Sheikh Nasser dated 2 October 2014). It is a distinction that mattered to Mr Cable, but not apparently to Mr Al Saif (given the wording of the Typed Confession). Therefore, it represented a movement towards Mr Cable's position.
 - ii) The Typed Confession insisted, not only on payment, but on payment "with immediate effect and with no delay". This was, not only in Mr Al Saif's interests, but reflected the language of the Saudi Claim Form, which sought (in translation) payment "as soon as possible without any procrastination or delay". The Handwritten Agreement removed this language entirely, agreeing payment in principle, but saying nothing about how quickly it would be made.
 - iii) Both the Typed Confession and the Handwritten Agreement referred to "a mechanism" for payment. The concept of a "mechanism" for payment was one which had originally come from Mr Cable. It appears for the first time in Mr Cable's email to Mr Al Saif of 2 December 2012 (para 47 above), in which he

had said “We do need a methodology to cover any payment” and went on to say that “a mechanism of combination of methods” could include “direct cash payment as time goes by as I earn” and so on. Mr Cable referred to a “mechanism” in the same context when writing to Irwin Mitchell on 22 May 2013 (para 75 above). However, whereas Mr Cable’s “mechanism” was always a staged payment linked to his future earnings and ability to pay, the Typed Confession undertook payment to Mr Al Saif “according to a mechanism that is fully satisfactory to him with immediate effect and with no delay”, which was not what Mr Cable was suggesting at all. It was also a mechanism which had to be “fully satisfactory” only to Mr Al Saif. By contrast, in the Handwritten Agreement, Mr Cable said “I also agree to propose a mechanism, acceptable to both parties to cover this amount”. Not only was the element of immediacy removed (as I have already mentioned), but Mr Cable now regained the initiative in making the proposal, and it was also specified that the mechanism had to be “acceptable to both parties”. These changes were more in Mr Cable’s interests than Mr Al Saif’s, and reflected Mr Cable’s negotiating position (in previous correspondence) rather than Mr Al Saif’s.

- iv) The Typed Confession contained no reference to the Saudi proceedings, or to the settlement of any legal proceedings. But the Handwritten Agreement said “the case in Saudi against me will be dropped”.
125. These points support my conclusion on the balance of probabilities that the Typed Confession came from Mr Al Saif’s side but the Handwritten Agreement came from Mr Cable and was not dictated to him as he claims.
126. It follows both from the sequence of events (which by the end of the trial was common ground, placing the Typed Confession before the Handwritten Agreement), and from the movement towards Mr Cable’s position in the Handwritten Agreement from the Typed Confession which I have noted, that the meeting on 22 November 2013 was not the one-sided affair which Mr Cable claims in his evidence. Nor did all the elements come from Mr Cable’s side as Mr Al Saif claims (less emphatically) in his evidence. Rather, I find on the balance of probabilities, based particularly on the substance of the two documents and the direction of travel they record, that Mr Cable was able to and did assert his counter-position, which was committed to writing in the Handwritten Agreement, and Mr Al Saif accepted it. I am supported in my conclusion that Mr Al Saif accepted it because the subsequent agreements in the Contract and, ultimately, in the Deed itself, reflected it in every respect. They both included staged payments. They both included settlement of the Saudi proceedings. Neither of them contained an admission that Mr Cable had “taken” any money.
127. It is true that, in signing the Typed Confession, Mr Cable went beyond his position in previous correspondence. For the first time, he explicitly agreed to pay the full SAR 24 million. But he had never previously refused to pay it, or challenged the obligation to pay it which was being put to him in the Irwin Mitchell letter of 10 April 2013 and afterwards. He also admitted in the Typed Confession to having “taken” the money, which was not even what was being alleged against him in the Irwin Mitchell correspondence. However, both these concessions were entirely in line with his policy of appeasement, and his calculation that he would do better to offer no resistance, in the hope of avoiding legal proceedings and damage to his reputation and ability to

operate and earn money in Saudi Arabia. It is not, therefore, necessary to suggest some intervening force (such as a threat of immediate arrest and imprisonment, or the presence of police) to explain what he did. Moreover, he was able instantly to manoeuvre away from the Typed Confession he had signed, and draw up an acceptable alternative of his own, in the Handwritten Agreement, to which Mr Al Saif agreed.

128. Bearing all of this in mind, I now turn to consider the allegations of fact which are central to the claims of duress, so far as the meeting of 22 November 2013 is concerned. Has Mr Cable proved on the balance of probabilities (as he pleads in para 6(f) of the Defence) that Mr Al Saif “threatened the Defendant with immediate arrest and imprisonment”? Were two uniformed police officers present? Did Mr Cable sign the Typed Confession “in fear of [his] liberty”?
129. Mr Cable’s evidence supported each of these propositions. Mr Al Saif’s evidence denied all of them. As I found neither to be entirely credible witnesses, I will not decide the point simply by preferring one witness over another.
130. A number of the findings I have already made are more consistent with the claimant’s case than the defendant’s on these points.
- i) The delay in raising the allegations.
 - ii) Mr Cable’s success in moving Mr Al Saif from the Typed Confession to the Handwritten Agreement.
 - iii) The lack of reference to the criminal proceedings even in the Handwritten Agreement. The Handwritten Agreement stipulated that the civil action would be dropped, but it said nothing about averting the threat of criminal proceedings.
 - iv) Mr Cable’s email of 22 November to Mr Cable saying “I do appreciate you being decent, and shall see you this morning”. This contradicts para 23 of his witness statement (para 98 above) that he was already being threatened in the telephone conversation that summoned him to the meeting, and that he understood the threats to mean “I would be picked up by Police and thrown into jail” if he did not go. It would also be surprising if, as he says, when he entered the main house complex he saw “two uniformed Police Officers” which “heightened my concerns as to my safety”, he continued in to the meeting rather than turning back.
 - v) The complete consistency of Mr Cable’s conduct on 22 November 2013 with his conduct in the prior negotiations. He never said no. He never resisted. He pursued a deliberate and calculated policy of appeasement. There was no need to threaten him.
131. In Mr Cable’s favour is that, unlike Mr Al Saif, he has called another witness to speak (apparently) to 22 November 2013, who is Mr Sales. Mr Sales was an unsatisfactory witness because he was highly partisan, and seemed keen to bring everything that he could into his evidence which could damage Mr Al Saif, regardless of whether it was within his personal knowledge and regardless also of its relevance or weight. An

example was when he tried, in cross examination, to tell me about “disgruntled people on the internet”. He himself seemed to find it difficult to distinguish between what he knew (from his own observation and experience) and what he believed (from other sources), and because he came to court with what seemed to be a fixed position (highly adverse to Mr Al Saif, and highly supportive of Mr Cable), his beliefs were (it seemed to me) at risk of confirmation bias which would have a tendency, also, to damage the reliability of his own recollections. For these reasons, as well as because of his long-standing business association with Mr Cable, he could not be described as an independent witness. By that I do not mean that he was likely to give evidence which he knew to be untrue, but I did assess him as a witness likely to give evidence that he wished to be true, and believed to be true, without it being entirely based upon actual recollection, and also as a witness whose actual recollection was unreliable. He was also giving evidence about events many years ago. His witness statement is dated 16 December 2021 and it was not supported by a diary, contemporaneous texts or any other aid to memory. It does refer to an earlier witness statement of 2015, but I was not shown that.

132. Mr Sales thought that Mr Cable was confiding in him, and he judged at the time of the events in question that Mr Cable was credible and honest in what he was telling him and was not what he described as “a dodgy guy”. But it was a striking fact that Mr Cable had not told him about many of the things that were admitted by Mr Cable at the trial. Mr Cable did not tell Mr Sales: that in the first half of 2013 he had been accused of wrongdoing; that Mr Cable had promoted contracts to ASG without disclosing that he was taking secret commissions; that he had from the outset of discussions agreed in principle to pay compensation at some level for what he was accused of; or that he was keen to reach a confidential settlement. From this, I conclude both that Mr Cable was not a reliable source for Mr Sales about what was happening and that Mr Sales was wrong in his assessment of Mr Cable.
133. Mr Sales remembered Mr Cable appearing to be under increasing pressure, rising to a point of distress. That does not, however, mean he was acting at any time under duress. He was accused of, and had decided not to contradict, breach of duties of disclosure, promoting scams and worthless contracts, and causing losses of some £4 million for which he should be held legally responsible. He did not have the money to pay. His reputation and therefore his livelihood in Saudi Arabia was under threat. All of these are enough fully to explain Mr Sales’ observations of him at this time.
134. I completely discount what Mr Sales remembers Mr Cable telling him by way of background and, indeed, all his second-hand and hearsay evidence. One of Mr Cable’s priorities was to preserve his reputation and prevent the allegations against him becoming widely known. He did not (contrary to Mr Sales’ belief at the time) fully confide in Mr Sales, or honestly paint the full picture, or even the most important features of it. It was natural for him to try and cast himself as a wholly innocent party, battling against bad faith, and, although he did that in his conversations with Mr Sales, that does not mean it was true. It was not true. Mr Cable had taken secret commissions and did not (for his own reasons) deny any of the wrongdoing he was accused of. Mr Al Saif was not at fault in drawing the logical conclusion from these facts that Mr Cable ought to pay.
135. I do, however, give more weight to Mr Sales’ evidence of his own observations in 2013. This related, particularly, (1) to “one evening late in November 2013”, which

was agreed to have been 22 November 2013 and (2) to “at least 4 meetings attended by Robert [Cable]” which are agreed to have been after 22 November. (I am quoting from paras 10-11 of his witness statement.)

136. Mr Sales evidence about 22 November was:

“Robert called me one evening late in November 2013 when he returned to the compound where we were staying. He was in a terrible state. Robert explained to me he had just been to Khalifa Al Saif’s house where he had been forced to sign a confession that he had taken Saudi Rials 24 million. Visibly traumatised, Robert said he had been threatened with detention and destruction of his capacity to work and that if he did not sign he would be taken straight to the police station by the policemen who were at the house.”

137. I read this evidence with all the scepticism created by my evaluation of Mr Sales as a partisan and unreliable witness. Also, Mr Sales’ ability to judge whether he was “in a terrible state” could be based only on what Mr Cable was saying and how he said it. Mr Sales thought then and thought when he wrote his witness statement that Mr Cable was the innocent party, and had not been told that Mr Cable had long since admitted taking secret commissions and had for months agreed to pay everything he had as soon as he had it, the disagreement being only whether he could pay faster than he said he could.

138. Moreover, Mr Sales is here recalling what Mr Cable told him, not anything which he himself had observed. He was not at the meetings with Mr Al Saif. He was not even outside. He did not see any police. He did not hear what was said. He was not there.

139. Even if Mr Sales has a perfect and reliable recollection of what Mr Cable was saying, it does not follow that what Mr Cable was saying was true. There are striking inconsistencies between Mr Sales’ evidence of what Mr Cable told him and what is known to have happened. There is no mention of the Handwritten Agreement; written in Mr Cable’s own hand and moving Mr Al Saif towards Mr Cable’s own position. There is a statement in Mr Sales’ evidence that Mr Cable had been threatened with “destruction of his capacity to work”, which neither Mr Cable nor Mr Al Saif say in their evidence was mentioned at the meeting on 22 November. There is no mention of the civil proceedings already issued, or of the agreement that these would be settled in exchange for a mechanism of payment. There is no repeat of the colourful language alleged in Mr Cable’s witness statement: “You fucking sign this”, “or you fucking go to jail”. I have already decided that Mr Cable’s evidence to me about what happened is not true: it is not true that the Handwritten Agreement was dictated to him. If what he told me is not true, might what he told Mr Sales not have been true either?

140. Mr Cable initiated this call to Mr Sales. Mr Cable knew he had just signed documents (one of his own drafting) admitting liability to pay SAR 24 million and he knew that one of them (the Typed Confession) admitted to having taken money, and he had signed it and added his thumbprint to it. If his plan to reach a deal and keep everything confidential failed (as, in the event, it did not fail, because of the Contract and the Deed), it would suit him to say to British colleagues that the confession had been extracted from him by force.

141. I am not convinced that Mr Sales' recollection is correct, given his unreliability as a witness. For example, Mr Cable might not have said "if he did not sign he would be taken straight to the police station by the policemen who were at the house" (an allegation which Mr Cable never subsequently made to anyone until he filed his Defence years later). Instead he might only have referred to a private fear he had, based on the email a few days before on 19 November telling him "Another case in criminal courts is also going to be filed in next few days". But, even if Mr Cable did say the things that Mr Sales now remembers him saying, I simply do not believe that they were true. On the balance of the evidence, I find that they were not true. If Mr Cable said them at all, he said them to cover his back in case the confession later emerged, and not because they were true.
142. After careful consideration of the evidence as a whole, including the contents of the documentary record as well as the evidence of the witnesses, I find as a fact that Mr Al Saif did not threaten Mr Cable with immediate imprisonment on 22 November 2013; no police officers were present; and Mr Cable signed the Typed Confession and drew up in his own words the Handwritten Agreement, not in fear of his liberty, but as part of a negotiation strategy upon which he was already well embarked, and which he subsequently followed to a successful conclusion upon execution of the Deed.
143. After signing the Typed Confession and the Handwritten Agreement on 22 November 2013, Mr Cable sent Mr Al Saif an email on 30 November 2013 about a business opportunity which was friendly and relaxed in tone. It ended by saying "I am back in Riyadh Monday, are you going to the embassy reception for the Health Group? Or can we meet Tuesday".
144. Mr Al Saif responded on 1 December 2013 saying: "...thanks for your interest but before we move on any business opportunity, I would like you to address your payment issue first." He then pressed to have "at least first instalment and give me a clear plan for rest of payments." He also asked for payment of his legal expenses.

The Contract of 14 December 2013

145. A document not mentioned in the pleadings of either side is referred to in the entire agreement clause of the later Deed (clause 6.1): "the un-witnessed deed of settlement dated 14 December 2013", which I am calling "the Contract".
146. The existence of the Contract is explained by the evidence of Mr Marshall, Head of Litigation at Irwin Mitchell, which I accept.

"In December 2013, after Mr Cable had signed the written confessions, Irwin Mitchell prepared a draft settlement agreement for the parties to sign. The draft settlement agreement set out a repayment plan and was to be executed as a deed.

On 14 December 2013, Mr Cable and Sheikh Khalifa first signed the draft settlement agreement. The version of the settlement agreement signed on 14 December 2013 [i.e. the Contract] was not intended to be the final version of the

settlement, and, as one can see from the signed agreement, Sheikh Khalifa and Mr Cable's signatures were not witnessed.

Because of the above, Irwin Mitchell prepared an updated version of the settlement agreement [i.e the Deed]. The final version of the settlement was signed on 19 December 2013 and [Mr Al Saif] and Mr Cable's signatures were witnessed by Amir Rammay..."

147. I have mentioned that the Contract dated 14 December 2013 is not pleaded in the Defence and it follows that it is not part of the Defendant's case that the Contract was procured by duress. It was not suggested to Mr Al Saif in cross examination that it was not genuine, or that it had been procured by duress. The defendant's evidence was that he had no recollection of signing the Contract at all.
148. The Contract was included in the bundle without any challenge to its authenticity under CPR 32.19, with the result, pursuant to that rule, that the defendant was deemed to admit the authenticity of the Contract. His Counsel did not resile from that admission.
149. When the original was inspected during the trial, the defendant conceded that the signatures and the initials on the Contract were his.
150. I find that the Contract was duly signed by Mr Al Saif and Mr Cable on the date it bears, and that it falls where it does in the chronology – after the Typed Confession and Handwritten Agreement of 22 November, but before the final Deed of 19 December 2013 – for the reasons given by Mr Marshall.
151. A comparison between the Contract and the Deed shows that they are in most respects identical. They have different fonts and line-spacing, but Mr Marshall explained that this was because the Contract was produced for his colleague, the late Ms Dolman, whereas the Deed was produced for him, and he uses different formatting. However, although the Contract is described as a "Deed" (it begins "THIS DEED is made the 14th day of December 2013"), and is stated on the signature page to be executed as a Deed, it was not signed by a witness. It is signed by Mr Al Saif (on behalf of ASG) and by Mr Cable, but the witness sections are not completed or signed (except that Mr Cable has put his own name "Robert" where the witness name should have been, and under his signature). This meant that it did not meet the requirement for a Deed to be signed in the presence of a witness or witnesses imposed by section 1(3)(a) of the Law of Property (Miscellaneous Provisions) Act 1989. This is consistent with the explanation given for there being two documents in the evidence of Mr Marshall. However, subject to any argument about consideration, that would not prevent the document from being legally binding as a contract. No argument about consideration is pursued in this case.
152. I have said that the Contract and the Deed are almost identical, but there are differences.
 - i) There are some drafting tweaks which are of no consequence. For example, in the Contract the parties (ASG and Mr Cable) are identified by their names and addresses and given definitions, but in the Deed a closing phrase is added to

this section, saying “each of whom is referred to as the “Party” or the “Parties””.

- ii) The Deed begins with an entirely new clause 1, stating that it “shall immediately be fully and effectively binding”. Subsequent clauses are re-numbered accordingly.
- iii) Clause 1.1 of the Contract sets a payment schedule, which is essentially the same as clause 2.1 of the Deed. However, the payment dates in the Contract are a month and year only (e.g. “July, 2014”), whereas in the Deed the last day of the month is specified (e.g. “By 31 July 2014”).
- iv) The payment schedule is in identical pound sterling amounts in both the Contract and the Deed, which come to a total of £4 million. In the Contract, one of the amounts is stated as £500,000 and also \$800,000 in brackets, but in the Deed this potential confusion has been ironed out and only the £500,000 figure remains.
- v) After the pound sterling instalments, the Deed added a new provision, not present in the Contract, whereby the final total would be adjusted (up or down) so that the payments (although by instalments denominated in pounds sterling) finally amounted to exactly SAR 24,630,000; plus “all legal expenses incurred by Al Saif Group in relation to this settlement”. Both the reconciliation to a Saudi Riyal amount, and the provision for legal expenses, were new.
- vi) Both the Contract and the Deed state, next to each instalment amount, the “Probable Source”, which is in each case recognisable as a business opportunity which Mr Cable had been saying in correspondence he hoped to use in order to fund payments as they fell due in the future.
- vii) The Deed specified the Bank account into which amounts should be paid. The Contract did not do this. It was an account in the name of Mr Al Saif in Riyadh.
- viii) Both the Contract and the Deed provide for discontinuance of legal proceedings, but they do so in different ways. The Deed precedes the schedule of payments by saying they are “in respect of the Saudi Proceedings (Claim no: 342205169)”, whereas the Contract did not say this. On the other hand, both the Contract and the Deed had a separate clause (in both cases entitled “Discontinuance of Saudi Arabian Proceedings”) settling the Saudi Proceedings, albeit in different terms. No reliance was placed on the differences at trial. Clause 2.1 of the Contract said

“Following satisfactory proof that the payments in Paragraph 1 have been made and the arrangement set out in Paragraph 1 has been confirmed in writing, the Company will not continue the proceedings in Saudi Arabia. Those proceedings will remain active until the sum of £700,000 has been paid.”

Clause 3.1 of the Deed said

“Following compliance with the payment schedule in Paragraph 2.1, the Company will agree to discontinue the Saudi proceedings (Claim no: 342205169)”

- ix) New provisions were inserted as clause 2.3 and 2.4 of the Deed, not present in the Contract, whereby if any payment date on the schedule was missed, the whole sum became immediately payable (clause 2.3) and if payment remained outstanding for 5 business days, ASG would be entitled to enter judgment (clause 2.4). To similar effect, whereas the schedule of instalment payments in clause 1.1. of the Contract ended with the words “These are based on best estimates of outcome of potential contracts detailed in Schedule 1”, and Schedule 1 to the Contract accordingly gave “estimates of potential contracts”, this Schedule was not carried over to the Deed, and this wording was omitted.
 - x) Both the Contract and the Deed had a confidentiality clause (clause 3.1 of the Contract, clause 4.1 of the Deed) but the drafting was different. Again, no point was taken about the difference at the trial. Both versions ensured that the agreement itself would be confidential. The version in the Deed was, if anything, broader, as it agreed confidentiality in respect of “any information relating to this Agreement” as well as the Agreement itself.
 - xi) Both the Contract and the Deed included Warranties and Representations from Mr Cable about his assets. They were different, but, again, no point was taken on the differences at trial.
 - xii) Both the Contract and the Deed allowed ASG to enter judgment for the full sum due (thereby overriding the instalment mechanism) if the warranties and representations were false (clause 6 of the Contract, clause 5.3 of the Deed). The Deed made it clear, as the Contract did not, that credit would be given for any payments already made.
 - xiii) Clause 5.4 of the Deed had no equivalent in the Contract. But it merely warranted and represented that the parties were authorised to enter into it.
 - xiv) The entire agreement clause in clause 6.1 of the Deed referred to the Contract as one of the agreements which it superseded. The Contract, naturally, did not do that.
153. Despite some of these differences being of substance, the Contract was undoubtedly superseded by the Deed (as, indeed, the entire agreement clause of the Deed said explicitly). Some of the changes were to ASG’s advantage (notably the stricter definition of instalment dates, and the provision that late payment would accelerate payment of the whole amount, as well as the provision for payment of its legal fees). Some were broadly neutral in their impact on the parties (such as the final reconciliation of the sterling payments into the Saudi Riyal amount, which might go either way depending on prevailing exchange rates). None were strikingly in favour of Mr Cable, although it might be said that the broadening of the confidentiality clause strengthened a point which Mr Cable had promoted in correspondence more than Mr Al Saif or Irwin Mitchell had.

154. Having said that, the Contract was on the face of it a decisive move in Mr Cable's favour when compared with the state of play evidenced by the Typed Confession and the Handwritten Agreement.
- i) By it, he secured not only the agreement in principle that there should be "a mechanism, acceptable to both parties" for payment (which was in the Handwritten Agreement), but an actual schedule of payment dates, directly linked to Mr Cable's own projections about what he would be able to pay and when (by reference to his future business deals). This was what he had been asking for all along.
 - ii) He also secured discontinuance of the Saudi proceedings (which was in the Handwritten Agreement but had not been in the Typed Confession).
 - iii) He also secured confidentiality, which he had also asked for since his first response to Irwin Mitchell on 22 April 2013. There was no reference to confidentiality in the Typed Confession or in the Handwritten Agreement.
 - iv) None of these points were taken away from him by the changes which were made to the Contract by the Deed. Although the Deed made the obligation to pay the instalments stricter (with provision for accelerated payment in the event of default), it did not change the amounts or the dates of the instalments, save to clarify that the payment date was on the last day of the month (which, if it made any change at all, was in Mr Cable's favour).
155. I have found that the Contract was a genuine document (as was by the end of the trial not disputed), and that it was signed by the parties on the date it bears. Both the Contract and the Deed are initialled by Mr Cable on every page, as well as signed by him. I do not accept that he would not have read both documents before signing them. He was a businessman who was anxious about his own position, and he knew that any document he was asked to sign by Mr Al Saif, or which he agreed to sign with Mr Al Saif, would have a bearing on that position, for better or for worse. It is not credible that he would have initialled every page without reading the pages, or that he signed any document in English without reading it and noting its contents.
156. I have made the point that Mr Cable does not allege in his pleadings, or his evidence, or in the submissions made on his behalf, that the Contract was entered into under duress. His case is that he does not remember signing it at all, although he does say in his witness statement, by way of general observation, "I felt under constant extreme pressure of being picked up by the Saudi Police". For the avoidance of doubt, however, I have reached my own conclusion, on the evidence, that it was not signed under duress. It was a document which suited Mr Cable. ASG had not, through Mr Al Saif or otherwise, threatened Mr Cable with being picked up by the Saudi police.

(iii) The execution of the Deed on 19 December 2013

157. The Deed dated 19 December 2013 is (like the Contract before it) a document drawn up by ASG's English solicitors, Irwin Mitchell. It is between ASG (for whom Mr Al Saif signed) and the defendant.
158. I have already set out key terms when comparing it to the Contract, above.

159. The Deed was to be “governed and construed in accordance with English law” and the parties submitted to the exclusive jurisdiction of the English courts.
160. The Deed was initialled on every page by both Mr Al Saif and the defendant, and both Mr Al Saif and the defendant signed and executed it as a Deed. Their signatures were witnessed by Amir Sohail Rammay, who was described as Chief Financial Officer of ASG.
161. No challenge is made to the authenticity or enforceability of the Deed save by way of the plea of physical duress in para 6(g) of the Defence and Counterclaim (quoted in para 7 above). The plea is that on 19 December 2013, Mr Al Saif presented the Deed to Mr Cable and informed him that if he did not sign it he would be immediately arrested and imprisoned and that, in fear of this threat, Mr Cable signed it.
162. Once again, the evidence of Mr Cable and of Mr Al Saif about what happened when the Deed was executed on 19 December 2013 was in disagreement.
163. Mr Cable’s evidence was that he was called on his mobile phone by Mr Al Saif who said that he should come to his office straight away. Mr Cable said that he would. He then told Mr Sales about the conversation, and Mr Sales said that he would go with him. Mr Sales drove them. They arrived at lunch time. They sat together in the reception area. Mr Al Saif came to meet Mr Cable. Mr Cable introduced him to Mr Al Saif as a friend of his who worked at the British Embassy (they were both based there when working for UKTI). Mr Al Saif then asked him to go to Mr Rammay’s office on the same floor. Mr Rammay was sitting there, but there was no discussion between them. Mr Al Saif came in a few minutes later. Mr Al Saif handed Mr Cable the Deed and said “sign this or go to jail now”. Mr Cable did not read the document. He simply followed the instruction and signed it. He does not recall Mr Al Saif signing it. He does not recall Mr Rammay witnessing it (although he agrees he was there when Mr Cable signed, which would be enough to entitle Mr Rammay to sign his attestation of the signature afterwards). He says “The meeting was very short; approximately 1 minute [in] duration”. He ends “As we left, I explained to Lindsay what had happened.”
164. Mr Al Saif agreed that the Deed was executed at his offices but denied saying “sign this or go to jail now”. The meeting was arranged amicably because the Contract signed on 14 December turned out to be a draft (this seems to be a reference to it not having been executed correctly as a Deed).
165. Mr Sales’ evidence was that, after the account he had been given of Mr Cable being forced to sign a confession on 22 November, Mr Sales is “aware” of at least four meetings attended by Mr Cable “because of the concern he expressed based on the now serious threats for his safety”. For the first two meetings, Mr Cable asked him to notify the British Embassy if he did not make contact within an hour of the scheduled meeting, but he does not say that this failure to make contact ever occurred and no-one was able to match this recollection with any particular meeting about which I heard evidence. On the third occasion, Mr Sales said that he drove Mr Cable and waited outside in the car “with the request to standby in case the situation deteriorated and to notify the Embassy”. (Mr Cable did not give evidence that he asked Mr Sales to be ready to notify the Embassy on any occasion, either in his own witness statement or in cross examination.) Mr Sales did not say that any threat materialised

on this third occasion. On the fourth occasion, Mr Sales said that he decided to accompany Mr Cable into Mr Al Saif's office, and he met Mr Al Saif, whom he found to be "exceedingly charming", although he remained "highly sceptical of Mr Al Saif" based on what he had been told by Mr Cable and others. It was common ground that this fourth occasion was 19 December 2013, when Mr Cable's evidence also mentions introducing Mr Sales to Mr Al Saif. Mr Sales gave evidence that he noted that Mr Al Saif "had multiple knives and swords on his walls and was concerned at how easily these could be used if his anger became uncontrolled" but even Mr Cable conceded that this was only an ornamental display and had never given him cause for concern.

166. Although Mr Cable's evidence was that he told Mr Sales "what had happened" straight after the meeting, Mr Sales did not say that he was ever told by Mr Sales that, on 19 December 2013, he was told "sign this or go to jail now". Mr Sales gave no evidence of being told anything about what actually happened at the meeting. He did not, for example, say that he was told a document had been signed. He confirmed in cross examination that he had not been told that. Mr Sales' only direct evidence of Mr Al Saif's demeanour was that he was "exceedingly charming", and Mr Sales was not himself in the room when the Deed was executed. Mr Sales' evidence did not give much support, therefore, to Mr Cable's account. I also bear in mind my general reservations about the reliability of Mr Sales as a witness, which I have already explained.
167. Mr Rammay (who attested the Deed) was not called to give evidence by either side, although he had been indicated as a witness in claimant's Directions Questionnaire on 4 March 2021. He signed the claimant's Electronic Documents Questionnaire as the claimant's Chief Financial Officer on 12 August 2021 and he signed the claimant's List of Documents on 17 September 2021. Mr Al Saif said (inconsistently with those documents) that he stopped working for ASG over a year ago, but "he is very cooperative with the office, providing them with information". Mr Al Saif agreed that there was no reason why Mr Rammay could not have given evidence, but he said "It was never requested. Nobody asked me... You have not asked for him to attend." I was asked by Mr Cable's Counsel to read Mr Rammay's proceedings in a private prosecution against Mr Cable in England, in which Mr Rammay confirms that the Deed was signed in his presence, and does not mention anything untoward in connection with the signing.
168. It does not help ASG's case that Mr Rammay was not called, and I do regard his absence as a point which weakens ASG's position in the conflict of evidence between Mr Cable and Mr Al Saif about whether Mr Cable was threatened with jail if he did not sign the Deed. But that observation, although it has some weight, does not have, in my judgment, very much weight. The defendant knew when witness statements were exchanged that it was not proposed to call Mr Rammay on the claimant side. He and his representatives appear to have made no enquiry of him or any effort to obtain his evidence for themselves. In deciding the case, I am assisted more by the evidence that I did have, than by speculation about the evidence of a witness who was not called.
169. A number of points make Mr Cable's allegation implausible:

- i) Mr Cable did not claim at any time until service of the Defence, seven years later, that he had been forced to sign the Deed by a threat on that day that he would otherwise “go to jail now”.
 - ii) Mr Sales, who was on the premises, and who was (according to Mr Cable) told “what had happened” as they left, was not told this.
 - iii) Mr Cable had already signed the Contract, and the Deed was for the most part the same as the Contract.
 - iv) The Contract, and the Deed, were in Mr Cable’s own interests, because they improved his position beyond where it stood on 22 November. I have found that the Typed Confession and the Handwritten Agreement signed on 22 November were not obtained under duress.
 - v) There was no reason for Mr Cable to be reluctant to sign the Deed, both because of its substantial resemblance to the Contract which he had already signed, and because it gave him what he had for a long time been asking for by way of a settlement.
 - vi) There had been no more talk (by Mr Al Saif or his staff) of any criminal proceedings after the email of 19 November from Mr Rammay enclosing the civil proceedings, and saying “Another case in criminal courts is also going to be filed in next few days, a translated copy of which will be provided to you once it is done.” No criminal case was ever filed. Discussions had gone well for Mr Cable after that, as evidenced, not least, by the Contract and the Deed themselves. There was no need for Mr Al Saif to threaten criminal proceedings, because he was moving towards Mr Cable’s position rather than away from it, compared with what had been said in the Typed Confession. If Mr Al Saif had wanted to add a threat of prosecution, or jail, at this later date, I would expected the criminal proceedings to have been filed beforehand, perhaps with the support of the Typed Confession. But that did not happen.
170. My assessment of the evidence as a whole is that Mr Cable’s contested evidence about 19 December 2013 (that he was threatened with jail, and signed the Deed without reading it, and as a result of that threat) is incredible and I reject it. In rejecting his evidence on this, I am rejecting the evidence of a witness I have already found not to be credible in his evidence about earlier events, including particularly the meeting on 22 November. I find that this was an amicable meeting which reflected an agreement between the parties which both sides were happy with. It corrected what was seen as a defect in the execution of the Contract (which should have been attested as a Deed by a witness) and an understanding on Mr Al Saif’s side that the Contract was a draft, and should be superseded (to the extent that they differed) by the Deed. It was initialled on every page by Mr Cable to show that he had read it and agreed with it. He did read it, and he did freely agree with it. On his own evidence, it was Mr Sales who suggested that he go with him to the meeting. After the meeting, Mr Cable did not tell Mr Sales that anything untoward had happened. He had no need to, because he had just signed an agreement (which he did not mention to Mr Sales) which he was happy with.

171. I find that this was a meeting at which Mr Al Saif was probably as charming to Mr Cable as he had been to Mr Sales. Mr Cable was most likely friendly and conciliatory (as he always had been in the correspondence before this meeting and continued to be after it, at least during the early part of 2014). Mr Cable signed the Deed freely because it was in line with the deal which he himself wanted: confidentiality, dropping of the civil action, no more talk of criminal action (there having been none since the Mr Rammay's email of 19 November), a payment amount which was worth making in order to secure Mr Cable's future of potentially lucrative deals in Saudi Arabia worth four or five times what he was agreeing to pay (£15-£20 million against £4 million) and time to pay based upon what Mr Cable thought could afford, linked to the deals which he hoped to use to fund the payments. He also had an exclusive English law and jurisdiction clause so, even if things went wrong, he would only face civil proceedings on the Deed in his own country (as, indeed, he now does).
172. I return to the evidence that Mr Cable gave about his state of mind in the early stages of the dispute in December 2012, one year before he executed the Deed. He said: "I wanted to keep away from major conflict which would destroy my opportunities in Saudi Arabia – effectively, a policy of appeasement." It was consistent with this policy that he should agree to pay regardless of his personal belief, which he never disclosed to Mr Al Saif, that he was under no legal obligation to pay. He was not interested in a legal battle. He was not interested in the rights and wrongs. He was interested only in keeping away from major conflict which would destroy his opportunities in Saudi Arabia. He adopted his policy of appeasement many months before the alleged duress, which does not begin, on his own case, until 22 November 2013. This reduces the likelihood of duress as an explanation for the agreement he eventually reached in the Contract and in the Deed and supports the conclusions I have reached.

(iv) Events after 19 December 2013

Payment of £20,000

173. The Deed (as I have noted) provided for payment, in instalments ending on 30 September 2017, of SAR 24,630,000 plus all legal expenses incurred by ASG. It also stated the bank account (in Mr Al Saif's name) into which payments should be made. However, although I have found that Mr Cable signed the Deed freely, it does not appear that he was given or retained a copy of it. At a much later date, in the pre-action correspondence, his solicitors asked for a copy of it. There is no evidence that Mr Cable asked to retain or be given a copy before that point.
174. Mr Cable did not pay any of the instalments, but he did pay £20,000 towards legal fees, which he was asked for in January 2014. He did so without protest, using bank details provided to him in an email from Mr Rammay on 29 January 2014 following a request which does not appear in the papers. Mr Cable noted that he could not pay more than £10,000 a day and said (again in a friendly email, dated 3 February 2014) that he would send it on consecutive days, which he apparently did. He sent the money when he was in the UK, at a time when he was able to and did move freely between the UK and Saudi Arabia (which remained the case until September 2014, as he said in cross examination).

175. In evidence in chief, Mr Cable explained the £20,000 payment of legal fees as “on the continuing basis of appeasement and wishing to make a payment despite owing him nothing, whilst in anticipation of significant payments being received from the projects which I was seeking to finalise”. That is not a claim that it was paid under duress.
176. In cross examination he said he was not afraid of detention in January 2014.
177. This appears to dispose of his counterclaim for repayment of the £20,000, which was pleaded on the basis that it was made “as a direct result of the threats of arrest and imprisonment” alleged to have been made by Mr Al Saif on 22 November and 19 December 2013 (Defence and Counterclaim para 13). However, I have in any event rejected his case that such threats were made on those occasions.
178. Consequently, the counterclaim must fail and, indeed, it was not strongly pressed in closing submissions, in the light of the evidence that Mr Cable had given.

The travel ban

179. Notwithstanding the settlement reached in the Deed, which required Mr Cable to pay the first instalment (of £200,000) on 31 July 2014, it seems that the parties returned to Riyadh General Court for a hearing on 30 May 2014 at which the Typed Confession was entered into the record. Judgment was then entered for the full SAR 24,630,800 without reference to instalments on 19 June 2014. Mr Cable, however, emailed Mr Al Saif on 2 June 2014 asking for “the analysis of the SR 24 million figure”.
180. Mr Al Saif was at this point in a divorce dispute and Mr Cable supported him by signing a statement accusing Mr Al Saif’s wife of involving Mr Cable, or trying to involve him, in a “heinous criminal plot” against Mr Al Saif, involving lies and forgery. Mr Cable’s evidence to me was that the statement was untrue (“contains wrongful information” was how he put it) and he says that it was stupid of him to sign it. My impression, whilst bearing in mind that this was not an issue in the case, is that it was more than stupid. It was on the face of it dishonest to sign a false statement (written in English), accusing others of crimes and for use in legal proceedings, merely to please. Mr Cable does not say that he signed under duress.
181. Mr Cable’s evidence to me was that, ultimately, he “decided not to give further wrongful information by going to Court and giving evidence to support my wrongful statement”. The contemporaneous correspondence shows that Mr Rammay tried to persuade him with threats of legal proceedings, which Mr Cable described to him as blackmail. No-one comes out of it with credit, but nowhere in the correspondence did Mr Cable suggest that the blackmail of which he was complaining was in line with previous threats of prosecution, arrest or imprisonment in connection with the signing of the documents in November and December 2013, including the Deed.
182. Mr Cable had his own lawyer at that point, which he mentioned (for example) in an email to Mr Rammay on 4 September 2014. According to an email at this time from Mr Cable to Mr Sales, Mr Cable was asked by Mr Al Saif to go to court on 11 September 2014 “and swear a written statement about his wife was true. I went but wasn’t asked to swear anything.” From this, I understand that Mr Cable had agreed to go to court, and did so, and did not refuse to swear anything, because he was not

asked to – but he had already signed a statement. There is no doubt that Mr Cable had already signed the statement, because a copy of it, already signed, had been sent to him on 2 September 2014 (the statement itself was not dated), and he accepted in evidence that he had signed it (“stupidly”). However, it seems that he had told Mr Sales that he had refused to sign it, because Mr Sales in an email to a third party on 11 September 2014 said “Robert has been instructed to sign a false statement regarding the Saudisi x-wife and when he refused the Saudi blocked his exit. This happened yesterday.” Mr Sales’ information about whether Mr Cable had refused to sign a false statement supports my conclusion that Mr Sales was either being misinformed by Mr Cable or was for some other reason not a reliable source.

183. Mr Cable’s evidence to me (in para 32 of his witness statement, which was not challenged) was that the travel ban was obtained without his knowledge and that, after he instructed lawyers, he had it overturned. He told me that the travel ban was granted at a hearing at which Mr Cable was present, but he relied on Mr Rammay to translate for him and he did not realise he was banned from travelling until he arrived at the airport and was refused exit.
184. On 2 October 2014 Mr Cable emailed the joint chair of the Saudi-British Business Council saying he was appointing a lawyer in Riyadh to find out all the details of the judgment (that is, the judgment entered against him in Riyadh) and “find a basis for me to appeal the judgment”. At a hearing on 27 October 2014, these lawyers had the judgment suspended, and the travel ban lifted. As far as I am aware, that was effectively the end of those proceedings in Saudi Arabia, which are not mentioned again in the evidence or in the papers that I have.
185. Mr Cable left Saudi Arabia. He made no payments under the Deed (leaving aside the £20,000) and, if he was to be pursued, further proceedings would have to be brought in England.

The private prosecution

186. In 2016, Al Saif Motors (“ASM”), which appears to be part of the claimant Al Saif Group but with its own corporate personality, brought a private prosecution in Westminster Magistrates Court in which ASM was represented by leading and junior Counsel. The Summons is dated 2 August 2015. The defendants were Mr Cable and one of those mentioned in the Irwin Mitchell letter of 10 April 2013, Alan Whaley.
187. ASM’s case summary (paras 3-7) presented the prosecution case as follows:

“The offences to which this prosecution relates were committed in 2007, 2008 and 2009. At the time, these defendants held senior and influential positions in ASM. RC [i.e. Robert Cable] had a long standing connection with the companies in the group and was Group Finance Director. He had authority to deal with the company's bank accounts. AW [i.e. Alan Whaley] was General Manager of ASM. He was appointed in 2006 because of his expertise in the automobile industry.

The evidence shows that both men abused their positions for substantial personal gain. In essence, they used their influence

to commit the company to a series of fraudulent contracts that were designed to divert funds away from the company for their benefit and that of their associates in the UK. A number of other people, mostly UK nationals, were complicit in the frauds. This case focuses on the activity of these two defendants ('RC' and 'AW') as principals and a third employee of ASM and co conspirator, Christopher Riddell ('CR'). CR is currently believed to be in Australia.

This fraudulent behaviour came to light in the early months of 2012 when Amir Sohail Rammay ('ASR'), the current Chief Financial Officer of ASM, examined a very substantial back up email server relating to the first defendant RC. On Sheikh Khalifa's instructions, ASR conducted a thorough analysis of the emails held on that server.

The emails - some of which are exhibited to ASR's witness statement - show very clear evidence of corrupt conduct by the defendants and others. The language of the emails is explicit and unguarded. The emails show the diversion of company funds against false or inflated invoices to off shore accounts set up behind a Jersey trust ('Herald Trust') to hold the defendants' benefit from the frauds. At times the defendants discuss the precautions they need to take to avoid being detected. In one very blatant sequence, the emails reveal the defendants' control of an entirely fraudulent company ('WS Ltd') with prepared scripts for fictitious company personnel who are pretending to write to ASM about a subscription contract for a vehicle tracking system. The company only existed to receive and divert funds from ASM for the benefit of the conspirators and disappeared once the money had been received.

The loss to ASM arising from the frauds was considerable, When the emails had been examined and their contents understood, Sheikh Khalifa [i.e. Mr Al Saif] confronted RC. RC admitted his guilt and agreed to pay back SAR 24.6 million (approximately £4 million sterling) to the company. This agreement was consolidated into a formal settlement of civil proceedings in the RSA. RC even set out the dates upon which he would repay the funds and the source of the moneys. In fact he paid nothing, although summary judgment was obtained and a travel ban imposed on him, RC managed to evade the authorities and returned to the UK."

188. The prosecution was eventually discontinued, for reasons which were not explored at the trial. Mr Cable's evidence to me was that Mr Al Saif offered no evidence. I was referred to witness statements filed in the private prosecution in support of the prosecution. However, this material seems to me to be of limited relevance in an action brought upon the Deed, in which the only issue is whether the Deed was obtained by duress to the person. The defence based upon a lack of consideration having been abandoned, I am not called upon to examine too closely the facts

underlying the claims which the Deed, eventually, settled; and it was these facts which were the focus of the private prosecution.

189. The main point in the private prosecution papers relied upon in the cross examination of Mr Al Saif was that the prosecution was brought in the name of Al Saif Motors, whereas the Deed was in favour of ASG. This point was linked to questions about the second recital in the Deed which said (as had the same recital in the Contract) that the proceedings in Saudi Arabia were brought by ASG, whereas the translation of the claim form in my papers suggests that they were brought by Mr Al Saif personally. I have addressed that point in paras 25 to 28 above.

THE LAW

190. The law of duress has been brought up to date by the decision of the Supreme Court in *Times Travel (UK) Ltd v Pakistan International Airlines Corpn* [2021] UKSC 40. Although that was a case about lawful act economic duress, it provides some universal statements of principle. These include an authoritative statement of the two essential elements that the defendant needs to establish in order to succeed in a claim to set aside the Deed, both of which were contested on the facts.

- i) The first is a threat (or pressure exerted) by ASG that is “illegitimate”.
- ii) The second is that that illegitimate threat (or pressure) caused the defendant to enter into the Deed.

See *Times Travel (UK) Ltd v Pakistan International Airlines Corpn* [2021] UKSC 40 per Lord Burrows at para 78 (agreed by all the other members of the Supreme Court at para 1).

191. The Supreme Court in *Times Travel* also agreed (at para 1) with the observation of Lord Burrows (at para 96) that: “With regard to lawful act duress, the courts have stressed that, because the threat is of a lawful act, the question of whether it is illegitimate should focus on the nature of the demand rather than the nature of the threat”. On this, Lord Burrows cited *The Universe Sentinel* [1983] 1 AC 366 per Lord Scarman at 401, and *Thorne v Motor Trade Association* [1937] AC 797 per Lord Atkin at 806, who said:

“The ordinary blackmailer normally threatens to do what he has a perfect right to do - namely, communicate some compromising conduct to a person whose knowledge is likely to affect the person threatened. Often indeed he has not only the right but also the duty to make the disclosure, as of a felony, to the competent authorities. What he has to justify is not the threat, but the demand of money.”

192. The Supreme Court majority in *Times Travel* disagreed with Lord Burrows (at paras 45-53) on the relevance of a demand being made “in bad faith”, but, on my view of the evidence, no demand in bad faith was made of Mr Cable on or before 19 December 2013, when the Deed was executed. I find on the evidence that Mr Al Saif genuinely believed that there was a proper legal basis for bringing both civil and criminal proceedings against Mr Cable.

- i) The basis for civil proceedings was set out in Irwin Mitchell's letter of 10 April 2013 and Mr Cable never challenged their account of the facts or their position that, as a result, he was liable for a claim worth "in excess of £4 million."
 - ii) Although Irwin Mitchell's letter of 10 April 2013 was framed in terms of a civil cause of action, rather than any criminal offence, I have no reason not to accept that the conduct of which Mr Cable was suspected would, if proved, also have constituted criminal conduct. It was framed as such in the private prosecution, which shows one way in which it might be put as a matter of English law.
193. I think that the burden would be very much on Mr Cable to show that the threat of criminal proceedings in the email of 19 November 2013 (which is the only such threat which I have found to be established by the evidence) was a threat of something other than due process. He has not, however, pleaded or proved that what the email said ("Another case in criminal courts is also going to be filed in the next few days") was not referring to due process and I find as a fact (regardless of the pleading point) that it was referring to due process.
194. In *AG v R* [2003] UKPC 22, [2003] EMLR 24, a soldier in the SAS signed a confidentiality agreement under threat of being returned to unit ("RTU") if he refused. He claimed that it should be set aside by reason of duress. It was accepted that involuntary RTU was normally imposed as a penalty for some disciplinary offence or on grounds of professional unsuitability; it involved exclusion from the social life of the regiment and loss of its higher rates of pay (para 6). It was also accepted that the threat left R with no practical alternative but to sign (para 15). The lawfulness of the threat was relevant but not decisive (para 16). The claim to set aside the agreement for duress was rejected. The Privy Council held both that the threat was lawful and the demand supported by the threat could be justified (para 18). The threat was not unlawful and the demand was not unreasonable (para 20).
195. I agree with the editors of *Goff & Jones: The Law of Unjust Enrichment* (9th edition, 2016) that the proper use of legal process does not constitute duress, although there may be cases of improper application even of legal process which would amount to duress (paras 10-20 and 10-21). This is an application of the key test in *Times Travel*: "a threat (or pressure exerted) which is illegitimate" (at para 78). There are interesting cases which explore the boundary between the two in the context of legal proceedings which might involve physical detention or imprisonment.
196. The cases of *Williams v Bayley* (1866) LR 1 HL 200, *Kaufman v Gerson* [1904] 1 KB 591 and *Mutual Finance Ltd v John Wetton & Sons Ltd* [1937] 2 KB 389 were considered in *Times Travel* at paras 5-9, as cases of what would now be seen as examples of lawful act duress.
197. In *Williams v Bayley* (1866) LR 1 HL 200 a man (William Bayley) forged his father's name (James Bayley) on promissory notes in favour of a bank, which the bank later discovered. Although the father had not put his own name to the forgeries, he was pressed by the bank in relation to the debts thereby incurred, which were in the region of £7,000 (a colossal sum in the money of those days). The father realised that his son was guilty of forgery and, in discussion with the bank, everyone understood that "this

was a case, not of life or death, but of transportation for life” (per Lord Cranworth LC at 211). “The father, then, was acting in this matter under the notion that if he did not interfere to save his son, the latter would be liable to be prosecuted, and, probably, would be prosecuted for forgery, and so be transported for life” (at 211). The father entered into an agreement with the bank to pay £7,203 secured by a charge over his property, in consideration of the bank giving up to him the bills and promissory notes in question. The House of Lords granted the father’s claim to set aside the agreement.

198. Lord Cranworth LC based his decision on a finding that the agreement in question had the object of stifling a criminal prosecution, which made it illegal (at 213). Lord Chelmsford decided that the agreement had been “extorted from the father by undue pressure” (at 214). Lord Westbury decided both that the father lacked “free and voluntary agency” (at 219) and that the contract was an impermissible agreement to stifle a prosecution (at 219-220).
199. On my view of the evidence, it was no part of the Deed, or of the discussions leading up to the Deed, that a criminal prosecution of Mr Cable should be stifled. No criminal proceedings had been mentioned in the long period of correspondence between 10 April 2013 and the email of 19 November 2013. The email of 19 November 2013 was primarily about the civil proceedings in Saudi Arabia (which were attached to it, in translation). After the email of 19 November 2013, there was no more talk of criminal proceedings. Even if (which I am willing to accept), Mr Cable was concerned by the suggestion in that email that there would or might in the future be criminal proceedings, he did not draw attention to his concern at the time and there is no reference to criminal proceedings in any subsequent correspondence or document before he left Saudi Arabia at the end of 2014. When the travel ban was (briefly) imposed on him in 2014, it was through the civil proceedings. I have found as a fact that the police were not present on 22 November, and that no threat of jail or being picked up by police was made to Mr Cable on 22 November or on 19 December 2013 (the only dates on which he alleges such threats). Both the Contract and the Deed settled the civil proceedings in Saudi Arabia, provided Mr Cable made the agreed payments, but they did not refer to any criminal proceedings, or purport to settle or avoid any future criminal proceedings. They made no reference to criminal proceedings at all. Therefore they do not suffer from the vice identified by the House of Lords in *Williams v Bayley* as an unlawful stifling of prosecution.
200. There was an entirely proper basis for the prosecution threatened in *Williams v Bayley*. However, the threat itself was held not to be proper. It was emphasised that the father had no personal liability and was forced into an agreement for which, apart from the retrieval of his son’s forgeries, there was no consideration (at 218-219).
201. In the present case, Mr Cable did not deny his personal liability and what he was trying to achieve, and did achieve, was time to pay, as well as the other points (such as confidentiality) which the Deed secured for him. These would have constituted good and sufficient consideration, even if the Deed had not been executed as a deed in due form which made consideration unnecessary.
202. I find that no illegitimate pressure was applied on Mr Cable in order to secure his agreement to the Deed, or to the documents which preceded the Deed. The pressure on Mr Cable was the insistence that he should agree to pay money that he did not at any time dispute being liable to pay, as a result of his own actions. The insistence was

conveyed primarily in perfectly legitimate pre-action correspondence. It was continued also in personal meetings between Mr Cable and Mr Al Saif (notably on 22 November, 14 December, and 19 December) but not in an improper way. There was no threat of violence, or of undue process. When Mr Cable still failed to pay, he continued to be pressed only in civil proceedings, and by orders obtained in civil proceedings, and when he challenged those orders, he was successful. To the extent that pressure was applied to him, none of it was in my judgment illegitimate.

203. In my view, the reference in the email of 19 November 2013 to future criminal proceedings was not illegitimate either. The reference to criminal proceedings in that email is not part of Mr Cable's pleaded case (see para 6(e) of the Defence and Counterclaim, which picks up only its reference to the civil proceedings, which were enclosed). However, I find this as a fact, anyway. I am supported in my assessment by the points I have made in paras 192-193 above.
204. In *Kaufman v Gerson* [1904] 1 KB 591 a married man living in France (Mr Gerson) misappropriated money entrusted to him by Mr Kaufman for another purpose. The defendant (Mrs Gerson) agreed to pay the misappropriated money herself within three years in consideration of Mr Kaufman agreeing not to prosecute her husband. Mr Kaufman was entitled to prosecute her husband. But the threat to do so as a means of obtaining the agreement from Mrs Kaufman that she would pay was held to be improper, and the agreement was set aside. This is a case which must now be understood as an example of lawful act duress (*Times Travel* at paras 6 and 9), and it is therefore an example of lawful act duress although the prosecution threatened was one which was entirely in accordance with due process. But, like *Williams v Bayley*, it was a case in which the duress was applied to a person who was not herself liable to pay the sums in question, and who agreed to pay them solely in consideration of a threat of prosecution being averted. (The stifling of prosecution point did not arise because it was not available under the applicable law, which was of France.)
205. Neither of those points apply to the case of Mr Cable. He was being asked to pay what it was said he was legally liable himself to pay. He was agreeing to do so provided he was given time to pay, which is what he had asked for long before any duress is alleged to have been applied. I have decided that no illegitimate pressure was applied to him.
206. In *Mutual Finance Ltd v John Wetton & Sons Ltd* [1937] 2 KB 389, a guarantee was obtained from a family company under an implied threat that, if it was not given, a member of the family who appeared to have forged the company signature on an earlier guarantee would be prosecuted for his forgery. Although decided as a case of undue influence, it is the last of the trio of cases identified by the Supreme Court in *Times Travel* as now seen as examples of lawful act duress (at paras 7 and 9).
207. The threat of prosecution was successfully relied upon in *Mutual Finance* to render the new guarantee unenforceable, although, as in *Kaufman*, there was no suggestion that the prosecution, if pursued, would have been in any way improper. This case was, again, however one in which the pressure was applied to third parties (the innocent family members and the family company which they directed) and not the forger, and in which, by entering into the agreement, they obtained no benefit for themselves (see per Porter J at 397). It is, therefore, like *Kaufman*, quite different on its facts from the case of Mr Cable.

208. I consider it doubtful whether lawful act duress could ever be established when a threat of prosecution by due process was used to obtain agreement from the person liable to prosecution (rather than a family member or other party fearing that prospect), and in respect of sums already due in law from that person. None of the cases I have been referred to demonstrate the contrary. There is support for my view in a dictum of Cotton LJ in *Flower v Sadler* (1882) 10 QBD 572 at 576:

“It has been contended that the plaintiffs obtained the indorsement of the bills by virtue of a threat to prosecute Maynard. It seems to me that there is a distinction between getting a security for a debt from the debtor himself and getting it from a third person who is under no obligation to the creditor. A threat to prosecute is not of itself illegal; and the doctrine contended for does not apply, where a just and bona fide debt actually exists, where there is a good consideration for giving a security, and where the transaction between the parties involves a civil liability as well, as possibly, a criminal act. In my opinion, a threat to prosecute does not necessarily vitiate a subsequent agreement by the debtor to give security for a debt, which he justly owes to his creditor.”

209. I recognise that this may well be a matter of degree. If the threat of prosecution were to be made in circumstances which made it particularly terrifying or oppressive, it might upon extreme facts constitute lawful act duress even though the person acting under that duress was truly guilty or, at least, properly liable to prosecution. Such extreme facts are difficult to imagine in (for example) the United Kingdom in the twenty-first century, where even arrest is usually accompanied by immediate bail, and prison conditions for those not granted bail are strictly monitored. Be that as it may, the facts as I have found them in this case fall well short of anything that constitutes duress, whether by lawful or unlawful act.

CONCLUSION

210. For the reasons I have explained, my conclusion on the evidence is that no pressure was exerted by or on behalf of ASG in this case which was illegitimate. It also follows that, so far as causation is concerned, and whatever test of causation applies, there was in this case no illegitimate threat (or pressure) which caused the defendant to enter into the Deed.

211. As a result, the claim to set aside the Deed by reason of duress must fail. The Counterclaim for repayment of the £20,000 is also dismissed. The claimant is entitled to judgment on the claim for 24,630,000 Saudi Arabian Riyals under the Deed.

212. The Deed did not provide for interest but the claimant is entitled to interest under section 35A of the Senior Courts Act 1981. The rate of interest is in my discretion and I would ordinarily assess interest in a case like this at a commercial rate, rather than the Judgments Act rate or the Court Funds Office special account rate. I accept the Claimant’s submission that a suitable rate for this purpose is the Saudi 3-month interbank rate plus 1%: cf *Hamad M. Aldrees & Partners v Rotex Europe Ltd* [2019] EWHC 526 (TCC) at paras 21 and 30. I would expect interest to be calculated on the

basis of the payment dates in clause 2.1 of the Deed and to be simple, rather than compound, interest.

213. However, it may be that there are matters affecting interest, such as an effective Part 36 offer, of which I am not yet aware. I will therefore invite the parties to agree the rates and the figures and, in the absence of agreement, to make written submissions upon which I will make my final decision about the figure for interest.