Neutral Citation Number: [2022] EWHC 2862 (Ch)

Claim No BL-2020-001003

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
BUSINESS LIST
FINANCIAL SERVICES AND REGULATORY SUB-LIST (ChD)

BEFORE MR RECORDER RICHARD SMITH
(Sitting as a Judge of the Chancery Division)

BETWEEN:-

THE FINANCIAL CONDUCT AUTHORITY
(A Company Limited by Guarantee)

Claimant

-and-

(1) LONDON PROPERTY INVESTMENTS (U.K) LIMITED (TRADING AS LPI EMERGENCY PROPERTY FINANCE)
(2) NPI HOLDINGS LIMITED
(3) ANTHONY KAFETZIS (ALSO KNOWN AS ANTHONY STEVENS, TONY STEVENS, GEORGE STASIS, ANTHONY STEPHENS, ANTHONIO GEORGIOU AND ANDREAS GEORGIOU)
(4) DANIEL STEVENS

Defendants

APPROVED JUDGMENT

Mark Fell KC (instructed by the Financial Conduct Authority).
No appearance for the Defendants.

Hearing dates: 5-6 and 9-10 May and 19 October 2022
Draft judgment circulated to the parties: 2 November 2022

This judgment was handed down remotely by circulation to the parties' representatives by email and release to the National Archives. The date and time for hand-down is deemed to be 11 November 2022 at 10.30am.

A. INTRODUCTION

1. This judgment follows the trial of the claim brought by the Financial Conduct Authority (**FCA**), alleging that:-

   (a) The first Defendant, London Property Investments (U.K.) Limited (**LPI**), and the second Defendant, NPI Holdings Limited (**NPI**), contravened the 'general prohibition' imposed by section 19 of the Financial Services and Markets Act 2000 (**FSMA**);

   (b) LPI contravened the 'financial promotion restrictions' imposed by section 21 of FSMA; and

   (c) the third Defendant, Tony Stevens (**TS**), and the fourth Defendant, Daniel Stevens (**DS**), were 'knowingly concerned' (within the meaning of sections 380 and 382 of FSMA) in such contraventions.

2. FCA's case in outline is that LPI operated a business providing services to individuals facing eviction from their homes. Those services were rendered, and fees charged, pursuant to agreements (**Service Agreements**) partly contained in certain written "*Irrevocable Fee Agreement Declarations*" (**IFADs**). LPI registered restrictions against the relevant properties to ensure payment of its fees. The FCA contends that LPI carried on the regulated activities of making arrangements for, and/or with a view to, and advising on, 'regulated mortgage contracts' (**RMCs**) with third party lenders, and of agreeing through the Service Agreements to make such arrangements.

3. The FCA further claims that NPI operated a business purchasing and renting largely residential property in circumstances in which (i) LPI carried on the regulated activities of making arrangements for, and/ or with a view to, and advising on, regulated 'sale and rent back agreements' (**SRAs**) under which the homes of individuals were transferred to NPI which then rented them back to those individuals and (ii) NPI undertook the regulated activities of entering into as 'agreement provider', and administering,[1] those SRAs.

4. Pursuant to the order of Trower J made at the Pre-Trial Review on 12 April 2022, the trial was concerned only with whether:-

   (a) the alleged contraventions of sections 19 and 21 of FSMA occurred and, if so, whether declarations should be made to that effect;

   (b) TS and DS were 'knowingly concerned' therein;

   (c) the Court should declare unenforceable the relevant Service Agreements and SRA transactions under section 26 of FSMA;

   (d) the Court should grant a 'remedial order' under section 380(2) of FSMA, requiring LPI to apply for removal from the relevant registers

[1] The FCA's central case is that NPI administered SRAs. However, it also says that LPI, acting on behalf of NPI, engaged in administration services with respect to SRAs.

of title the restrictions it has caused to be entered at HM Land Registry to secure fees under the Service Agreements; and

(e) the Court should grant an order under section 380(1) of FSMA to restrain the continued or repeated breach of sections 19 and 21 of FSMA.

5. At the start of trial, the FCA explained that it had identified 140 properties (and 133 individuals) as potentially falling within the scope of the claim. However, at that stage, the FCA could only evidence its claim in respect of 45 of them (the **Affected Individuals**). The FCA therefore applied to adjourn the hearing of its claim in relation to the other potentially affected individuals until any 'quantum' phase in these proceedings with respect to the Affected Individuals. I deferred my ruling on that application to this judgment.

The circumstances of these proceedings

6. At the outset, I should say that the circumstances of the trial were unusual. Following the Defendants' non-compliance with certain disclosure orders, culminating in their breach of the unless order made by Deputy Master Nurse on 23 February 2022, their Defence was struck out and they were debarred from defending the FCA's claim. On 25 March 2022, Deputy Master Nurse refused the Defendants' application for relief against sanctions and, at the Pre-Trial Review held on 12 April 2022, Trower J refused their application to participate in the trial by cross-examining the FCA's witnesses and making submissions on whether the FCA had proved its case. As a result, although the Defendants' representatives were present throughout the trial as observers, they did not participate in it. Given these unusual circumstances, I have had regard throughout to the following considerations:-

(a) First, the FCA must still prove on the balance of probabilities the various elements of its claim (see *Times Travel v Pakistan International Airlines Group* [2019] EWHC 7322 (Ch) (at [55(5)])).

(b) Second, although not as extensive as the duty of full and frank disclosure on a without notice application, the FCA has a duty of 'fair presentation', requiring it to draw to the attention of the Court all factual and legal points of potential benefit to the Defendants (see *CMOC Sales and Marketing Limited v Persons Unknown* [2018] EWHC 2230 (Comm) (at [14]) where the defendants did not attend, cited in *MMD Mining Machinery Developments Limited & Onr v Lang* [2021] EWHC 3264 (Comm) (at [12]) where the defence had been struck out); and

(c) Third, although the Defendants' defence has been struck out, the Court is still entitled to rely on their pleadings for the purposes of admissions and a proper understanding of the claim and ambit of the dispute (see *Thevarajah v Riordan & Ors* [2015] EWCA Civ 41 (at [33]) and *Times Travel* (at [55(6)])).

7. At the outset of the trial, the FCA specifically drew these considerations to the Court's attention and explained its proposed approach to ensure compliance with its obligations. The FCA also accepted that its burden of proof applied with respect to each case for each Affected Individual and, as noted, to that end, only sought at that stage to advance those individual cases for which there existed cogent evidence. As to its 'fair presentation' obligation, the FCA drew my attention throughout to various factual and legal aspects which, it was said, might have been relied on by the Defendants had they participated at trial. Given the FCA's circumspection in this regard and the lengths to which it went in identifying arguments potentially detrimental to its own case and/ or supportive of the Defendants' case, I am satisfied that the FCA understood, and complied with, its obligations to the Court.

8. In conducting the trial and in reaching my judgment, I have been conscious of the need in these unusual circumstances for particular circumspection. To that end, I have carefully examined and tested the FCA's legal and factual case. As for the oral evidence presented at trial, without 'descending into the arena', I asked certain questions of each of the witnesses. These were focused on the Defendants' pleaded case as to why their activities were said to fall outside the regulatory regime, particularly on the key issue of what (if anything) the Affected Individuals discussed with the Defendants concerning the occupation and use of their properties following any new (or potential new) secured loan facilitated with LPI's assistance and/ or following sale to NPI. As for the documentary record, I have spent considerable time after trial reviewing the extensive hearing bundles and considering the documents carefully against, and closely testing, the case advanced by the FCA.

Structure of this judgment

9. This judgment is organised into the following sections:-

Section A	This introduction.
Section B	Overview of the evidence.
Section C	The legislative framework.
Section D	Alleged contravention of the:-
	1. 'general prohibition' with respect to RMCs;
	2. 'general prohibition' with respect to SRAs; and
	3. 'financial promotion restrictions'.
Section E	TS' and DS' alleged accessory liability.
Section F	Consequences of my findings/ relief.
Section G	Procedural matters.
Section H	Disposal.

10. In relation to **Sections D(1)-(2)** concerning the Defendants' alleged contravention of the 'general prohibition', this judgment includes two annexes setting out my detailed analysis and findings with respect to each individual case involving, respectively, alleged RMCs (**Annex A**) and alleged SRAs (**Annex B**). This format has been adopted for convenience and ease of reading only. Both annexes form an integral part of this judgment. For internal referencing, I have adopted the rubric '[**JXX**]' to refer to paragraph numbers

in the main body of this judgment, '[**AXX**]' to refer paragraph numbers in Annex A and '[**BXX**]' to refer to paragraph numbers of Annex B.

B. OVERVIEW OF THE EVIDENCE

11. The evidence came from a number of different sources.

John Bulmer's evidence

12. I heard oral evidence first from the FCA's lead investigator, Mr John Bulmer, who had provided a very substantial 'reporting statement', drawing together the information obtained during the FCA's investigation into the Defendants' activities and involvement with the Affected Individuals. I asked Mr Bulmer about the investigatory steps undertaken by the FCA, the size of, and time spent by, the FCA team, and the measures taken to ensure the team's work was properly checked, reviewed and quality assured. I also sought clarification on specific aspects of the FCA's findings. Having heard his evidence, I found him to be an honest witness. I was also satisfied that, in the conduct of the investigation, he (and the FCA team he supervised) acted with appropriate diligence and that the presentation of his evidence was fair. Finally, during the course of the trial, the FCA properly brought to my attention certain minor errors in Mr Bulmer's statement. These were corrected in his amended statement served shortly after trial.

The evidence of the Affected Individuals

13. I also heard, in the order in Table A below, oral evidence from 14 Affected Individuals, each of whom had already provided a written statement for these proceedings concerning their dealings with LPI and/ or NPI.

Table A – Witnesses

No	Witness name
1	Toni Bowman
2	Jonas Tsormetsri
3	Sharon Lea
4	Robert Jackson
5	Mark Moroney
6	Rachel Dann
7	Harrington Thomas
8	Elaine Terroni
9	Donna Sanchez
10	David Cassar
11	Stephen Suluk
12	Suzanne Hulks
13	Gokhan Karaman
14	Olujimi Begbaaji

14. Although a very diverse group of individuals, with different backgrounds and personal circumstances, they had each experienced financial difficulties,

including problems servicing their existing secured lending, leading them separately to have contacted LPI. Some of the witnesses re-financed their borrowings with LPI's assistance (or attempted to do so). Others sold their homes to NPI. Some did both. A number were clearly disgruntled by their experience with the Defendants although one witness, Mr Tsormetrsi, was notably effusive.[2] Some were also eager to 'tell their story', occasionally taking their focus away from the matters with which the Court was most concerned. However, having heard their evidence, including their responses to my questions, I found all these witnesses to be honest and their testimony consistent with their prior written evidence. I have no reason to doubt that their statements reflect their own independent and truthful recollections of the events they describe, not least given the similarity of their evidence on key aspects of their dealings with LPI and NPI, in particular as to their continued occupation of, and intention to occupy, their homes regardless of any remortgage or sale which might have been achieved with LPI's assistance.

'Hearsay' statements

15. For the reasons set out in the witness statement of Ms Kathleen Gentle dated 5 May 2022 provided during the course of the trial, the FCA sought permission to serve late a hearsay notice in respect of the witness statement of Mr Roy Gillett whom it was originally anticipated would give oral evidence. The FCA also sought permission to rely on his statement in the absence of a certificate under CPR, PD22, para 3A. For the reasons given in my oral ruling at trial, I acceded to those applications.[3]

16. The FCA had also previously served a (timely) hearsay notice dated 21 April 2022, including with respect to the witness statement of Ms Rose Onyema, who was travelling overseas when the witnesses were scheduled to give oral evidence.[4]

Statements from other proceedings

17. During the trial, the FCA also applied under CPR, Part 32.12, to rely on four witness statements from other proceedings, namely the statements of:-

    (a) DS in possession proceedings brought against Mr Mark Moroney;[5]

    (b) DS in support of an application to vary a criminal restraint order;

    (c) Ms Donna Riddell[6] in proceedings between her and LPI; and

    (d) Mr Prince Goba (formerly of Edward Marshall, solicitors) in proceedings between Ms Tonia Richardson,[7] Taylors Legal and NPI.

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2 Similarly, Ms Savage was effusive in her discussion with the FCA [B128]. Ms Edwards was grateful to be allowed to remain in her property [B89].

3 Mr Gillett's case is analysed in detail at [A475-487] (RMC) and [B49-62] (SRA).

4 Ms Onyema's case is analysed in detail at [A258-274].

5 Mr Moroney's case is analysed in detail at [A78-91] (RMC) and [J160-171] (SRA).

6 Ms Riddell's case is analysed in detail at [A370-383].

7 Ms Richardson's case is analysed in detail at [B140-155].

18. I acceded to the FCA's application for the reasons given in my further oral ruling at trial, albeit it was later confirmed that DS had not objected to the use in this case of his two statements from those other proceedings.

Other evidence

19. Finally, the hearing bundles include (in Bundle 'B') attendance notes and contact reports of the FCA's communications with, and FCA questionnaires completed by, the Affected Individuals. Bundle 'B' of the trial bundle also contains voluminous case specific contemporaneous documents and correspondence evidencing the dealings of the relevant Affected Individuals with the Defendants. Bundle 'C' of the trial bundle includes other documents of a more general nature collated by the FCA in the course of its investigation. A number of documents in Bundles B and C too were the subject of the FCA's hearsay notice dated 21 April 2022.

Approach to the evidence

20. As was fairly accepted by the FCA, where the relevant Affected Individuals had not given oral evidence, the weight to be attached to their statements (whether in the form of attendance notes, questionnaires, contact reports, hearsay statements, statements from other proceedings or otherwise) is necessarily more limited than if they had testified in person and subjected themselves to questioning under oath about the subject matter of those statements. In considering the appropriate weight, I have had regard to the factors identified in section 4(2)(a)-(f) of the Civil Evidence Act 1995 and all the other relevant circumstances, including importantly the degree of corroboration (or otherwise) afforded by the contemporaneous record in each case. I should also add that, despite the limitations described, having regard to the number of Affected Individuals, the need for the claim to be conducted efficiently and cost-effectively and the practical difficulties of securing written and/ or oral evidence from them all, I am satisfied that the FCA has adopted an appropriate and proportionate approach to its organisation and presentation of the evidence and that the Court is properly equipped to decide the case fairly and with confidence.

21. Recognising that it had to make good its case with respect to each Affected Individual, the FCA's written closing note identified the evidence relied upon as it pertains to the relevant regulated activities said to have been undertaken in each case. In the course of oral closing submissions, the FCA took me through the individual cases and to a number of the related documents, albeit by no means to all the voluminous material. The FCA took me particularly carefully through those individual cases said to have specific features which might have been relied on by the Defendants as taking them outside the scope of regulation, explaining why, those features notwithstanding, those cases were still said to engage the regulatory regime.

22. Finally, as noted (at [J8]), I have spent considerable time after trial reviewing (or re-reviewing) each of the documents in the bundles to consider carefully

the extent to which the case for each Affected Individual is supported (or otherwise) by the contemporaneous record. As a result of that review, various further points occurred to me, principally related to the specific facts of the individual cases. I caused a list of these points to be circulated to the parties on 3 October 2022 and requested the FCA to provide me with its further related submissions. I heard these orally on 19 October (with the benefit of the FCA's note and further supporting information filed on 11 October). My analysis of the evidence and my related findings, including with the benefit of those further submissions, are set out in this judgment (including the Annexes). First, however, I set out the legislative framework within which that analysis has been undertaken.

C. THE LEGISLATIVE FRAMEWORK

Introduction

23. The 'general prohibition' in section 19(1) of FSMA provides that:-

> "*No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is–*
> *(a) an authorised person; or*
> *(b) an exempt person.*"

24. Under section 31 of FSMA, an 'authorised person' is one who has permission from the FCA under Part 4A of FSMA to carry on 'regulated activities'. Persons qualify as 'exempt', including by being appointed representatives of authorised persons under section 39 of FSMA.

25. The concept of 'regulated activity' is defined in section 22(1) of FSMA in the following terms:-

> "*(1) An activity is a regulated activity for the purposes of this Act if it is an activity of a specified kind which is carried on by way of business and–*
> *(a) relates to an investment of a specified kind; …*"

26. Section 22(5) of FSMA provides that 'specified' means specified in an order made by HM Treasury. The order in question is the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544 (**RAO**).

27. Although the phrase 'carried on by way of business' has been considered judicially, section 419 of FSMA confers on HM Treasury the power to make provision by order as to the circumstances in which a person who would not otherwise be regarded as carrying on a regulated activity by way of business is to be so regarded (and vice versa), so as to widen (or narrow) the ambit of that expression. The Treasury exercised this power in the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001/1177 (**CRAWBO**).

28. As to the consequences of non-compliance with the 'general prohibition', section 26(1) and (3) of FSMA provide that:-

> "*(1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party; ….*
>
> *(3) Agreement" means an agreement–*
> *(a) made after this section comes into force; and*
> *(b) the making or performance of which constitutes, or is part of, the regulated activity in question.*"

29. The effect of section 26(1) and (3) is mitigated by section 28(3) of FSMA, which provides that, if the court is satisfied that it is 'just and equitable' in the circumstances of the case, it may allow the agreement to be enforced. Section 28(4)(a) and (5) of FSMA provide that, in considering whether to allow the agreement to be enforced, the court must have regard to whether the person carrying on the regulated activity reasonably believed that he was not contravening the 'general prohibition'. Section 28(7) of FSMA provides that, if a person against whom an agreement is unenforceable elects not to perform the agreement, he must repay any money and return any other property received by him under the agreement.

'Specified investments' - 'regulated mortgage contracts'

30. Article 88 of the RAO provides that a 'regulated mortgage contract' is a 'specified investment'. Article 61(3)(a) (as applicable at the material time) sets out the conditions to be met for a contract to qualify as an RMC:-

> "*a contract is a "regulated mortgage contract" if, at the time it is entered into, the following conditions are met:-*
> *(i) the contract is one under which a person ("the lender") provides credit to an individual or to trustees ("the borrower");*
> *(ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA;*
> *(iii) at least 40% of that land is used, or is intended to be used —*
> *(aa) in the case of credit provided to an individual, as or in connection with a dwelling; or*
> *(bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person;*
> *but such a contract is not a regulated mortgage contract if it falls within article 61A(1)… .*"

31. The term 'credit' is defined in article 61(3)(c) of the RAO to include ".. *a cash loan*".

32. The term 'related person' is defined in article 61(4)(c) of the RAO to include spouses, civil partners (and others whose relationship has the characteristics of a husband or wife) and parents, grandparents, siblings, children and grandchildren.

33. Setting aside for one moment the 'carve-outs' from article 88 in article 61A(1) of the RAO (considered at [J34-38]), the definition in article 61(3)(a) therefore covers a wide range of loan contracts secured on residential property, specifically those which, at the time they are entered into, provide credit to:-

    (a) an individual, secured by residential property within the EEA, whether or not the individual resides there; and

    (b) a trustee (individual or corporate), secured by residential property within the EEA, occupied by an individual beneficiary of the trust or a member of the beneficiary's family.

Article 61A(1) 'carve-outs'

34. As to the 'carve-outs', article 61A(1) identifies a number of agreements which will not qualify as RMCs, including most relevantly to this case:-

    (a) 'limited payment second charge bridging loans' (article 61A(1)(b));

    (b) 'second charge business loans' (article 61A(1)(c));

    (c) 'investment property loans' (article 61A(1)(d)); and

    (d) 'exempt consumer buy-to-let mortgage contracts' (article 61A(1)(e)).

35. These are defined by article 61(A)(5) of the RAO as follows:-

    (a) **a 'limited payment second charge bridging loan'** is a contract that, at the time it is entered into, meets the conditions in paragraphs (i)-(iii) of article 61(3)(a) of the RAO (noted at [J30]) and the following further conditions:-

        (i) it is a borrower-lender-supplier agreement financing the purchase of land;

        (ii) it is used by the borrower as a temporary financing solution while transitioning to another financial arrangement for the land subject to the mortgage;

        (iii) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and

        (iv) the number of payments to be made by the borrower under the contract is not more than four.

(b) **an 'investment property loan'** is a contract that, at the time it is entered into, meets the conditions in paragraphs (i)-(iii) of article 61(3)(a) of the RAO (noted at [J30]) and the following further conditions:-

(i) less than 40% of the land subject to the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower or by a related person; and

(ii) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(c) **a 'second charge business loan'** is a contract that, at the time it is entered into, meets the conditions in paragraphs (i)-(iii) of article 61(3)(a) of the RAO (noted at [J30]) and the following further conditions:-

(i) the lender provides the borrower with credit exceeding £25,000;

(ii) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and

(iii) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

(d) **an 'exempt consumer buy-to-let mortgage contract'** is a contract that, at the time it is entered into, is a consumer buy-to-let mortgage contract within the meaning of article 4 of the Mortgage Credit Directive Order 2015 and:-

(i) is of a kind to which the Mortgage Credit Directive (Directive 2014/17/EU) (**MCD**) does not apply by virtue of article 3(2) thereof; or

(ii) is a bridging loan.

Article 4 of the Mortgage Credit Directive Order 2015 defines a 'consumer buy-to-let contract' as a mortgage contract which provides that the land to which it relates cannot be occupied at any time by the borrower or by a related person and is to be occupied as a dwelling on the basis of a rental agreement and is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him.

36. In relation to 'investment property loans' and 'second charge business loans', article 61A of the RAO contains certain provisions *presuming* (under article 61A(3)) or *deeming* (under article 61A(5)) the borrower to have entered into an RMC wholly or predominantly for the purpose of a business carried out by

him. So, where the RMC includes a declaration with the relevant statements identified in article 61A(3), the *presumption* will be engaged. In this case, many Affected Individuals signed declarations that the secured loans they entered into were for the purposes of their business, albeit the FCA says that such declarations were non-compliant on their terms, being directed to consumer credit rather than RMCs. It also says that the presumption is, in any event, easily rebutted since the Affected Individuals were entering into the loans to save their homes, not to carry on a business.

37. Article 61A(5) of the RAO contains a number of conditions to be satisfied for borrowers to be *regarded* as having entered RMCs wholly or predominantly for the purposes of a business. However, for present purposes, it suffices to say that this provision is never engaged when the borrower (or a 'related person') intended to occupy the mortgaged property as a dwelling. The FCA says that all the Affected Individuals (or, in two cases,[8] their 'related persons') intended to occupy their properties such that none of them could be regarded as having entered into their loans for the purposes of a business.

Relevance of the article 61(A)(1) 'carve-outs' in this case

38. Pausing there, it can be seen that these 'carve-outs' are not without their complexity. However, the FCA makes the overarching point that, as with the generality of the loans entered, or proposed to be entered, into by the relevant Affected Individuals in this case, (i) remortgages by borrowers (ii) not acting for the purposes of a business (iii) secured by first legal charge (iv) over a property that they own and intend to live in will meet the conditions for RMCs in article 61(3)(A)(i)-(iii) of the RAO but will not engage the potentially relevant article 61A(1) 'carve-outs', there being no:-

    (a) 'limited payment second charge bridging loan' because (i) the loan is a *remortgage* rather than a *purchase* mortgage and (ii) there is a *first* legal charge;

    (b) 'investment property loan' because the borrower (i) intends to live at the property and (ii) is not acting for the purposes of a business;

    (c) 'second charge business loan' because (i) there is a *first* legal charge and (ii) the borrower is not acting for the purposes of a business; and

    (d) 'exempt consumer buy-to-let contract' because the borrower intends to live at the property.

'Specified activities' in relation to RMCs

39. The RAO also identifies a number of 'specified' kinds of activity in relation to RMCs.

[8] Jardim [A275-285]; Peters [A325-335].

‘Arranging’ RMCs

40. Article 25A(1) and (2) of the RAO specify *making arrangements* for, and with a view to, the entry into of RMCs in the following terms:-

> “*(1) Making arrangements:-*
>
> *(a) for another person to enter into a regulated mortgage contract as borrower... is a specified kind of activity.*
>
> *(b) ……..*
>
> *(2) Making arrangements with a view to a person who participates in the arrangements entering into a regulated mortgage contract as borrower is also a specified kind of activity.*”

41. It is important to note that the word “*arrangements*” does not have a different meaning in article 25A(1) from that in 25A(2) and ‘arrangements’ falling under the first limb may also fall under the second if the differences in the other language of article 25A (explored at [J45-46]) can be navigated (see *Personal Touch Financial Services Ltd v Simplysure Ltd* [2016] EWCA Civ 461 (at [26]); *Financial Conduct Authority v Avacade Limited & Ors* [2021] EWCA Civ 1206 (at [49])).

42. In relation to the almost identically worded activity in article 25 of the RAO concerning securities, Sir Stanley Burnton held in *Simplysure Ltd* (at [26]) that its “*wording and therefore scope…is deliberately wide*". The potential breadth of article 25 (and, therefore article 25A), and of the term ‘arrangements’, had also been emphasised earlier by Jonathan Crow QC (sitting as a Deputy High Court Judge) in *Re The Inertia Partnership* [2007] EWHC 539 (Ch), observing (at [39]) of article 25(1) and 26 of the RAO that:-

> *“(1) the word ‘arrangements’ is, depending on the context, capable of having an extremely wide meaning, embracing matters which do not give rise to legally enforceable rights; (2) in articles 25 and 26, the word ‘arrangements’ is used in contradistinction to the word ‘transaction’; (3) in article 26, the word ‘transaction’ is plainly a reference to the purchase, sale, etc of shares contemplated by article 25; (4) as such, a person may make ‘arrangements’ within article 25 even if his actions do not involve or facilitate the execution of each step necessary for entering into and completing the transaction (i.e. the purchase, sale, etc of the shares); (5) the availability of the exception in article 26 is essentially a question of fact: as a matter of causation, did the arrangements bring about the transaction (i.e. the purchase, sale, etc of the shares)?*”

43. The activity of making ‘arrangements’ for another person to enter into an RMC as borrower (the ‘first limb’ of article 25A of the RAO) is also subject to the exclusion in article 26, which introduces a (notional or actual) causation test in the following terms:-

"*There are excluded from article…25A(1)….arrangements which do not or would not bring about the transaction to which they relate.*"

44. The FCA's guidance (at PERG 4.5.4G) suggests that an 'arrangement' brings about, or would bring about, an RMC if its involvement in the chain of events leading to the transaction is of sufficient importance that, without such involvement, the transaction would not take place. In *Adams* v *Options UK Personal Pensions* [2021] EWCA Civ 474 (at [97]), Newey LJ considered it important to focus on the words "*bring about*" in article 26, implying the requirement for the relevant 'arrangements' to have "*causal potency*". This was not to be judged simply on a 'but for' basis of causation but nor was a "*direct connection*" between the 'arrangements' and the ultimate transaction inevitably required.

45. Article 25A(2) (the 'second limb' of article 25A) has certain significant differences from the 'first limb', considered by Popplewell LJ in *Avacade* (at [47]-[48]), albeit in the context of article 25(1) and (2) concerning securities:-

> "*There are three relevant differences between articles 25(1) and 25(2), each of which is concerned with "making arrangements" in relation to the buying and selling of securities (among other things). The first is that 25(1) applies to making arrangements "for" the buying and selling of securities, whereas 25(2) applies to making arrangements "with a view to" that activity. The second is that for article 25(1) the buying or selling may be conducted by anyone, whereas for article 25(2) it must involve a person who participates in the arrangements. I agree with the Trial Judge that both the language of the article ("a person") and the decision of this Court in SimplySure make clear that the relevant transactions contemplated need only involve one of the parties to the arrangements, not both. The third difference is that article 26 provides an exception to article 25(1) but not article 25(2).*
>
> *Article 26 excludes from the operation of article 25(1) arrangements which do not or would not bring about the transactions to which the arrangements relate. The words "would not" make clear that even article 25(1) is not concerned only with arrangements which successfully result in a relevant transaction; a person may contravene article 25(1) by making arrangements "for" such a transaction which does not in fact take place. Nevertheless article 26 introduces an actual or notional test of causation ("bring about") in relation to arrangements for the purposes of article 25(1). In Adams the court held that the degree of causal potency required was that for arrangements to "bring about" a transaction they must play a role of significance but need not involve a direct connection (see [97]). Importantly, however, article 26 is expressly confined by its terms to article 25(1) and other articles; it does not apply to article 25(2), as this court confirmed in SimplySure at [26]. There is no need to introduce any test of causation into 25(2) by reference to the language of the*

inapplicable article 26 because by using the words "with a view to", article 25(2) makes clear that it is concerned with the purpose of the arrangements. An intended purpose, an end in view, must be that a relevant transaction take place, but the arrangements do not need to bring it about by way of an actual or notional test of causation. These are wide words which suggest that all that is necessary is that a relevant transaction is part of the purpose of making the arrangements. A person may have a relevant transaction as an end in view where the arrangements do no more than create or facilitate a situation which provides the opportunity for it to take place. That may be an intended result notwithstanding that the arranger is powerless to ensure that it takes place or even influence the decision which leads to it taking place. You cannot make the proverbial horse drink, but taking it to water involves making arrangements with a view to it drinking."

46. Accordingly, article 25(2) is not subject to the causation test in article 26 but is concerned with the *purpose* of the arrangements or the 'end in view', namely the occurrence of the relevant transaction, whether or not the arranger has the ability to procure this or even influence the decision leading to it taking place.

Exclusions to article 25A(1) and (2) of the RAO

47. Although article 26 is concerned only with the first limb of article 25A, the RAO contains further exclusions which operate in relation to both limbs:-

    (a) Article 29 provides an exclusion where the transaction is (or is to be) entered into (i) with or through an authorised person and (ii) on the advice of an authorised person (or it is clear that the borrower has not sought advice on the merits of the transaction from the person making the arrangements), provided that (iii) the person making the arrangements does not receive from a third party any pecuniary reward or other advantage for which he does not account to the borrower; and

    (b) Article 67 provides an exclusion where the relevant 'arrangements' (i) are undertaken in the course of any profession or business which does not otherwise consist of the conduct of regulated activities in the UK and (ii) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business, provided that (iii) the making of those arrangements is not separately remunerated from other services and (iv) the person making the arrangements is not acting as a 'credit intermediary' within the meaning of the MCD. The FCA guidance (at PERG [4.10.3G]) suggests that, for 'arranging' to be a necessary part of other services, the provision of those other services must generally not be possible unless the arranging is present. This approach was endorsed in *Financial Conduct Authority v Capital Alternatives & Ors* [2018] 3 WLUK 623 (at [737]).

48. The RAO also contains further exclusions which operate in relation to the second limb of article 25A only:-

(a) Article 27 contains an exclusion where the person making the 'arrangements' merely provides a *means* by which one party to the RMC (or potential RMC) is able to communicate with other such parties. The FCA guidance (at PERG [4.5.6G]) suggests that this exclusion is to be construed narrowly, such as to internet service providers; and

(b) Articles 33 and 33A contain exclusions for the making of 'arrangements' under which the prospective borrower is introduced to (i) an authorised or exempt person, provided that the introduction is with a view to the provision of independent advice (or exercise of independent discretion) in relation to investments generally or any class of investments to which the arrangements relate (article 33) and (ii) an authorised person or appointed representative, provided that the introducer receives no money paid by the borrower for any RMC entered into as a result of the introduction (other than money payable to the introducer on his own account) and discloses (1) any fee or commission paid by the person to whom the introduction is made and (2) any other reward or advantage arising from the introduction (article 33A).

Advising on RMCs

49. Article 53A(1) of the RAO specifies *advising* on RMCs in the following terms:-

> "*Advising a person is a specified kind of activity if the advice–*
> *(a) is given to the person in his capacity as a borrower or potential borrower; and*
> *(b) is advice on the merits of his….*
> *(i) entering into a particular regulated mortgage contract.*"

50. Article 53A is also subject to the exclusion in article 67 of the RAO (noted at [J47(b)]).

51. FCA guidance (at PERG [4.6.5G]) suggests that the key question in applying article 53A is whether a recommendation is made to a prospective borrower explicitly or implicitly steering them to a particular RMC. *Rubenstein v HSBC Bank plc* [2011] EWHC 2304 (QB) (at [80]-[86])) indicates that some comment, value judgment, element of evaluation or persuasion is required on the part of the person advising, the presence or absence of which is to be judged objectively by reference to whether an impartial observer, having due regard to the regulatory regime and guidance, and to what passed between the parties, would conclude that advice had been given.

Agreeing to carry on a specified activity

52. Article 64 of the RAO specifies *agreeing* to carry on a specified activity as a specified activity in its own right such that *agreeing to make arrangements* for RMCs under either or both limbs of article 25A is also a specified activity.

The 'business test' for specified activities in relation to RMCs

53. Article 3A of CRAWBO (noted at [J27]) provides that, to be acting by way of business in relation to **arranging**, or **advising on**, RMCs (or **agreeing** to do either), a person must be carrying on the 'business of' carrying on these activities. The FCA's guidance (at PERG [4.3.6G]) explains that this is a narrower test than the standard 'by way of business' test because it requires those activities to represent the carrying on of a business in their own right. PERG 4.3.7G suggests that the principal factor that might cause an activity to satisfy the standard 'by way of business', but not the 'carrying on the business', test is frequency or regularity such that some degree of regularity is required to meet the latter (narrower) test. Newey J cited with approval the FCA's related guidance in *Helden v Strathmore* [2010] EWHC 2012 (Ch) (at [84]-[85]).

54. PERG 4.3.8G refers to the situation in which a person arranges, or advises on, RMCs (or does both) on a regular basis in return for payment of some kind (from the borrower or a third party) as one in which the 'carrying on the business' test would likely be met. Adam Johnson QC (sitting as a Deputy High Court Judge) held in *Financial Conduct Authority v Avacade Limited* [2020] EWHC 1673 (Ch) (at [188]) that, if the arrangements in question were part of the defendant's business model and designed to generate income, it was beyond serious dispute that the 'carrying on the business' test was met.

Specified investments – 'sale and rent back agreements'

55. Article 88C of the RAO specifies 'sale and rent back agreements' as a 'specified investment', with article 63J(3)(a) setting out the conditions which must be satisfied for an 'arrangement' to be an SRA:-

> *"a "regulated sale and rent back agreement" is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:-*
>
> *(i) the arrangement is one under which a person (the "agreement provider") buys all or part of the qualifying interest in land (other than timeshare accommodation) from an individual or trustees (the "agreement seller"); and*
>
> *(ii) the agreement seller (if the agreement seller is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so*."

56. A "*qualifying interest*" in land includes a leasehold or freehold interest (article 63J(4)(a)(i) of the RAO). "[R]*elated person*" is defined in similar terms as for RMCs (noted at [J32]) (article 63J(4)(c) of the RAO).

57. The FCA point to three important aspects of the definition of SRAs, namely:-

(a) the breadth of the word "*arrangement*" which may encompass a number of agreements or instruments, not all of which are legally binding transactions (such breadth also reflected in "*arrangements*" within the meaning of article 25A of the RAO (see, for example, *Inertia* (noted at [J42]));

(b) the conditions set out in article 63J(3)(a)(i) and (ii) of the RAO must be satisfied at the time the 'arrangement' is entered into but an SRA may be comprised within several agreements or instruments such that the conclusion of an agreement for the sale of land at a different time from a tenancy agreement conferring the right to occupy that land will not preclude an SRA; and

(c) the wording relating to the right to occupy the land in article 63J(3)(a)(ii) of the RAO does not indicate that such right must be continuous or exercisable from the moment the arrangement comes into being. To the contrary, the FCA points to the reference to "*timeshare accommodation*" as strongly suggestive that a non-continuous right to occupation which is not exercisable at the moment the arrangement comes into being is capable of giving rise to an SRA.[9]

Specified activities in relation to SRAs

58. Potentially relevant 'specified activities' in relation to SRAs are:-

(a) Making arrangements for another person to enter into an SRA as an agreement seller (article 25E(1));

(b) Making arrangements with a view to a person who participates in the arrangements entering into an SRA as agreement seller (article 25E(2));

(c) Agreeing to make arrangements with respect to SRAs (article 64);

(d) Advising on SRAs (article 53D);

(e) Entering an SRA as agreement provider (article 63(J)(1));

(f) Agreeing to enter an SRA as agreement provider (article 64); and

[9] "[T]*imeshare accommodation*" is defined as overnight accommodation the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulation 2010.

(g) Administering an SRA, including by notifying the agreement seller of changes in payments due or taking necessary steps for the purpose of collecting or recovering payments due under the agreement from the agreement seller (article 63J(3)(b)).

59. Article 25E(1) of the RAO is also subject to the exclusion at article 26. Articles 25E and 53D are subject to the exclusion at article 67.

The 'business test' for specified activities in relation to SRAs

60. CRAWBO specifies how the 'by way of business' test must be applied to certain regulated activities in relation to SRAs, namely:-

(a) For **entering into an SRA**, article 5 of CRAWBO provided (at the material times relevant to this case) that a person was to be regarded as carrying on the activity of entering into an SRA 'by way of business' if he carried on the activity of entering into an SRA (unless a 'related person' in relation to the agreement seller).

(b) For a person to be acting 'by way of business' in relation to **arranging** or **advising on SRAs** (or **agreeing** to do either), article 3D of CRAWBO provides that a person must be carrying on the business of carrying on those activities (as for the corresponding specified activities in relation to RMCs (noted at [J53])).

'Financial promotion restrictions'

61. The FCA also claims that LPI has contravened the 'financial promotion restrictions' under section 21 of FSMA which provides that:-

> "*(1) A person ("A") must not, in the course of business, communicate an invitation or inducement to engage in….investment activity.*
> *(2) But subsection (1) does not apply if–*
> *(a) A is an authorised person; or*
> *(b) the content of the communication is approved for the purposes of this section by an authorised person.*"

62. "[E]*ngage in an investment activity*" is defined in section 21(8) and (9) of FSMA as meaning to enter, or offer to enter, into an agreement the making or performance of which by either party is a 'controlled activity', being an activity of a 'specified kind' relating to an investment of a 'specified kind'. Section 21(15) provides that 'specified' means specified by an order made by HM Treasury. The relevant order is the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005/1529 (**FPO**).

63. Paragraph 10A of Schedule 1 to the FPO specifies the making of arrangements for another person to enter as borrower into an agreement for the provision of qualifying credit as a 'controlled activity', 'qualifying credit' being credit provided pursuant to an agreement under which the lender is a person who

carries on the regulated activity specified in article 61 of the RAO (entering into RMCs as lender) and the borrower's repayment obligation is secured (in whole or in part) on land.

64. The FCA points to aspects of the 'financial promotion restrictions' which it says are potentially significant, namely:-

(a) The "*in the course of business*" language in section 21(1) of FSMA is less stringent than the "*carried on by way of business*" test (noted at [J27]);

(b) Section 21(13) of FSMA makes clear that to "*communicate*" includes *to cause* a communication to be made; and

(c) The effect of article 6 of the FPO is that communications may be addressed to specific persons orally or in writing or to persons generally, for example, through a website.

65. Finally, the FCA also referred in this context to the Court of Appeal decision in *Financial Conduct Authority* v *Ferreira* [2022] EWCA Civ 397 concerning the exception in section 21(2) where the content of the relevant communication is approved by an authorised person. Although there is no suggestion of such approval in this case, the FCA fairly pointed out that the Defendants might argue that *Ferreira* gives rise to broader considerations for TS' and DS' potential accessory liability (considered at [J193-196]).

Accessory liability – 'knowingly concerned'

66. As to such accessory liability, the FCA says that the third and fourth (individual) defendants, respectively TS and DS, are liable as being "*knowingly concerned*" (within the meaning of sections 380(2) and 382(1) of FSMA) in LPI's contraventions of the 'financial promotion restrictions' and LPI's and NPI's contraventions of the 'general prohibition'. *Financial Conduct Authority v Capital Alternatives & Ors* [2018] 3 WLUK 623 (at [797]-[810]) provides a helpful distillation of what is meant by "*knowingly concerned*":-

(a) Proof of actual *knowledge* is a necessary, but insufficient, requirement for being 'knowingly concerned'. Actual *involvement* in the contravention must also be established;

(b) The concept of 'involvement' is a broad one, covering those who 'pull the strings' at directorial and/ or managerial level (including the most obvious example of the 'moving light' in the contravening entity);

(c) The authorities do not rely on the accessory being a *de jure* director or even a *de facto* or shadow director of the contravening entity; the question is whether the individual has the requisite knowledge and involvement;

(d) Such involvement could, in an appropriate case, include those at a lower level depending on the extent of their knowledge and participation in the contravention;

(e) The word 'concerned' can cover both the 'front' and 'back office' functions performed with the necessary knowledge;

(f) It is too narrow a view to say that the individual has to have actual involvement in the *primary* contravention since it would fail to capture the person, including the 'moving light', who directs others from a distance but 'keeps his own hands clean';

(g) The relevant knowledge is knowledge of the *facts* on which the contravention depends; it is irrelevant whether the individual knows that such facts constitute a relevant contravention – ignorance of the law is no defence; and

(h) It is a fact sensitive enquiry to determine whether a person was 'knowingly concerned' in the contravention of a relevant requirement of FSMA. Each case must be considered on its own unique facts.

D1. ALLEGED BREACH OF THE 'GENERAL PROHIBITION' - RMCs

RMCs - the FCA's case (in outline)

67. The FCA asserts in the Amended Particulars of Claim (**PoC**) that LPI carried on a business providing services to the Affected Individuals who were financially distressed and whose homes were at risk of being, or had been, repossessed by mortgage lenders. In particular, it is said that LPI facilitated, or attempted to facilitate, the entry by the Affected Individuals into loan agreements with third party lenders, secured on their properties (PoC [at 2]).

RMCs – the FCA's factual case

68. The FCA also claims that the activities of LPI (acting through TS and DS) followed a certain 'pattern' with respect to such secured loans (PoC at [8]), as summarised below.

69. The FCA says that, being at risk of losing their homes, the Affected Individuals contacted LPI, often having seen its website (the content of which is considered further in the context of the 'financial promotion restrictions' (at [J180-190])). The Affected Individuals were then contacted by TS (acting for LPI). TS then often visited the Affected Individuals in their homes and (on behalf of LPI) he would then ask them to sign and hand over documentation agreeing to pay fees in return for LPI's services, including the facilitation of such secured loan agreements (PoC at [8.1-8.4]).

70. The FCA specifically referred me to a 'sample package' of initial documentation for Ms Rose Alfred,[10] signed by her (and her mother, Francis Alfred) on 29 March 2019, comprising the following:-

(a) **Legal Authority Instruction** by which they agreed to give (i) "*full authority*" to Woodford Wise, solicitors, to represent them "*for the remortgage/ sale of the above named property*" and (ii) consent and authority to Woodford Rise to "*liaise direct with my/ our agent: Mr D R Stevens & Mr T Stevens*" from LPI "*to assist in the process of my/ our completion*";

(b) **Third Party Authority** by which they gave "*full authority*" for LPI to "*request or be given information* [about]*, and discuss in full without any restriction*" the existing loan account with Halifax (Bank of Scotland);

(c) **Restriction Entry Consent** by which they consented to "*a restriction and an OS1 legal charge being registered on the security address and title number as set out above in favour of*" LPI "*for security of fees that may fall due*" to LPI, such entries to be "*removed immediately upon payment of fees*". The "*standard form of restriction*" provided that "[n]*o disposition of the registered estate by the proprietor of the estate, or by the proprietor of any legal charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by*" LPI.

(d) **Formal Instruction** by which, having " …. *exhausted every possible avenue of refunding*" and " …. *now facing the high possibility of repossession of my/ our property with the imminent danger of eviction sanctioned by the courts*", they gave "*full authority*" to LPI "*to exclusively source emergency funding through their network of brokers or provide private bridging finance to halt our possible eviction*". The instruction also confirmed that "*I/ we fully understand that because of my/ our circumstances and status, emergency private funding/ bridge finance comes at a higher interest rate and cost than conventional mortgages*" and that "*this has been fully explained to me/ us in detail and I/ We are happy to proceed with the refinance completion on offer*". Finally, they agreed and accepted that "*I/ we are giving my/ our formal authority to LPI to commence the re-finance process/ application and I/ we are therefore fully liable for all irrecoverable fees signed by myself/ ourselves from this date on*"; and

(e) **IFAD** by which they:-

(i) instructed LPI to "*formally represent us as consultants in sourcing financial networks and brokers in order to facilitate a refinance package in part or full against the above secured property*";

[10] Ms Alfred's case is analysed in detail at [A106-119].

(ii) authorised "*Edward Marshall solicitors to pay the agreed irrevocable fee of 10% (+VAT) of the property valuation out of our/ my loan advance to LPI upon the day of completion*";

(iii) agreed that "[i]*n the event that I/ we source our/ my own refinance package or sell my/ our property after LPI have been instructed, I/ we agree that I/ we are still liable for the full irrevocable fee of 10% (+VAT) of the property valuation that will be paid to LPI in full upon draw down of funds on or before completion of loan or sale*";

(iv) agreed that "*the above fees relate to LPI and all their professional consultancy services/ sourcing/ facilitating and coordinating financial networks, brokers, banks and specialised funders, plus all legal court representation relating to repossession and/ or property eviction*";

(v) agreed that LPI's fee excluded "*any bank/ bridge financial disbursements and arrangement fees, interest charges, broker commissions, bridge/ funder legal services, clients legal costs, legal disbursements, all property valuations and any court documentation that is required*";

(vi) agreed that "[i]*n the event that I/ we do not require any form of financial loans and do not proceed with any bank or bridge finance in any capacity, and do not sell my/ our property after LPI have been instructed, then I/ we agree to pay LPI a* [sic] *cancelation fee of £10,800 for all services, including all disbursements and costs incurred*" but that such "*LPI cancellation fee does not include any legal/ court fees or legal disbursements incurred in perusing any outstanding debt*";

(vii) agreed "*to pay the above fee*" to LPI whether it "*facilitates a new loan or you choose to proceed with your existing bridge loan/ funding which has NOT been facilitated by*" LPI;

(viii) agreed that "[i]*n the event of your property being sold" either by LPI or independently, "I/ we agree to pay an irrevocable fee of 5%* [sic] *(VAT) of the house sale price*" to LPI", such fee being "*payable on completion of the sale of the security address*";

(ix) acknowledged that "*it has been fully explained to me*" that LPI or their conveyancer "*will register a restriction and OS1 at Land Registry for security of the fees due*";

(x) confirmed that "*this is an irrevocable fee agreement, relating to all consultancy work and any pre-court eviction services, excluding all legal fees*" and that "[o]*nce signed and entered into there is no right of cancellation of the fee*";

(xi) acknowledged that "*the property is to be marketed by estate agents appointed by*" LPI "*who will endeavour to reach the highest sale price possible*"; and

(xii) acknowledged that LPI "*are not estate agents, lawyers, barristers, a legal body or a charity, and LPI are solely appointed to manage my property repossession*" and "*may charge further fees*" and that all LPI fees exclude "*all legal conveyancing fees relating to representation and draw-down of funds in relation to new bridge loans/ finance*" and "*all brokerage and network fees which I/ we are liable for (calculated at 5% (+VAT) of property valuation)*".

71. Pausing there, the IFAD therefore envisages the provision of services by LPI in the form of (i) repossession/ eviction services (ii) consultancy, sourcing, facilitation and co-ordination services in connection with a remortgage package or (iii) the sale of the relevant property. In the case of a remortgage, a fee of 10% of the property valuation (plus VAT) was payable to LPI. In the case of a sale, a fee of 5% of the sale price (plus VAT) was payable to LPI. In both cases, the fee was to be secured by a restriction on the title of the relevant property and was non-cancellable, albeit if no remortgage or property sale took place, LPI was entitled instead to a cancellation fee. I set out the above by way of example only. The documentation is not identical or necessarily as extensive for each Affected Individual. In particular, the IFADs (where present) take different forms, some in longer form (as above), with others in shorter form (often concerned with reimbursement of disbursements such as valuation, survey or legal fees and expenses).

72. The FCA says that, following the completion of such documentation, LPI would register a restriction against the title to the relevant property (PoC at [8.5]).

73. The FCA also says that, in the case of a proposed remortgage, TS (on behalf of LPI) would (i) recommend the individual apply for a loan agreement with a third party lender, to be secured by a legal mortgage over the relevant property (ii) obtain information from the Affected Individual to apply for the secured loan and (iii) assist that Affected Individual to provide necessary documentation such as identity confirmation and proof of address, including in some cases, advising that individual to provide proof of address different from that to which the secured loan relates (PoC at [8.6]).

74. LPI (acting by TS or DS) would then provide information and/ or documentation necessary to apply for the secured loan, either (i) directly to the lender or (ii) via an intermediary (not authorised under FSMA nor an appointed representative) who passed that information to the lender (PoC at [8.7]), albeit the FCA accepted at trial that certain regulated brokers (such as Mortgage World) were involved in a small number of loans sourced by LPI.[11]

[11] Of the Affected Individuals, Ms Onyema [A258-274], Mr and Mrs Fletcher [A346-359] and, possibly, Mr Jabaru [A423-430] (Mortgage World) and Ms Terroni [A17-37] (KPZ).

75. TS (acting on behalf of LPI) would then put the relevant Affected Individual in touch with a firm of solicitors to handle the conveyancing for the secured loan and would liaise with that individual concerning its timing and implementation (PoC at [8.8-8.9]).

76. The secured loan would then be entered into and registered against the relevant property. In due course, when the property was sold, LPI would not agree to the release of the restriction in its favour unless its fees were paid (PoC at [8.10-8.11]).

RMCs - the FCA's legal case

77. The FCA further says (PoC [10-11] and [17-18]) that:-

(a) the secured loans were **RMCs** within the meaning of article 61(3)(a) of the RAO (noted at [J30]);

(b) none of those secured loans fell within the 'carve-outs' in article 61A of the RAO (noted at [J34-35]);

(c) LPI's activities in relation to those RMCs were intended to secure a commercial return through the fees it charged such that LPI met the test for **carrying on business** (noted at [J53-54]); and

(d) LPI's activities in relation to the RMCs were 'regulated activities' under FSMA, representing:-

(i) **agreements to arrange** RMCs (within article 64 of the RAO (noted at [J52]));

(ii) the **making of arrangements** for, and with a view to the entry into of, RMCs (within article 25A(1) and (2) of the RAO (noted at [J40-46])); and

(iii) **advice** on RMCs (within article 53A(1) of the RAO (noted at [J49])).

(e) Since LPI was neither authorised nor exempt, LPI's activities **breached the general prohibition** at section 19 of FSMA (noted at [J23]).

(f) As such, the Service Agreements are unenforceable as against the relevant Affected Individuals by reason of section 26(1) of FSMA (noted at [J28-29]).

RMCs - LPI's case (in outline)

78. Although debarred from defending the claim, the Defendants served a defence dated 18 September 2021 (**Defence**), indicating those aspects of the FCA's claim with which they took issue, including with respect to RMCs.

RMCs – LPI's factual case

79. The Defendants admit that LPI carried on the business of providing services to financially distressed individuals whose homes were at risk of being, or had been, repossessed by mortgage lenders. Such services included the introduction of individuals to finance brokers (regulated and non-regulated), solicitors and other agents relevant in securing the suspension of eviction or recovery of possession and the introduction to appropriate finance (or purchasers) depending on the individuals' circumstances. They also admit that, from time to time, as part of LPI's services, on occasions it facilitated the individuals entering into loan agreements with third party lenders, secured on their properties by legal charges (Defence at [2]). Finally, they accept that such services were intended to provide a commercial return, secured by the restrictions, but deny that the loans were regulated transactions or arose from regulated activity (Defence at [5]).

80. More specifically in terms of how they went about their business, the Defendants accept that individuals at risk of losing their homes contacted LPI, often having seen its website. The individuals were then contacted by TS or DS by telephone by way of an initial fact-finding exercise to establish various initial relevant facts, including the needs and aims of the individuals concerned. TS and DS would also explain the cost to the individuals of LPI's services. If, based on that initial fact-find, LPI's services were suitable to the individual's needs and aims, TS or DS would then arrange a face to face meeting, albeit sometimes only after further telephone calls between them. TS and DS offered the individuals the option of meeting at their offices, alternatively at a mutually convenient venue. Occasionally, at the individuals' request, they met at their homes (Defence at [4(b)-(d)]).

81. The Defendants also say that, at their first meeting, TS and/ or DS would usually ascertain the individuals' detailed circumstances, discuss in detail their needs and aims and explain LPI's fees for its services and the requirement for these to be secured by restriction. On most occasions, this first meeting lasted more than two hours, providing adequate time to explain these matters, and for the individuals to ask any questions or raise concerns. TS and/ or DS would also go through each document requiring the individuals' signatures, explain its terms and effects, answer any related questions, and explain the third parties involved in the process and whose fees would be discharged by LPI, including solicitors' fees, brokers' network, valuation fees, proposed funders' administration fees and, in some cases, an EPC fee. TS and/ or DS would request the relevant documents in relation to LPI's fees to be signed after they had provided these explanations and answered their questions but, only then, if the individuals were happy to proceed. They were free to decline LPI's services but, if they were happy to proceed, and signed the documents, the restriction would be registered (Defence at [4(e)-(f)]).

82. The Defendants also say (Defence at [4(g)]) that, at the meetings, TS and/ or DS would discuss in detail all the options available to the individuals and allow them to make a free choice on how they wished to proceed. In the circumstances in which the individuals found themselves, it was self-evident that, without action being taken, their property would be repossessed or sold if already in the lender's possession. The practical options available to the individuals were usually:-

(a) an immediate sale to a cash buyer (most likely significantly below market value);

(b) a sale to a willing family member or friend; or

(c) vacating the property and applying for an emergency bridging loan of between 6-12 months to rebuild their credit rating and then sell.

83. The Defendants say that TS and/ or DS did not recommend any options. Rather, they laid out those available and answered any questions as to the pros and cons of each. They accept that they obtained information from the individuals which would have enabled an application for a secured loan to be made if that was an available option they chose. Where they did choose the option of a secured loan, the Defendants also accept that TS would assist the individuals to provide necessary documentation such as identity confirmation and proof of address (Defence at [4(h)-(k)]).

84. The Defendants accept that they were neither exempt nor authorised to undertake regulated activity under FSMA but, where individuals opted to proceed with a secured loan, it was explained to them that they could only do so if neither they nor a member of their families resided, or intended to reside, in the property and that, if they wished to pursue that option with the services of LPI, they would have to vacate the property. Where they were willing to do so, they were asked to produce evidence of their alternative accommodation. Any individuals who were not willing to vacate were placed with a regulated broker such as Mr Chauhan[12] (under the Mortgage World 'umbrella') or Ms Parveen (trading as KPZ Financial Solutions) (Defence at [4(l)]).

85. The Defendants deny that LPI passed the information obtained from the individuals direct to the lenders rather than to intermediaries who, after their own assessment, passed the enquiry to the most suitable broker. LPI was effectively a postbox to intermediaries such as Azure Mortgage and Asset Management Services Limited (**Azure**) or Soho Wealth (**Soho**). The broker then submitted the application to the lender. Where a lender was minded to lend, LPI would be requested to arrange for the lender's application forms and related documentation to be completed and signed by the individuals along with any other documents required by the lender (Defence at [4(m)]). (In other proceedings brought by its former solicitors, LPI admitted that its services included "*completing and submitting non-status applications by Owners to specialist bridging lenders*".) On occasion, Azure would approach lenders directly (rather than through a broker) where the individuals were not

[12] Referred to elsewhere by the Defendants and the FCA (and in this judgment) as Mr Chohan.

residing in the property or where the loan was to be secured by way of a second charge behind the individuals' first charge or where the individuals' loan funds were to be used for business purposes (Defence at [4(n)]). Where the intermediary rejected the application as being a regulated transaction, LPI would provide the introduction to a regulated broker such as Mr Chauhan or Ms Parveen (Defence at [4(o)]).

86. The Defendants accept that TS (acting on behalf of LPI) put the individuals in touch with a firm of solicitors to handle the conveyancing for the secured loan (Defence at [4(p)] but deny having control over the timing and implementation of the secured loans. That depended on the acts of intermediaries, brokers and lenders, albeit LPI would ensure required steps were dealt with promptly so far as within its reasonable control (Defence at [4(q)]).

87. The Defendants say the very purpose of the restriction was to secure payment of LPI's fees such that there was nothing improper about refusing to release the restriction unless its fees were paid. However, on occasion it would do so in return for a lesser amount than the fees due (Defence at [4(r)]).

RMCs – LPI's legal case

88. Although the Defendants admit that the secured loans were RMCs within the meaning of article 61(3)(a) of the RAO (Defence at [6]), they deny that they were regulated transactions (Defence at [7]) because:-

    (a) where these were not completed through lenders and brokers authorised to undertake regulated activity, they were exempt from the concept of RMCs as specified in article 61A of the RAO by reason of the properties being vacated by the individuals and there being no intention on their part to use the properties as a dwelling, either by themselves or a related person;

    (b) some of the secured loans were secured by way of second legal charges behind existing lenders and, as such, were exempt;

    (c) by reason of the individuals vacating the properties, the secured loans were registered on 'investment properties' as the land subject to the mortgage was neither used, nor intended to be used, as or in connection with a dwelling by the borrower; and

    (d) in some cases, the properties were rented by the individuals at full market price.

89. By reason of the above matters, the Defendants also deny that LPI undertook any regulated activities with respect to RMCs (Defence at [13]).

90. The emphasis of LPI's defence (in respect of those loans not concluded through regulated brokers) therefore appears to be on the article 61A 'carve-outs' from article 88 of the RAO (noted at [J34-35]). That emphasis is also reflected in schedule 1 to the Defendants' response dated 19 May 2021 to the

FCA's Request for Further Information (**RFI**) in which the Defendants identify in tabular form information about those current and historic loans the entry into which LPI facilitated (or attempted to facilitate). In that schedule, the Defendants deny any 'breaches' with respect to those loans for many reasons, including (i) the borrower not living in the property (ii) a few of the properties being designated as 'buy to let' (iii) in one case, the relevant loan being to a company (iv) in another, the loan being a 'commercial refinance' (v) in another, the use of a regulated broker (J Chohan) and (vi) for many, the non-completion of the relevant finance. The last suggests that the Defendants may have been under the (erroneous) impression that non-completed transactions and/ or the Defendants' related activities fall outside the regulatory regime. Although the definition of RMC in article 61(3)(a) of the RAO is framed in terms of a 'contract' (indicating a completed transaction), the regulated activities said by the FCA to have been undertaken by the Defendants in this case are not. The other reasons advanced by the Defendants for loans (other than those completed through regulated brokers) being unregulated again appear directed to the article 61A 'carve-outs'.

91. Although this appears to be the 'shape' of LPI's defence, I have made no assumptions about that. Rather, in determining whether the FCA has discharged its burden, I have considered whether its case in respect of both the specified investments and related activities alleged has been established 'from the ground up'. In doing so, I have also considered all those matters that might arguably point away from liability, including any potentially available exceptions to otherwise regulated activities, whether or not pleaded or alluded to in the Defence.

RMCs/ 'attempted' RMCs – general findings

92. Having set out the legal framework and the parties' respective outline positions, I analyse in detail (at [J100-134]) for Mr Harrington Thomas and in Annex A (for the other Affected Individuals) (i) the evidence of their dealings with LPI concerning the remortgage (or attempted remortgage) of their properties and (ii) whether, in light thereof, the regulatory regime was engaged. Although I have considered in detail and made findings in each case based on its own specific facts, it is convenient to set out here my overall findings on those dealings as a result my review of all the evidence in the case.

93. All the Affected Individuals found themselves in difficult financial circumstances, exacerbated in individual cases by other personal difficulties such as health or employment issues or caring responsibilities. Although a few anticipated ultimately selling their properties, they were generally anxious to avoid repossession by (or, in a small number of cases, to regain possession from) their lenders. In most cases, the initial 'introduction' to LPI was through its website, often followed by telephone contact with TS, followed by face to face meeting(s) with TS, often at their homes but sometimes in a hotel lobby or other public place. Those meetings were generally brief, often hurried. At those meetings, LPI would generally assure the Affected Individuals that it could help them avoid repossession and obtain a loan for them. At these (or subsequent) meetings, LPI would often present them with

papers to sign. In many cases, LPI did not explain these documents or give them enough time to read them, copies were not provided and/ or the Affected Individuals were required to sign these in a rush, often 'in blank'. Moreover, when the Affected Individuals raised questions about these documents, they would often be told that LPI had been doing this for years, or that this is what the lenders required or, more bluntly, that this was their only option, time was short and, if they did not sign, they would lose their homes. LPI was also generally unforthcoming about its fees. In almost all cases, the Affected Individuals did not appreciate that they had given written consent to LPI entering a restriction against their property for its fees, placing some of them who later came to sell in the invidious position of having to pay LPI significant sums or let their sale fall through.

94. LPI would then set about sourcing a loan, enlisting the assistance of brokers, and taking various steps in conjunction with the prospective borrowers (and others involved in the process) to facilitate its progression and completion. As for the loans themselves, in most cases, these were intended by the lenders to be non-regulated, requiring the borrower to use the loan for business purposes and/ or not to live in the property. In this regard, a further consistent theme of the evidence is LPI's request to many Affected Individuals to provide proof of address different from the secured property, to tell the surveyors valuing their homes they did not live at the properties or, in a few cases, to sign 'sham' tenancy agreements to create the (false) impression they resided elsewhere (and therefore satisfied lenders' conditions) even though LPI knew this was not the case and that the prospective borrowers intended to and did, in fact, live in their properties. Although a number of the Affected Individuals appreciated they were short-term or bridging loans, a common feature in many cases is that LPI did not tell them the identity of the lender(s) being approached or key loan terms such as loan amount. I am satisfied that this was due, at least in part, to the high cost of those loans which, when LPI's fees were included, increased their existing borrowings significantly, placing the Affected Individual in a worse position at the end of the new loan term.

95. Based on LPI's pattern of dealings revealed by the extensive body of evidence, I therefore have no hesitation in rejecting the general assertions made by LPI in its Defence that 'on occasion' it facilitated the Affected Individuals entering into secured loans, that it meaningfully explained its fees or the paperwork presented for signature or that LPI explained that they would have to vacate their homes to avail themselves of LPI's services or use a regulated broker instead. To the contrary, based on the evidence, I am satisfied that LPI made systematic efforts to secure the grant of loans it knew to be regulated and on terms the Affected Individuals did not satisfy, taking steps to convey the contrary impression to the brokers and lenders involved.

96. The general position I have described is well (if not completely) encapsulated by Mr Karaman in his witness statement (at [61]) where he says:-

> "*I believe that TS took advantage of the situation I was in and made me sign documents in a hurry and at very short notice. In hindsight, and all the way through, I believe that TS wanted me to sign his papers*

in a hurry, because he knew that I was anxious to clear my arrears. But he tried to get me to accept high-cost loans without explaining the potential pitfalls for me, for example trying to persuade me to sign blank loan applications and sourcing excessive amounts of loan monies I did not need, within 24 hours, with my having to sell my property to repay them. I believe TS wanted me to lose my property to his companies rather than help me sort out my problems. I am now trying to sell my house, but he is demanding extremely high amounts of money to remove the restriction that he placed upon my property."

97. I should add that the evidence also indicates that, in a number of cases, illicit methods were used to facilitate these loans, including the forging of bank statements,[13] the witnessing of signatures and certification of documents by solicitors whom the Affected Individuals had not met,[14] documents being placed before the Court in repossession proceedings to suggest that the properties of the Affected Individuals had been sold when, to the owners' knowledge, they had not[15] and 'sham' tenancy agreements being executed to give lenders the (false) impression that the Affected Individuals were renting their properties and not living in them.[16] I am not asked, and it is not necessary for me, to make findings of fraud, illegality or the like. I do not do so, albeit I have obviously had regard to such matters as are established by the evidence that are relevant to what I have to decide. In a related vein, I am also aware that certain criminal proceedings had been brought against TS (and Mr Chohan) in which allegations of mortgage fraud were made against them. I understand that these do not concern the cases before me and that the FCA does not rely on them. I have had no regard to them.

98. Finally, I make clear that my findings are limited to those issues I have to decide at this stage of the proceedings. Although I have, for example, received (and summarised herein) extensive evidence as to the level of borrowings by the Affected Individuals, their arrears and other debts, estimated property or equity values and the costs, expenses fees or losses incurred or paid as a result of their dealings with LPI, I make no related findings. Such matters may become relevant in any subsequent phase(s) of these proceedings and will be considered in detail, and any necessary further findings made, at that stage.

99. With that general overview, I now turn to the specific cases and whether LPI undertook regulated activities in relation to regulated investments (here, RMCs) with respect to the Affected Individuals, starting in the body of this judgment with Mr Harrington Thomas, setting out the relevant evidence and my related analysis and reasoning in some detail. I then address the other individual cases and set out in detail in Annex A my related findings, adopting the same analytical approach which, given the complexity of the regulatory regime and the number of cases, is inevitably formulaic and often repetitive.

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13 Begbaaji [A67].

14 Sanchez [A46]; Begbaaji [A66-67]; Moroney [A81].

15 Peters [A326(e)]; Dickens [A336(c)].

16 Thomas [J106]; Bowman [A3]; Terroni [A21]; Sanchez [A47]; Caton [A134]; Milone [A148]; Hazel [A172]; Cassar [A198]; Karaman [A247]; Alexander [A314].

Harrington Thomas (1) – evidence

100. Mr Harrington Thomas provided a witness statement and gave oral evidence, explaining that he owned a property in Thornton Heath, Surrey between 1981 and 2020. Following his divorce in 2011, he became sole owner but encountered difficulties repaying the existing loans secured on the property. By June 2019, his arrears with Melanite Mortgages (**Melanite**) were around £15,000 (with an outstanding mortgage of approximately £74,000). Taking into account his other secured loans, the arrears on his borrowings were around £80,000. He also had a large Council Tax debt.

101. Mr Thomas received an eviction order for 25 July 2019. He began looking on the internet for ways to avoid repossession. He wanted to pay off the Melanite mortgage and obtain a new loan with a longer term and lower interest rate before then looking into equity release. He found LPI which seemed to be able to offer the help he needed. He called TS who said LPI could stop the repossession and arrange loans and remortgages. He understood LPI's fees would be a small percentage of the final loan amount but was never told that LPI would be registering a restriction on his home. After speaking to TS, he understood that LPI would take the necessary steps to delay the eviction and find a company to remortgage the property. Mr Thomas did not receive an IFAD form until 26 March 2020 when DS sent the declaration under cover of an e-mail asking simply "[p]*lease can you sign and return*" without explaining the attachment.

102. Mr Thomas understood that TS delayed the eviction by three months but he did not know how. He believes TS then went to work on the remortgage process. Mr Thomas is now aware that, rather than arranging a conventional remortgage, TS had been trying to get a short-term bridging loan. He also believes that TS tried to use Azure,[17] then FBSE Finance Limited (**FBSE**) and 4Syte Limited (**4Syte**). 4Syte ended up providing the loan, albeit TS had not informed him of the loan amount. He assumed this to be about £100,000 but it turned out to be £205,000.

103. Pausing there, according to Mr Bulmer's evidence, Azure is a broker (neither authorised nor exempt). Azure's response to a statutory request for information from the FCA indicates that it provided access to unregulated finance and lenders to LPI's clients, including Mr Thomas, who risked having their properties repossessed. According to Azure, LPI took steps on behalf of its clients to avoid repossession, either by sale or by providing emergency funding to give the client a 'breathing space' to sell the property to maximise equity realisation without a forced sale. Azure had an arrangement with a 'master' broker, Soho (also neither authorised nor exempt). Once lenders' terms had been acquired, Soho would forward these to Azure, together with the relevant application forms and declarations and then, in turn, Azure to LPI. Azure had no involvement with LPI clients. Only LPI had face to face contact except when official facility agreements were to be signed and proof of name and address information had to be certified and the lenders required the clients

[17] Mr Thomas appears to have understood Azure to be a lender rather than a broker.

to meet in person with their solicitors instructed by LPI. LPI provided all the information required for the application forms which Azure would then complete. LPI would also collect signatures and supporting documentation from LPI clients. On several occasions, LPI also asked Azure to provide a letter for use in court repossession proceedings, explaining the stage an application had reached and when funds could be realistically available. Although no Azure representative gave evidence, I accept as accurate the information it provided to the FCA which is borne out by the evidence of the Affected Individuals and the contemporaneous documents in the individual cases. In Mr Thomas' case, those documents show that Azure and Soho were both involved in FBSE's prospective loan. Another broker, Rangewell Limited (**Rangewell**), an appointed representative, was also involved (together with Azure) in the actual loan provided by 4Syte. Neither FBSE nor 4Syte is authorised or exempt.

104. Mr Thomas did not recall the details of each loan application but the documents shed light on LPI's extensive activities in relation to both loans. However, Mr Thomas did recall TS phoning him, asking for proof that he lived at another address. When Mr Thomas questioned this, TS said the "*paperwork needed to give the impression that* [he] *did not live at the address that the lender would be securing the loan against but rather give the impression that* [he] *rented out the property as landlord*." TS also later requested that he change his home insurance to landlord's insurance. Mr Thomas provided proof of address documentation (a bank statement) showing him living at his ex-wife's address and made the insurance change. It is also clear from the documents that Azure understood Mr Thomas had moved out of his property, that he wanted to rent it out and that his future plan was to "[s]*ell the property*". However, Mr Thomas confirmed (and in oral evidence in similar terms) that he "*had no intention of moving out of the property as Tony had explained to me this was not required*."

105. In this regard, the related documents include an e-mail from DS to Mr Thomas dated 11 February 2020, stating that "[w]*ith regard to the insurance, we note that it refers to the property being occupied by the borrower and his family, which is not the case*", requesting he take this up with his insurance company. This might suggest on its face that DS understood that Mr Thomas had, in fact, vacated the property. However, TS's subsequent e-mail of 19 February 2020 repeated those quoted words and confirmed their source as the lender's solicitors, not the Defendants. Mr Thomas confirmed in his statement that he understood this request again reflected the need, as TS had explained earlier, to give the "*impression*" he did not reside at the property.

106. In a similar vein, Mr Thomas said that, on 25 March 2020, he received an e-mail from TS attaching a receipt showing a cash payment of £800 from Nevis Farquharson for rent on his property, requesting him to sign and return this, which he did. Mr Thomas said he did not know a Mr Farquharson, he did not rent out his house (or a room within it) between June 2019 and August 2020 and both TS and DS were aware of this and that he remained at the property. Mr Thomas also signed (as landlord) an Assured Shorthold Tenancy Agreement in favour of Mr Farquharson (as tenant). Although Mr Thomas did

not recall receiving this, the documents indicate that it was required by, and reached, 4Syte's solicitors. Finally on this aspect, the 4Syte property questionnaire stated that "*Property is let out to a tenant (see previously sent AST Agreement)*" and showed Mr Thomas as living at an address different from the property. Mr Thomas said that he did not believe he completed this document himself since some of the information in the form is incorrect and he was only sent the last page of the document to sign.

107. A letter from Azure dated 15 January 2020, forwarded by LPI to Mr Thomas on 29 January 2020, stated that the funding application had reached its final stages and, upon completion, the property would need to be vacated or tenanted. Mr Thomas said this did not "*come as a surprise*" to him because of TS's prior request to provide proof of address for a different property and confirmation that he did not have to vacate. An accompanying letter from LPI also explained that, once the funding was completed, Mr Thomas would need to obtain a long-term mortgage or start marketing the property. Mr Thomas says he understood from his discussions with TS that this was a standard letter and that no action was required because he had already discussed with him his intention of looking into equity release. Despite the application apparently being in its final stages, TS later informed Mr Thomas that the FBSE loan had "*fallen through*", possibly for coronavirus-related reasons. Mr Thomas believes that TS then began applying for a loan with 4Syte.

108. The 4Syte facility letter signed by Mr Thomas indicated a loan of £207,730 over a six month term. It also provided that, for the duration of the loan, the property "*shall not be occupied by the Borrower*" and contains provisions for the production to the lender of any tenancy agreement or proof of rental payments. Mr Thomas did not recall "*thoroughly reading*" this and believed it to be another document he was "*rushed into signing without having the opportunity to understand it or review it*". The facility letter also contains a business declaration, including:-

> "*We are entering into this [sic] entering this agreement wholly or predominantly for the purpose of a business carried on by us or intended to be carried on by us*."

109. The only time Mr Thomas met TS was after the latter told him that, to get the 4Syte loan, he would have to travel to Birmingham to sign paperwork at the offices of Jacobs Law, solicitors. TS assisted Mr Thomas with travel arrangements and attended the meeting on 30 March 2020. Mr Thomas does not believe that he had any contact with DS before 7 January 2020 when the latter contacted him about buildings insurance and the need to endorse FBSE's interest on the policy. However, he already understood from TS that DS was his brother and "*head of department at LPI*" (consistent with his title as "*Head of New Business*" shown on DS' e-mails, a title also used by TS).

110. The 4Syte loan was completed. However, realising that his debts, including the 4Syte loan redemption sum (£221,000), were too large, Mr Thomas put his property on the market and sold this.

Harrington Thomas (1) - analysis

111. The loan provided by 4Syte to Mr Thomas was an RMC within the meaning of article 61(3)(a) of the RAO (noted at [J30]), 4Syte having provided credit to Mr Thomas, the repayment of which was secured by a mortgage over land, such land being used, or intended to be used, as a dwelling, whether or not by Mr Thomas. FBSE's proposed loan would also have been an RMC. The question of whether or not Mr Thomas himself used, or intended to use, the property as a dwelling is, however, highly relevant to the application of potentially relevant exclusions in article 61A(1) of the RAO, namely 'investment property loans' and 'exempt buy to let contracts'. In this regard, it is evident from Azure's letter to Mr Thomas of 15 January 2020 that FBSE required the property to be vacant or let out under a short-term tenancy agreement. Likewise, it was a term of 4Syte's loan that Mr Thomas (and related persons) did not occupy the property, albeit it could be let out if an acceptable tenancy was in place. These requirements are consistent with what Azure told Mr Bulmer about the interest of unregulated lenders being to ensure that "*if the owner has ever lived at the property, that they no longer live in the premises and will not be living in the property while the unregulated facility is secured against the property*." As noted (at [J106]), the documents indicate that a tenancy agreement (with Mr Thomas as landlord) was provided to 4Syte's solicitors and evidence of rent payment obtained.

112. In my judgment, although FBSE and 4Syte required, and apparently believed, that Mr Thomas' property was to be vacated, it is the position as between LPI and Mr Thomas, viewed objectively, not the lenders' subjective understanding, that is decisive as to whether the relevant exemptions were engaged in this case. As to that, as noted (at [J84]), the Defendants assert in relation to LPI's secured lending activities generally that, where the loans were concluded other than through lenders or brokers authorised to undertake regulated activity, they were exempt from the concept of RMCs because of the vacation of the properties by the individuals, with no intention on their part to use these as a dwelling, either by themselves or by a related person (Defence at [4l]). However, as noted (at [J104]), Mr Thomas' evidence is that, although he provided proof of an alternative address and signed documentation to the effect that his property was tenanted, he never vacated his home or intended to do so, TS and DS knew this and he only provided or signed documents suggesting otherwise because he was requested to do so by TS to give the contrary 'impression' to the lenders.

113. Having reviewed the documents and Mr Thomas' statement, and having heard his oral evidence, I am satisfied that Mr Thomas was an honest witness and that his evidence, including on this important aspect, was truthful. In this regard, it might have been suggested that LPI told the relevant Affected Individuals, including Mr Thomas, that they would have to move out (as pleaded at [4l] of the Defence) and that those individuals agreed to do so but concealed from LPI their true intention to remain. However, had such a suggestion been made, I would have rejected it: first, a number of these witnesses volunteered quite independently of one another (but in very similar terms) that it was LPI which brought up the need to give the 'impression' that

they had vacated; second, such a submission would mean that all the relevant Affected Individuals who testified in person gave untruthful evidence to the Court. Even setting aside my assessment of their evidence as honestly given, this seems inherently unlikely; third, far more likely if they had 'pulled the wool' over LPI's eyes is that they would not have co-operated with the FCA at all. As it is, they have come forward and admitted that they 'went along' with what LPI proposed at the time, many feeling uncomfortable doing so then and, no doubt, recognising now that this was wrong; fourth, their evidence is also consistent with the contemporaneous record which shows an unnaturally close interest on the part of LPI in the documentation of their supposed occupation of an alternative address, including LPI even producing tenancy agreements; fifth, if these individuals had concealed their true intentions from LPI, this would have been easily discovered but there is no suggestion of this from the record, let alone of any related financing being withdrawn on that account; sixth, it was unlikely to be an attractive, viable or straightforward option for those already in mortgage arrears, but seeking to avoid repossession, to vacate their homes, rent these out and potentially have to pay rent themselves. If that was LPI's 'offering', there would likely have been much fewer, if any, 'takers'; seventh, that is presumably why LPI's website (discussed in detail (at [J183-185]) in the context of the 'financial promotion restrictions') states explicitly in its various iterations "*no need to vacate*"; eighth, nor would the other option supposedly offered by LPI to those not willing to vacate their properties (indicated in the Defence at [4l]), namely an introduction to a regulated broker, likely have yielded a viable solution either. Borrowers in arrears with their mortgages are unlikely to have had meaningful access to the regulated mortgage market with its stricter lending criteria. Given these difficulties, neither of LPI's options would have been fruitful in terms of the more limited opportunity they offered LPI to earn fees. Rather, I consider it far more likely (and lucrative) that LPI sought to 'tap' the unregulated market to secure loans for the relevant Affected Individuals even though they did not satisfy the loan conditions, including as to their non-occupation, instigating the necessary steps to give brokers and lenders the contrary (erroneous) 'impression' that they did.

114. Accordingly, I find that Mr Thomas did not vacate or intend to vacate his property and he did not rent it out, LPI knew this and Mr Thomas only provided a bank statement showing a different address and signed the tenancy agreement and rent receipt when asked to do so by LPI to make it appear to prospective lenders that he met their lending requirements even though, as LPI knew, he did not. Likewise, I accept that Mr Thomas was only sent the final page of the 4Syte questionnaire for signature and that LPI completed, or arranged for the completion of, the rest of that form (which Mr Thomas did not see), including the references to a tenancy agreement and an incorrect residential address for Mr Thomas. I therefore do not accept the Defendants' pleaded case (Defence at [4(l)]), so far as it is said to apply to Mr Thomas, that LPI explained he had to vacate his property if he wished to proceed with a secured loan with LPI's assistance, nor indeed the statement in the Defendants' response to the RFI that Mr Thomas "*moved out of the* [sic] *property*". LPI knew that Mr Thomas intended to (and did in fact) remain in his property. Despite this, LPI sourced loans it knew the lenders and brokers

intended to be unregulated and which required Mr Thomas to vacate the property but, to circumvent the latter, LPI told Mr Thomas he had to create the 'impression' he had vacated and assisted him to that end, including imparting to Azure erroneous information as to Mr Thomas' personal circumstances (noted at [J104] above).

115. Accordingly, neither the 'investment property loan' nor the 'exempt consumer buy to let contract' exemptions in article 61A(1) of the RAO was engaged. In relation to the former, I should also add that, although the 4Syte loan terms included a "[d]*eclaration for exemption relating to businesses*" (and, based on the cases of some of the other Affected Individuals, the FBSE loan would have done so as well had it gone forward), potentially engaging the presumption in article 61A(3) of the RAO that Mr Thomas entered into the loan wholly or predominantly for the purpose of a business carried out by him, that presumption would, in my judgment, easily be rebutted in this case. Indeed, considering objectively the position as between Mr Thomas and LPI, the former was acting to save his home from repossession, not for any business purpose. LPI knew this. In any event, the 4Syte declaration did not satisfy the requirements of article 61A(3) since it did not mention FSMA or RMCs. Nor was article 61A(5) of the RAO (deeming Mr Thomas to have had such a business purpose) engaged since, as I have found (at [J114]), Mr Thomas always intended to, and did, occupy the property as his dwelling. The absence of any business purpose is an additional reason why the 'investment property loan' exemption was not engaged and one reason why the 'second charge business loan' exemption was not engaged. Another reason why the 'second charge business loan' (and one reason why the 'limited payment second charge bridging loan') exemptions were not engaged was that, as the documents show, FBSE and 4Syte both required security in the form of a *first* charge over the property. Another reason why the 'limited payment second charge bridging loan' exemption was not engaged was because this secured lending was to be used to *remortgage* Mr Thomas' home, not for its *purchase*.

116. Accordingly, none of the potentially relevant exemptions in Article 61A(1) of the RAO applied to the lending in this case, such that the 4Syte and (potential) FBSE loans were (or would have been) RMCs. The question then arises whether LPI undertook any regulated activity in relation to those loans. Based on Mr Thomas' evidence and the information provided by Azure about LPI's activities (both of which I accept), and the contents of the related contemporaneous documents, I find that LPI undertook at least the following activities in relation the loans:-

(a) Gathering Mr Thomas' contact information and information about Mr Thomas' financial circumstances and mortgage needs;

(b) Arranging for the execution by Mr Thomas of an authority in favour of Azure "*to deal with the matter of raising finance against* [his] *pr*operty."

(c) Obtaining proof of an alternative address for Mr Thomas in the form of bank statements;

(d) Providing the Assured Shorthold Tenancy and rent receipt for the property and arranging for their execution by Mr Thomas;

(e) Arranging for FBSE's loan application to be signed, completed and submitted;

(f) Communicating, and seeking to have Mr Thomas address, FBSE's building insurance requirements;

(g) Co-ordinating the provision of an EPC report;

(h) Making upfront payments on behalf of Mr Thomas, including for funders' solicitors, property valuations and a County Court judgment;

(i) Arranging for the execution by Mr Thomas of client completion instruction and repayment of funds documents;

(j) Arranging for the execution by Mr Thomas of 4Syte's client consent form;

(k) Arranging for the execution of 4Syte's property questionnaire;

(l) Communicating, and seeking to have Mr Thomas resolve, 4Syte's buildings insurance queries;

(m) Arranging for the execution of 4Syte's coronavirus contingencies form;

(n) Co-ordinating and attending a meeting with Jacobs Law, solicitors, in Birmingham to execute documents for the 4Syte loan;

(o) Co-ordinating the provision of information and documentation to Jacobs Law, including in response to the queries raised by the lender's solicitors; and

(p) Co-ordinating the completion and signature of the TA6 property information form for 4syte.

117. In addition, LPI introduced Mr Thomas to Azure, Soho, FBSE, Rangewell and 4Syte (albeit Mr Thomas appears not to have been aware of Soho's and Rangewell's involvement).

118. I consider first whether LPI 'made arrangements' in relation to RMCs under article 25A of the RAO. In relation to the first limb of article 25A, as qualified by the exclusion in article 26, the FCA fairly brought my attention to the language of its related guidance (at PERG [4.5.2]) and the examples cited there of 'arrangements', such as the negotiation of the terms of the RMC with the eventual lender or the activities of certain so-called 'packagers' (see also PERG [4.15] in relation to the latter), as possibly suggestive of a 'high bar' in

terms of the substantive or systematic nature of the activity of the person 'making arrangements' for article 25(A)(1) to be engaged. Having considered the guidance and relevant authorities, in my judgment, whether the 'arrangements' are such as to 'bring about' the entry of the relevant transaction (whether an RMC or another type of specified 'investment'), is a question of fact and degree, depending on the particular circumstances of each case. I did not discern the examples in the FCA guidance as saying more than that. So, in the case of mortgage 'packagers', the FCA take the view that those companies engaged in a limited, 'outsourced' capacity may not be 'making arrangements' whereas those involved as 'broker packagers', offering a more comprehensive service direct to borrowers, might.

119. In this context, authorities such as *Inertia* (noted at [J42]) make clear that the word 'arrangements' is capable of having a wide meaning and that a person may make 'arrangements' even if his actions do not facilitate the execution of every step necessary for entering into, and completing, the relevant transaction. So, completing a 'fact-find' and arranging an interview for a 'fact-find' for the purpose of the client buying a particular investment, undertaking administration services to facilitate the relevant transaction, procuring a letter authorising liaison with the arranger, undertaking money laundering checks and completing application forms have all been held to amount to 'making arrangements' under the first limb of article 25 where, in the circumstances of the case, the article 26 causation test was satisfied (see *Simplysure* at [26]; *Inertia* at [41]-[42]; *Adams* v *Options UK Personal Pensions LLP* [2021] EWCA Civ 474 at [98]-[101]). In approaching the cases of the Affected Individuals, and considering these authorities, I recognise, of course, the different nature of the transactions with which articles 25 and 25A are respectively concerned and, therefore, the different context in which the principles they indicate fall to be applied. In this regard, the FCA guidance also indicates (at PERG [4.5.2G] and [4.14.4G]) that the provision of assistance in the completion of mortgage application forms might amount to 'making arrangements' within article 25A(1). Finally, as the Court of Appeal in *Avacade* made clear (at [48]), the combined effect of articles 25 (and therefore article 25A) and 26 are such that a person may make 'arrangements' even though the relevant transaction does not successfully complete.

120. In this case, although LPI's introduction to Azure (and, therefore, Soho, Rangewell, FBSE and 4Syte) did not of itself 'bring about' the 4Syte loan (or would not have brought about the FBSE loan), LPI's involvement in the remortgage process was more extensive than that, reflected in its other activities (noted at [J116(a)-(p)]). Those activities were undertaken "*for*" Mr Thomas to enter into the FBSE and 4Syte loans and their 'causal potency' such that they 'brought about' Mr Thomas' entry into the 4Syte loan (and would have done so for the FBSE loan had it progressed). Although I discerned from the Defence (at [2c-d]) an attempt to downplay its role, LPI needed to act as the interface with Mr Thomas and Azure and co-ordinate the remortgage process. This enabled it to 'control' events, reducing the risk that brokers and lenders would discover the loan conditions, particularly the requirement for Mr Thomas not to occupy the property, would not be met. As such, I find that the first limb of article 25A of the RAO was engaged.

121. In relation to the second limb, the FCA relies additionally on LPI's introduction of Mr Thomas to Azure (and, therefore, Soho, Rangewell, FBSE and 4Syte), referring to the FCA's guidance (at PERG [4.5.3G]) that, apart from the activities of publishers, broadcasters and website operators, a person may be making arrangements with a view to a person who participates in the arrangements entering into the RMC as borrower under article 25A(2) where they introduce the borrower to brokers or lenders. The FCA fairly pointed out that Holroyde J (as he then was) in *Watersheds Ltd v DaCosta* [2009] EWHC 1299 (QB) found (at [64]-[69]) that the claimant's introduction to investors (in a securities context) did not fall within article 25(2) of the RAO but submitted that his finding in that case was not of more general application and that, consistent with the related (post-*Watersheds*) FCA guidance (at PERG [2.7.7BD]), whether an introduction itself engages article 25A(2) is a question of fact in each case. I agree that, in principle, an 'introduction' may engage article 25A(2) (or the corresponding article for other investments regulated by the RAO) and, whether it does, will depend on the circumstances of the case, including the nature of the particular introduction in the context of the particular 'investment' involved. I did not understand Holroyde J's finding on the specific facts in *Watersheds* to be saying otherwise. In this case, I am in no doubt that the 'arrangements' undertaken by LPI on behalf of Mr Thomas (at [J116(a)-(p)]), as well as its introductions to brokers and lenders, were made with a view to Mr Thomas entering into the FBSE and 4Syte loans as borrower. Since Mr Thomas participated in those arrangements, article 25A(2) was also engaged in this case.

122. Having found that both limbs of article 25A were engaged in relation to Mr Thomas, I now consider whether any other relevant exceptions in the RAO applied, starting with those applicable to both limbs. The exception at Article 29 of the RAO is concerned with RMCs entered into on the advice of an authorised person. However, none of the brokers and lenders involved in this case was an authorised person. Nor were the FBSE and 4Syte loans to be entered into by Mr Thomas "*on advice*" in any event. Although there were some written communications from Azure to Mr Thomas, these were very limited and not in the nature of advice. Moreover, there is no indication in the documents of contact between Soho, Rangewell, FBSE or 4Syte and Mr Thomas. To the contrary, Mr Thomas makes no mention of Soho and Rangewell in his evidence and he appears to have been unaware of them. Likewise, 4Syte instructed solicitors, suggesting that this lender at least sought to keep matters at arm's length. In this regard, I accept Azure's explanation (consistent with Mr Thomas' evidence) that LPI 'fronted' the arrangements with LPI's clients such that there would have been no scope for brokers and lenders to have rendered advice even if they had been authorised persons. Nor is it "*clear*" to me, in all the circumstances, that Mr Thomas was not seeking advice from LPI on the merits of entering the FBSE and 4Syte loans. As such, even if one or more of the brokers or lenders had been authorised, the exception at article 29 of the RAO would still not have been engaged in relation to the FBSE or 4Syte loans.

123. As for article 67 of the RAO, as the FCA fairly pointed out, LPI might have argued that the arrangements in relation to those loans were undertaken in the course of the business of providing, and are reasonably to be regarded as a necessary part of, LPI's 'court-based' services provided to its clients, such services not being regulated, at least under FSMA. This argument was not explicitly advanced in the Defence but, had it been, I would have rejected it: first, although one of the early activities undertaken by LPI in their dealings with many of their clients (including Mr Thomas) was to provide assistance in connection with legal proceedings on foot with a view to avoiding or delaying possession, it is evident from the documents (including in relation to Mr Thomas) that LPI's 'core activity' was the facilitation of secured lending. To suggest that the facilitation of such lending was carried out in the course, and as a necessary part, of the court-based services would, in my judgment, represent the repossession 'tail' wagging the lending 'dog'; second, although both sets of services were often carried out by LPI, at least in part, in parallel, and they were complementary, they could have been carried out separately by different entities. Indeed, LPI's own website treated its lending facilitation services separately from its court-based activities. In this regard, I accept the FCA's submission (supported by the FCA guidance (at PERG 4.10.3G-4.10.4G), considered in *Capital Alternatives* (both noted at [J47(b)])), that article 67 is a narrow exception and it "*must, as a general rule, be the case that it is not possible for the other services to be provided unless the arranging or advising are also provided*". No doubt, the immediacy of possession proceedings afforded LPI the opportunity to go on and engage in lending facilitation services. No doubt, LPI's 'one-stop shop' offering was a more attractive proposition to Mr Thomas when he sought help from LPI and more lucrative for LPI. Nevertheless, LPI could have provided its court-based services to Mr Thomas without itself also providing loan facilitation services. As such, I find that the article 67 exception was not engaged in this case.

124. Since none of articles 26, 29 and 67 was engaged, I find that LPI engaged in 'making arrangements' under the first limb of article 25A in relation to the FBSE and 4Syte loans. Although it is therefore not strictly necessary for me to consider article 25A(2) any further, I nevertheless consider those exceptions potentially applicable to that second limb alone, namely articles 27, 33 and 33A of the RAO. As noted (at [J48(a)]), article 27 of the RAO affords an exception to article 25A(2) where the person making the arrangements merely provides a *means* by which one party to the RMC (or potential RMC) is able to communicate with other such parties. However, as the various activities noted (at [J116]) confirm, LPI's role was more extensive than a 'mere' means of communication. As such, I find that article 27 of the RAO was not engaged in this case.

125. As noted (at [J48(b)]), article 33 provides an exclusion from article 25A(2) for the making of arrangements under which the prospective borrower is introduced to an authorised or exempt person, provided that the introduction is with a view to the provision of independent advice (or the independent exercise of discretion) in relation to investments generally or any class of investments to which the arrangements relate. None of the brokers or lenders to which LPI introduced Mr Thomas was authorised or exempt, save for

Rangewell, an appointed representative, which brokered the 4Syte loan. However, as noted in the context of article 29, no advice was sought from, or given by, those brokers or lenders and, as noted (at [J122]), it appears that Mr Thomas was not even aware of Rangewell's involvement. LPI made the introductions to facilitate the provision of secured lending potentially available through, or from, not with a view to the provision of independent advice by, them. Nor was there any exercise of independent discretion. Finally, the arrangements made by LPI on Mr Thomas' behalf (noted at [J116]) were more extensive than introductions to those entities. For all these reasons, article 33 was not engaged in this case.

126. Finally, as also noted (at [J48(b)]), article 33A provides an exclusion from article 25A(2) for the making of arrangements under which the borrower is introduced to an authorised person or appointed representative and the introducer receives no money paid by the borrower for any RMC entered into as a result of the introduction and gives prior disclosure of any reward arising therefrom. In this case, Rangewell, an appointed representative, brokered the 4Syte loan. In the absence of evidence of LPI receiving money paid by Mr Thomas beyond the fees payable to LPI on its own account, LPI might have argued that article 33A was engaged. However, I would have rejected such an argument. As noted (at [J125]) in the context of article 33, given the nature and scope of LPI's 'arrangements', being more extensive than Mr Thomas' introduction to Rangewell, article 33A was not engaged in this case either.

127. Drawing these many threads together, I therefore find that LPI was 'making arrangements' under both limbs of article 25A of the RAO in relation to the proposed FBSE and actual 4Syte loans to Mr Thomas and that no potentially relevant exception applies.

128. The FCA also argues that LPI *advised* Mr Thomas on the merits of his entry into the FBSE and 4Syte loans within the meaning of article 53A(1) of the RAO. Although the FCA accepts that the record does not contain evidence of LPI *expressly* advising him on the merits of these loans, it says that such advice was *impliedly* given. In this regard, it is said that the context is all important: the Affected Individuals in this case, including Mr Thomas, approached LPI through, or after viewing, its website, seeking to save their homes, following which, there would be a call and/ or meeting with LPI and the presentation of documentation relating to a particular loan which they were then asked to sign. These circumstances are said to carry with them an implied recommendation, with LPI effectively advising the Affected Individuals that the relevant loan was the solution to the imminent repossession of their home. LPI could only avoid being found to have advised the relevant individual if it had made it explicit (which it did not) that it was merely helping to arrange the loan and not advising. LPI denies advising on RMCs. As noted (at [J82]), LPI accepts that it discussed at the outset in detail the options available to the Affected Individuals to avoid repossession but says it did not recommend any. In relation to the particular loans, as noted (at [J88-89]), LPI denies that these transactions or its related activities were regulated.

129. In deciding whether article 53A(1) of the RAO is engaged in the case of Mr Thomas, I have considered the guidance provided in *Walker v Inter-Alliance Group plc* [2007] EWHC 1588 (Ch) (at [30]), itself considered in *Rubenstein* (at [78-83], noted at [J51]), as both were considered by the Court of Appeal in *Adams* (at [69-82]), distilling the following points from those cases:-

(a) The test for whether advice has been given is an objective one: the question is whether an impartial observer, having due regard to the regulatory regime and guidance, and to what passed between the parties, would conclude that advice had been given;

(b) Advice on an unregulated investment is sometimes capable of involving advice on a specified one within the scope of article 53 of the RAO, depending on the circumstances;

(c) Although the simple giving of information without any comment will not normally amount to "*advice*", the provision of information which "*is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision of the recipient*" is capable of constituting "*advice*";

(d) Any element of comparison, evaluation or persuasion is likely to cross the 'dividing line';

(e) "*Advice on the merits*" need not be accompanied by information about the relevant transaction – a communication to the effect that the recipient ought, for example, buy a specific investment can amount to "*advice on the merits*" without elaboration on the features or advantages of the investment; and

(f) Generic advice is not covered under article 53 which requires the advice to relate to a "*particular investment*", albeit the advice does not necessarily have to apply to just one product or asset for article 53 to be engaged.

130. As the FCA effectively concedes, the facts of this case generally, and specifically in relation to Mr Thomas, do not reveal paradigm examples of advice rendered through, for example, the provision of information about an investment, accompanied by an express recommendation as to its suitability. Despite this, the facts of Mr Thomas' case, assessed objectively in the manner indicated above, do lead me to conclude that LPI gave advice to Mr Thomas on the merits of the FBSE and 4Syte loans such as to engage article 53. I reach that view for the following reasons disclosed by the evidence:-

(a) Mr Thomas reached out to LPI when faced with the prospect of imminent repossession of his property, his largest asset and his home;

(b) Mr Thomas did not have a clear view of how this would be achieved but he understood LPI would take steps to delay eviction and find a company to remortgage the property;

(c) As to the latter, Mr Thomas initially understood the remortgage would be a "*conventional remortgage*", not a short-term bridging loan;

(d) LPI 'sourced' specialist bridging finance for Mr Thomas through its own broker network operating in the unregulated market, with unsuitable loan conditions. As LPI knew, Mr Thomas was not seeking a loan for business purposes, nor did he intend to vacate or let his property. He was trying to avoid repossession and stay in his home;

(e) Knowing that the loans were unsuitable, LPI told Mr Thomas to take steps to give the 'impression' that he would be vacating the property and assisted him to that end;

(f) LPI provided limited information about the loans themselves. So, for example, Mr Thomas only discovered the (high) amount of the 4Syte loan on 17 April 2020 when he was sent a loan variation letter by Jacobs Law, reducing the loan amount to £205,000;

(g) LPI asked Mr Thomas to sign various documents to progress both loan applications without properly explaining their content or effect, including some in blank; and

(h) There is no evidence to suggest that, in taking these steps to progress the grant of the loans, LPI told Mr Thomas it was not advising him.

131. In circumstances in which Mr Thomas was in a precarious financial position and urgently sought to avoid repossession of his home, and LPI, having established his circumstances and needs, took the steps already described to source, and progress the grant of, the FBSE and 4Syte loans it knew to be unsuitable (not being conventional remortgages but short-term loans, requiring him not to live in the property and to use the funds for business purposes), doing so in a non-transparent manner, in failing to impart key information to Mr Thomas about the loans (such as their amount), requiring him to sign documents in a hurry, often in blank and without explanation, and in taking steps to circumvent lenders' requirements (by creating the impression that Mr Thomas was not, and would not be, living at the property), all the time 'fronting' the dealings with Mr Thomas, I have concluded that such dealings did carry with them LPI's advice that the loans were suitable for Mr Thomas' needs and the recommendation that he should enter into them. As such, I find that article 53A of the RAO was engaged. I also make clear that this finding applies to both the FBSE and the 4Syte loans, even though the former was not ultimately concluded. Considering objectively in the circumstances described the regulatory regime and the communications between LPI and Mr Thomas, the impartial observer would conclude that LPI rendered such advice in relation to both loans.

132. As noted (at [J50]), article 53A too is subject to the exception at article 67 of the RAO where the relevant advice is given in the course of any profession or business which does not otherwise consist of the conduct of regulated

activities in the UK and may reasonably be regarded as a necessary part of other services provided in the course of that profession or business. However, for the same reasons noted (at [J123]) in relation to article 25A, I find that article 67 has no application in the context of *advising* on RMCs under article 53A(1) either.

133. Finally, the FCA says that LPI engaged in the further regulated activity of *agreeing* to make arrangements for RMCs under either or both limbs of article 25A, such agreement being a specified activity in its own right. I have no hesitation in concluding that LPI did so agree with Mr Thomas. That much is evident from Mr Thomas' evidence (which I have accepted) as to his oral agreement with TS at the outset that LPI would arrange a remortgage in return for a fee and, in writing, from the IFAD signed later by Mr Thomas (and the other blanks IFADs in the record) to the same end.

134. Accordingly, subject only to the final issue of whether LPI carried on these activities "*by way of business*" (considered (at [J141-143]) after assessing the totality of LPI's dealings with the Affected Individuals), I find that the FCA has made out its case with respect to Mr Thomas.

RMCs/ 'attempted' RMCs – other Affected Individuals

135. With that long exposition of Mr Thomas' individual case and the reasoning upon which my related findings are based, I turn to the other Affected Individuals whom the FCA says were in the same or a similar position to Mr Thomas with respect to the (actual or prospective) remortgaging of their homes with the assistance of LPI. My analysis of their individual cases is set out in Annex A (following the case numbering of the trial bundle), Annex A forming an integral part of this judgment.

136. I have again considered carefully in each case the 'quality' of the underlying evidence. Many Affected Individuals, like Mr Thomas, provided written witness statements and gave oral evidence. In other cases, the FCA relied on statements made out of Court which were neither verified on oath nor tested in Court. The context in which those statements were made also differed: many made were to the FCA and therefore in response to a formal investigation, albeit not contemporaneously with the events they described, and in different forms (some in direct discussion with the FCA investigation team (as recorded in the FCA's attendance notes), less detailed contact reports with the FCA or written responses to standard written questions). Likewise, the length and level of detail contained within those statements differed and, in some cases, the statement makers had more limited first-hand knowledge of the events they described.

137. I have also taken account of the reaction to LPI expressed by the Affected Individuals. This was generally (but not exclusively) negative. Although I am satisfied that this did not lead the makers of those statements to lie or exaggerate, in some cases, as at trial, it was apparent that this led them to focus on those areas where they thought LPI had acted most egregiously even though not necessarily the most relevant to what I have to decide.

138. Moreover, as noted (at [J19]), there was a voluminous documentary record, most of it created contemporaneously with the events it describes. Although the extent of the record differs between the different cases of the Affected Individuals, this has been of invaluable assistance in providing an extensive, and generally neutral, documentary account of events and in allowing me to 'test' the statements of the individuals concerned.

139. Likewise, the evidence of the Affected Individuals in other cases has been of assistance, not least given the many similar facts and matters they describe concerning their separate and independent dealings with LPI.

140. Having analysed the facts, I then set out my reasoning and related findings, albeit more briefly than I did for Mr Thomas given the ground already covered in his case. The upshot of my analysis is that LPI undertook the regulated activity with respect to 'completed' or 'attempted' RMCs, as summarised in, respectively, Tables B and C below, subject again only to the final question of whether that activity was 'carried on by way of business' (considered at [J141-143]).

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Table B – Regulated activity in relation to 'completed' RMCs						
No	**Affected Individual**	**RMC**	**Arrange RMCs - Art 25A(1)**	**Arrange RMCs - Art 25A(2)**	**Agree to arrange RMCs - Art 64**	**Advise on RMCs - Art 53A(1)**
1	Harrington Thomas	FBSE[18]/ 4Syte – Y	FBSE/ 4Syte – Y	FBSE/ 4Syte – Y	Y	FBSE/ 4Syte – Y
2	Toni & Michael Bowman	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
3	Elaine Terroni	FBSE/[19] Tempus – Y	FBSE - Y Tempus - Y	FBSE – Y Tempus - Y	Y	FBSE – Y Tempus – Y
4	Donna Sanchez	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
5	Olujimi Begbaaji	Grosvenor – Y	Grosvenor - Y	Grosvenor - Y	Y	Grosvenor – Y
6	Mark & Louise Moroney	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
7	Robert Jackson	Gemini – Y	Gemini - Y	Gemini - Y	Y	Gemini – Y
8	Rose & Francis Alfred	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
9	Jacqueline McFarlane	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
10	Pauline & Tracy Caton	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
11	Lisa & Fabio Milone	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
12	Naveen DeSouza	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
13	Edward & Karan Hazel	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
42	Peter & Caroline Kershaw	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y

[18] The FBSE loan in this case was an 'attempted' RMC.
[19] The FBSE loan in this case was an 'attempted' RMC.

Table C – Regulated activity in relation to 'attempted' RMCs						
No	**Affected Individual**	**RMC**	**Arrange RMCs - Art 25A(1)**	**Arrange RMCs -Art 25A(2)**	**Agree to arrange RMCs - Art 64**	**Advise on RMCs - Art 53A(1)**
14	David & Margaret Cassar	FBSE – Y 4Syte – Y	FBSE – Y 4Syte - Y	FBSE – Y 4Syte - Y	Y	FBSE – Y 4Syte – Y
15	Stephen Suluk	Hope - Y	Hope - Y	Hope - Y	Y	Hope – Y
16	Suzanne Hulks	FBSE – Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
17	Gokhan Karaman	BridgeCrowd/ BFD/ Barton Bridging (or B2) - Y	BridgeCrowd/ BFD/ Barton Bridging (or B2) – Y	BridgeCrowd/ BFD/ Barton Bridging (or B2) - Y	Y	BridgeCrowd/ BFD/ Barton Bridging (or B2) – Y
18	Rose Onyema	TPF/ BFD - Y	TPF/ BFD - Y	TPF/ BFD – Y	Y	TPF/ BFD – Y
19	Sura Jardim	Unknown - Y	Unknown - **N**	Unknown - Y	Y	Unknown – **N**
20	Sheila (Princess) Elliott	Grosvenor/ Finanata/ Gemini - Y	Grosvenor/ Finanta/ Gemini – Y	Grosvenor/ Finanta/ Gemini – Y	Y	Grosvenor/ Finanta/ Gemini – Y
21	Laraine Colbourne	FBSE/ Grosvenor/ Finanta/ BFD - Y	FBSE - **N** Grosvenor - Y Finanta – Y BFD – **N**	FBSE/ Grosvenor/ Finanta/ BFD - Y	Y	FBSE - **N** Grosvenor - Y Finanta – Y BFD – **N**
22	Deborah Alexander	FBSE/ 4Syte - Y	FBSE/ 4Syte – Y	FBSE/ 4Syte - Y	Y	FBSE/ 4Syte – Y
23	Martin Peters	FBSE - Y	FBSE - Y	FBSE - Y	Y	FBSE – Y
24	Robert & Mary Dickens	FBSE - Y	FBSE - Y	FBSE - Y	Y	FBSE – **N**
25	Darren & Camilla Fletcher	Precise/ TPF - Y	Precise/ TPF – Y	Precise/ TPF - Y	Y	Precise/ TPF – **N**
26	Amber Akhtar	FBSE - Y	FBSE – N	FBSE - Y	Y	FBSE – **N**
27	Donna Riddell	FBSE - Y	FBSE – Y	FBSE - Y	Y	FBSE – Y
28	Michelle & Colin Thompson	Grosvenor - Y	Grosvenor - Y	Grosvenor - Y	Y	Grosvenor – Y
29	Seyhan Assaf	Unknown - Y	Unknown - Y	Unknown - Y	Y	Unknown – **N**
30	Ernest Bhatti	Hope – Y FBSE - **N**	Hope – Y	Hope - Y	Y	Hope – Y
31	Olumide Jabaru	Aura - Y	Aura – Y	Aura - Y	Y	Aura – Y
32	Marcus Perry	Unknown - Y	Unknown - **N**	Unknown - **N**	Y	Unknown – **N**
33	Antonio & Serafina Di Placido	B2 - Y	B2 – Y	B2 - Y	Y	B2 – Y
34	Sharon Michelle Lea	Grosvenor - Y	Grosvenor - Y	Grosvenor - Y	Y	Grosvenor – Y
36	Jonas & Agatha Tsormetsri	Hope/ HNW - Y	Hope/ HNW – Y	Hope/ HNW - Y	Y	Hope/ HNW – Y
37	Roy Gillett	BridgeCrowd - Y	BridgeCrowd – Y	BridgeCrowd - Y	Y	BridgeCrowd – **N**

Carried on 'by way of business'

141. As to that final question, as noted (at [J53-54]), for LPI to be acting 'by way of business' in relation to **arranging**, **agreeing to arrange** or **advising on**, RMCs, article 3A of CRAWBO requires it to have carried on the 'business of' carrying on these activities. As to this, LPI admits that:-

(a) " .... *the First Defendant carries on the business of providing services to financially distressed individuals ("Individuals") whose homes are at risk of being or have been repossessed by mortgage lenders*" (Defence at [2(b)]); and

(b) " ... *as part of its services the First Defendant from time to time and on occasions facilitated the entry by individuals into loan agreements with third-party lenders secured on the properties by legal charges*" (Defence at [2d]).

142. As noted (at [J120]), although perhaps no more than an incident of pleading style, I found this latter admission to be understated. It is apparent from a number of different sources that LPI's lending related activities already described were a central, regular and lucrative part of its business. Those sources include the many Affected Individuals who came forward to explain to the FCA (and a subset of them in person to the Court) their dealings with LPI with respect to the remortgage of their homes and the very high fees charged by LPI. The accounts provided by those individuals reflect a substantial and sophisticated business operation undertaken by LPI. Likewise, as noted (at [J103]), the information provided by Azure in response to the FCA's statutory request (which I have accepted) also confirms, from the different perspective of LPI's 'master broker', the (significant) extent of LPI's related activities, including in relation to the Affected Individuals. Finally, LPI itself, including through its own website (discussed at [J183-185] in the context of 'the financial promotion restrictions'), confirms the importance of its remortgage arranging activities and the sophistication of its operation. Likewise, LPI's own standard documentation (including its IFADs, Restriction Entry Consents and standard forms of authority) feature in most cases analysed and confirm the systematic and lucrative nature of its secured loan related services. To use the language of *Avacade* at first instance (noted at [J54]), LPI's 'arrangements' for such lending and its related agreements with, and advice to, the Affected Individuals formed a central part of its 'business model' and were designed to generate income. I therefore find that LPI did carry on the business of **arranging**[20] and **agreeing to arrange**,[21] and **advising on**, RMCs within the meaning of article 3A of CRAWBO.

143. I therefore also find that LPI did undertake the regulated activities in relation to RMCs for the Affected Individuals as explained above (for Mr Thomas) and in Annex A (for the other Affected Individuals), as summarised in Tables B and C above). Not being authorised or exempt, LPI thereby breached the 'general prohibition' at section 19(1) of FSMA.

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20 Under both limbs of article 25A of the RAO.

21 Under both limbs of article 25A of the RAO.

D2. ALLEGED BREACH OF THE 'GENERAL PROHIBITION' - SRAs

144. I now consider the further category of specified investments in relation to which the FCA says both LPI and NPI engaged in specified activities, namely SRAs within the meaning of article 63J(3)(a) of the RAO (noted at [J55]).

SRAs - the FCA's case (in outline)

145. The FCA's case in outline is that NPI carried on the business of entering into property transactions with financially distressed individuals under which those individuals transferred ownership of their homes to NPI which NPI rented back to the individuals under tenancy agreements (PoC at [3]).

146. The FCA says that, at the outset, the 'pattern' for SRAs replicates that with respect to RMCs (noted at [J69]), with individuals at risk of losing their homes contacting LPI, often having seen its website, the individuals then being contacted by LPI and often visited in their homes. LPI then recommended that the individuals transfer ownership of their property to NPI and represented that NPI would allow them to stay in their home in return for rent. LPI then put the individual in touch with solicitors to arrange the conveyancing, with TS liaising about the timing and implementation of the transaction. That transaction included a sale agreement and/ or transfer of title document by which the individual transferred the property to NPI and an assured shorthold tenancy agreement between the individual and NPI (signed by DS) and/ or an oral tenancy agreement between the individual and NPI (acting by TS), by which NPI rented back the property to the individual (PoC at [13.1]-[13.6]).

147. NPI's acquisition of the properties was facilitated by finance from a third party lender in favour of NPI and secured by a legal charge over the property. The rents from the individuals were paid into a bank account held by NPI. LPI (acting by TS) communicated with the individuals from time to time about the tenancy, including about the collection of rent. The transactions were intended to secure a commercial return for NPI by the acquisition of the properties at a price below market value and/ or the rent (PoC at [13.7]-[13.9]).

148. The FCA says (PoC at [17] and [19]) that these transactions were SRAs under article 63J(3) of the RAO and, since neither LPI nor NPI was authorised or exempt, they contravened the general prohibition in section 19 of FSMA by:-

    (a) LPI **making arrangements** with respect to SRAs under article 25E(1) and 25E(2) of the RAO;

    (b) LPI **advising** on SRAs under article 53D of the RAO;

    (c) NPI **entering into** SRAs as agreement provider under article 63J(1) of the RAO; and

(d) NPI (and LPI) **administering** SRAs under article 63J(2) of the RAO.[22]

LPI's and NPI's case (in outline)

149. The Defendants admit that NPI carried on the business of entering property transactions under which individuals transferred ownership of their properties to NPI and NPI rented out the properties. They also admit that, on occasion, NPI entered into "*separate transactions*" with such individuals following completion of the sale by which they entered into tenancy agreements with NPI. However, they also say that such tenancy agreements were "*separate and discrete transactions which did not form part of an Arrangement*" as required by article 63J(3)(a)(i) of the RAO (Defence at [2e]). They also admit that, as part of its services, from time to time and on occasions, LPI facilitated the entry by individuals into transactions with NPI (Defence at [2d]).

150. More specifically, the Defendants admit that:-

(a) The services provided by LPI in the run up to the property transactions were intended to provide a commercial return (Defence at [10]);

(b) The property transactions were intended to secure a commercial return for NPI through the acquisition of properties from financially distressed sellers below market value and/ or through the rental on those properties following acquisition (Defence at [11]);

(c) NPI facilitated the acquisition of the property by an advance from a third party lender, secured on the property (Defence at [9e]);

(d) NPI collected rent from the tenants of the properties transferred to it, some of whom were individuals who had transferred their properties to NPI (Defence at [9f]); and

(e) LPI and NPI communicated with the tenants, some of whom were individuals who transferred their properties to NPI (Defence at [9g]).

151. However, the Defendants deny that:-

(a) TS represented that NPI would allow the individuals to stay in their home in return for rent (Defence at [9c]);

(b) The property transactions included the sale agreement and the assured shorthold tenancy agreement (Defence at [9d]);

(c) The property transactions were SRAs under article 63J(3) of the RAO, the sale agreement and the separate and discrete tenancy agreements not being part of an "*Arrangement*" as required by article 63J(3)(a)(i) and the seller individual not being entitled to occupy at least 40% of the land in question as, or in connection with, a dwelling at the time of

[22] The FCA's principal case is that NPI administered SRAs, albeit LPI also undertook certain SRA administration services on NPI's behalf.

entering into the tenancy agreement, as required by article 63J(3)(a)(ii) (Defence at [12a-c]).

152. The Defendants therefore denied that the property transactions related to regulated transactions or involved regulated activity (Defence at [10-13]). However, in the Defendants' response to the FCA's RFI, the Defendants included information in schedule 1 about NPI's property purchase transactions, including those with 13 Affected Individuals in this case. Of those 13 transactions, the tabular schedule indicates that "*breaches*" are "*admitted*" in relation to 11 of them[23] for which Edward Marshall are shown as having "*provided tenancy agreement*" or "*Based on EM Model*" (or similar). The Defendants do not specify the breaches admitted by reference to the relevant regulated activity but, for any breach to be admitted at all, the Defendants must have accepted that the relevant 11 property transactions were SRAs within the meaning of article 63J(3) of the RAO. Despite those admissions, I have considered independently whether the property transactions between NPI and the Affected Individuals did indeed constitute SRAs within article 63J(3)(a) and, if so, what (if any) regulated activity was undertaken in relation to them by NPI and/ or LPI.

SRAs – general findings

153. Having set out the legal framework and the parties' positions in outline, I analyse in detail below (for the Moroneys) and in Annex B (for the other Affected Individuals) (i) the evidence relating to their dealings with LPI and NPI concerning the 'sale and rent back' of their properties and (ii) whether, in light thereof, the regulatory regime was engaged. Although I have considered in detail and made findings in each case based on its own specific facts, it is convenient to set out here my overall findings on those dealings as a result my review of all the evidence in the case.

154. Each of the relevant Affected Individuals was, again, in financial difficulty and at risk of losing their properties (a few following the expiry of loans sourced by LPI). They contacted LPI for assistance to avoid repossession, often later meeting with TS who stated that he knew a company, NPI, which was willing to purchase their property in which they could continue to live after the sale for so long as they paid rent. TS did not disclose his connection with NPI. Having then, or later, orally agreed (on behalf of NPI) with the Affected Individuals to the 'sale and rent back' of their properties, LPI would make various arrangements for the transaction, including instructing solicitors for the Affected Individuals and ensuring they signed sale and tenancy documents, often quickly, without any explanation of their contents or an opportunity properly to review them. They were also often unaware of the sale terms, particularly the sale price and net sale proceeds. A number of sales were below market value. The transaction documents generally provided for vacant possession on completion of the sale. Where the record contains a tenancy agreement, the term was often expressed to commence after completion of the sale even though, as LPI and NPI knew, the Affected

[23] Ms Lea is not identified in schedule 1 to the Defendants' response to the RFI. Breach is denied therein with respect to Mr and Mrs Moroney.

Individuals enjoyed uninterrupted possession of their properties throughout, consistent with LPI's representation at the outset that they could continue to stay in their properties. Documenting the transactions in this way was apparently intended to present the tenancy agreements as "*separate and discrete transactions which did not form part of an Arrangement*" as required by article 63J(3)(a)(i) of the RAO (as pleaded at Defence at [2e]) even though (as explained below and in Annex B), this was not the legal effect.

155. Finally, the evidence indicates that, in a number of cases, once the transaction had completed, TS continued to communicate with the Affected Individuals, often still holding himself out as acting for LPI, albeit now tasked with the collection of rent due to NPI.

156. I now turn to the individual cases, starting with the Moroneys (already considered (at [A78-91]) in the context of RMCs), setting out the relevant evidence and my related analysis and reasoning in some detail. I then address in Annex B the cases of the other Affected Individuals, albeit setting out my reasoning more briefly given the ground covered immediately below.

Mark Moroney - evidence

157. As noted ([A78]), Mr Moroney provided a witness statement and gave oral evidence, the accuracy of which I have accepted. In relation to the sale of the Moroneys' home to NPI, Mr Moroney explained how, towards the end of the term of the bridging loan arranged by LPI, they attempted unsuccessfully to obtain a new mortgage. Mr Moroney contacted TS again in March or April 2019. He agreed to look into matters and revert. TS did not do so and, in May 2019, Mr Moroney received a letter from Knights PLC (on behalf of FBSE) demanding full repayment of the FBSE loan (£201,725.80) within 14 days. Mr Moroney said that this was the first time he knew the full amount they had borrowed and was surprised that his debts had jumped so significantly compared to his previous mortgage (£117,000).

158. Mr Moroney says he contacted TS again who said he might have found someone who wanted to buy his property. He and his wife then met TS in person at a service station in May 2019. TS explained that a company called NPI was interested in buying his property in which they could stay paying rent (£1,525 per month, compared to his former mortgage payments of £866). According to TS, the sale of his property was their only option - no-one else could help - but it might cost more in the long run. The sale price and amount of sale proceeds were not discussed. Nevertheless, they agreed to this because Mr Moroney now had a job and they wanted FBSE 'off their backs'. In oral evidence, Mr Moroney confirmed that the whole idea was to sell the property and pay rent and, once 'back on their feet', they would buy back the property. During the meeting, they signed a number of documents to sell the property to NPI although they did not have an opportunity to read these nor were they explained. Some were blank which TS said he would complete later. There was a rush to sign and they did not receive copies. Mr Moroney was unable to specify the documents signed although the record contains an Agreement for sale and transfer form TR1 signed by him and his wife. From October 2019,

Mr Moroney paid the agreed rent by debit card to LPI (being unable to make bank transfers to NPI's account). Although they fell into rent arrears during the pandemic, they continued to make payments until October 2021, with TS often chasing them to make sure these were paid on time.

159. Finally, it transpires that the sale did not properly complete in October 2019 as intended due to a dispute between LPI and Edward Marshall (the solicitors handling the sale), the latter informing Mr Moroney that they were "*currently investigating Tony Stevens and LPI and they might be reporting them to the police.*" It appears that Edward Marshall never released the money they held to redeem the FBSE loan, the loan therefore remained secured against the property and the property was never transferred to NPI. FBSE later brought proceedings against the Moroneys and a possession order was made. At the time of Mr Moroney's witness statement, this was subject to appeal.

Mark Moroney - analysis

160. In the Defendants' response to the RFI, they deny any breach of FSMA or of the RAO from the transaction with the Moroneys, a denial explained as "*Property purchased, EM Kept money*". The meaning of that explanation, and its relevance to the engagement of the RAO, are not clear but, as for the RMCs, I have analysed this case by reference to whether (i) there was a regulated transaction and (ii) any related regulated activities were undertaken.

161. As to the former, article 63J(3)(a) of the RAO (noted at [J55]) is concerned with 'an arrangement' (comprised in one or more instruments or agreements) (i) for the purchase of all or part of a qualifying interest in land and (ii) under which the seller is entitled to occupy at least 40% of the land as, or in connection with, a dwelling, and intends to do so. In this case, the 'arrangement' for the purchase of the Moroneys' property was agreed (orally) by them and LPI (by TS), acting for NPI, at their meeting in May 2019 and, later (in writing), when contracts were exchanged on 18 October 2019. As such, the first limb of article 63J(3)(a) was satisfied.

162. The second limb is not so straightforward given (i) the provision for vacant possession on completion in the Agreement for sale and (ii) the Defendants' assertion that, in those cases in which tenancy agreements were entered into with those who sold their properties, such agreements were "*separate and discrete transactions which did not form part of an Arrangement*" as required by article 63J(3)(a)(i) of the RAO (Defence at [2e]). In this regard, I accept Mr Moroney's evidence that TS told him at their May 2019 meeting that he and his wife could stay at the property paying rent after it had been sold. Although TS may not have disclosed to the Moroneys his connection with NPI, LPI (acting through TS) clearly had authority to, and on the evidence, I find did, make such an agreement on NPI's behalf. NPI's own solicitors, Richard Solicitors, confirmed as much in their e-mail to FBSE's solicitors, Knights plc, dated 9 March 2020, in which they stated that " … *if agreement cannot be reached then I must take steps to protect the interests of* [sic] *Mr & Mrs Maroney, with whom our client agreed prior to exchange that they could occupy the property on an assured shorthold tenancy following the sale*".

Accordingly, by the time contracts were exchanged, the Moroneys were entitled, by reason of their prior (oral) agreement in May 2019, to continue to occupy the property as a dwelling following its sale and they intended to do so, albeit now as tenants. The sale and rental of the property agreed in May 2019 were inextricably linked and integral parts of the same 'arrangement'. The second limb of article 63J(3)(a) was therefore also engaged such that the transaction was an SRA.

163. In this regard, I should add that Mr Moroney fairly brought to the Court's attention in his witness statement a letter to Edward Marshall dated 31 October 2019 in which the Moroneys stated that "[i]*f the sale has completed let us know so that we can vacate the property*". On its face, this contradicts Mr Moroney's evidence that he and his wife intended to rent the property. However, not least having regard to its language and content, which strongly indicate the involvement of someone knowledgeable in property sale transactions, and its context, I accept Mr Moroney's evidence that the letter to Edward Marshall was drafted by TS or DS to attempt to break the impasse concerning the non-completion of the sale and that he and his wife had no intention to vacate. I should also say that the non-completion of the sale does not alter the analysis. Despite legal title remaining vested in the Moroneys, sale contracts were exchanged in October 2019. Nor, given the (oral) agreement from May 2019, providing for their continued right to occupy the property post-sale, does the absence of a written tenancy agreement.

164. I now consider whether LPI and/ or NPI undertook any regulated activities in relation to this SRA, drawing, where relevant, on the principles indicated by the authorities in the context of other types of specified investments, albeit again recognising the different nature of the transactions and different parties involved, and, therefore, the different context in which those principles fall to be applied. As to this, I am satisfied that, having 'facilitated' this transaction, LPI provided 'services' intended to secure a commercial return through the fees it charged (as pleaded generally in the Defence at [10], noted at [J150(a)]). As to nature of those services, based on the evidence, I find that LPI undertook the following activities:-

(a) Gathering information from LPI's records concerning the Moroneys' circumstances;

(b) Working out the rent to be paid by the Moroneys;

(c) Arranging for the sale documents to be prepared;

(d) Arranging for the execution of those documents by the Moroneys; and

(e) Transmitting those documents to Edward Marshall for completion.

165. I am satisfied that these activities engaged both limbs of article 25E of the RAO. Specifically, I am satisfied that these activities were undertaken "*for*" the Moroneys to enter into the SRA as agreement sellers (under article 25E(1)) and that they were of sufficient 'causal potency' in 'bringing about' the SRA

(within the meaning of article 26) that the first limb of article 25E was engaged. Likewise, such arrangements (and LPI's introduction of the Moroneys to NPI) were also made "*with a view to*" the Moroneys entering into the transaction as agreement sellers. Since the Moroneys participated in those arrangements, the second limb of article 25E too was engaged.

166. The FCA also asserts that LPI advised the Moroneys (as potential agreement sellers) on the merits of them entering into this SRA with NPI (under article 53D of the RAO). Again, the FCA accepts that it cannot point to any express advice or recommendation but, again, it prays in aid of the particular circumstances of this case, objectively considered, to say that LPI impliedly recommended this SRA to the Moroneys. In my judgment, the facts of this case are such as to engage article 53D for the following reasons disclosed by the evidence:-

(a) The Moroneys approached LPI again in early 2019 for further assistance;

(b) That approach was against the background of LPI having advised them in 2018 on their remortgage (noted at [A78-91]);

(c) The Moroneys were again in financial difficulty, liable to repay in short order a significantly greater sum than originally borrowed;

(d) Mr Moroney's evidence (which I accept) is that TS said that selling his home was the "*only solution*" and that no-one else could help;

(e) That view was imparted at the same time as he presented NPI as potential buyer of their property;

(f) TS did not disclose LPI's connection to NPI;

(g) TS was also unforthcoming about the terms of the SRA, including the sale price and net sale proceeds payable to the Moroneys; and

(h) TS asked the Moroneys to sign sale documents there and then (some in blank) but he did not explain these, they were unable to examine them and they did not receive copies.

167. In circumstances in which the Moroneys again found themselves in financial difficulties, seeking in short order to avoid default on their borrowings and repossession of the property, turning again to LPI, and LPI, having established their predicament, then proposed the sale of the property to NPI, doing so in a non-transparent manner, both as to the level of information provided about the SRA and LPI's connection with the purchaser, I have concluded that such actions carried with them LPI's implied advice that the SRA was suitable for their needs and the implied recommendation that they should enter into it. As such, I find that article 53D of the RAO was engaged.

168. Article 67 of the RAO (noted at [J47(b)]) also provides an exclusion to articles 25E and 53D for any activity carried out in the course of a profession or business not otherwise involving regulated activity. I have already found that LPI's activities in relation to secured loans were regulated. In any event, LPI's SRA related activities were not a necessary part of its secured lending business and could have been carried out separately by different entities. Nor, for the same reasons noted (at [J123]), could LPI's activities in relation to SRAs be regarded as a necessary part of LPI's 'court-based' activities. As such, article 67 of the RAO has no application in this case.

169. Turning to whether NPI undertook any regulated activities, I have no hesitation in concluding that NPI entered into a regulated SRA as 'agreement provider' (under article 63J(1) of the RAO). That is evident from the (oral) agreement from May 2019 by NPI (acting through LPI (by TS)) and the further (written) agreement in the form of the executed Agreement for sale of the Moroneys' property dated 18 October 2019, signed by DS on NPI's behalf. Again, the fact that title to the property remains vested in the Moroneys does not alter the analysis.

170. Finally, the FCA asserts that NPI (and LPI) administered a regulated SRA (under article 63J(2) of the RAO) by taking necessary steps for the purpose of collecting or recovering rent payments due from the Moroneys. Although there is clear documentary evidence of the rent payments, there is no such evidence of the steps taken to collect the rent. However, Mr Moroney confirmed in his written evidence that he paid the rent until he was 'furloughed' as a result of the pandemic, that he kept in contact with TS during this period "*because he was constantly chasing me to ensure that the rent was paid on time*" but that he eventually fell into rent arrears. I accept this evidence and infer that such 'chasing' continued with no less persistence when he fell into arrears. Moreover, as Mr Moroney also explained, he was unable to make bank transfers to NPI and paid using LPI's debit card facility instead. As such, NPI (as landlord) took necessary steps (including instructing LPI to the same end) for the purpose of collecting or recovering payments due under the oral tenancy agreement from May 2019. As such, I am satisfied that NPI and LPI both administered this SRA.

171. Accordingly, FCA has made out its case with respect to the Moroneys' SRA, subject only to the final issue of whether the activities I have found were "*carried on by way of business*" (considered at [J173-179]).

SRAs – other cases

172. With that long exposition of the Moroneys' individual case and the reasoning upon which my related findings are based, I turn to the other Affected Individuals whom the FCA says were in the same or a similar position with respect to NPI's purchase of their homes. My analysis of their cases is set out in Annex B which also forms an integral part of this judgment. In analysing each case, I have again carefully considered the 'quality' of the evidence in the manner indicated for RMCs (at [J136]). The upshot of my analysis is that LPI and NPI undertook the regulated activities with respect to SRAs in relation to

each of the Affected Individuals, as summarised in Table D below, subject again only to the final question of whether these were 'carried on by way of business'.

Table D – Regulated activity in relation to SRAs							
No	**Affected Individual**	**SRA**	**LPI arrange – art 25E(1)**	**LPI arrange – art 25E(2)**	**LPI advise – art 53D**	**NPI enter – art 63J(1)**	**LPI/ NPI admin-ister – art 63J(2)**
6	Mark & Louise Moroney	Y	Y	Y	Y	Y	Y
34	Sharon Lea	Y	Y	Y	Y	Y	Y
35	Rachel Dann	Y	Y	Y	Y	Y	Y
36	Jonas & Agatha Tsormetsri	Y	Y	Y	Y	Y	Y
37	Roy Gillett	Y	Y	Y	Y	Y	Y
38	Angela Waters	Y	Y	Y	Y	Y	Y
39	Peter Mitchell	Y	Y	Y	Y	Y	**N**
40	Lily & David Edwards	Y	Y	Y	Y	Y	Y
41	Edmund Rameshwar	Y	Y	Y	Y	Y	Y
42	Peter & Caroline Kershaw	Y	Y	Y	Y	Y	Y
43	Richard & Vivienne Savage	Y	Y	Y	Y	Y	**N**
44	Toniya Richardson	Y	Y	Y	Y	Y	**N**
45	Angela Addicott	Y	Y	Y	**N**	Y	**N**

Carried on 'by way of business'

173. As to that final question, as noted (at [J149]), the Defendants admit that:-

(a) "[NPI] *carries on business of entering into property transactions* [sic] *with under which they transfer ownership of their homes to* [NPI] *and* [NPI] *then rents out those properties.* [NPI] *has on occasions entered into a separate transaction with Individuals following completion of the sale whereby the Individuals have entered into tenancy agreements with* [NPI]" (Defence at [2e]); and

(b) " ..... *as part of its services* [LPI] *from time to time and on occasions facilitated the entry by individuals into ..... transactions with* [NPI]" (Defence at [2d]).

174. As noted (at [J150]), the Defendants also admit that:-

(a) "*The services provided by* [LPI] *in the run up to the Property Transactions are intended to secure a commercial return through the fees it charges*" (PoC at [14], admitted at Defence at [10]); and

(b) "*The Property Transactions are intended to secure a commercial return for* [NPI] *through the acquisition of properties of financially distressed sellers at a price below their market value and/or through the receipt of rent on those properties following their acquisition*" (PoC at [15], admitted at Defence at [11]).

175. It is again apparent from a number of different sources that the sale and rent back activities already described were a central, regular and lucrative part of the businesses of both LPI and NPI and the suggestion that they facilitated, or entered into, such transactions with the Affected Individuals "*on occasions*" is again understated. Those sources again include the many Affected Individuals who came forward to explain to the FCA (and a subset of them in person to the Court) their related dealings with LPI and NPI. Even Azure, which was involved in the secured lending aspects of LPI's business, was aware of LPI's alternative offering to halt possessions by "*finding a buyer for a property*" after the relevant individuals had signed "*fee contracts and instructions*." Indeed, LPI's standard documentation again features in most cases analysed, confirming the systematic and, in light of the fees charged, highly lucrative nature of its sale and rent back services. Likewise, NPI's extensive property portfolio, sizeable secured borrowings and rental activity reflected its substantial business undertaking concerned in the acquisition, and rent back, of properties. NPI gained financially both from the purchase of the property at below market value and from the rental income stream.

176. Again to use the language of *Avacade* at first instance (noted at [J54]), I have no hesitation in finding that LPI 's property sale and rent back services to the Affected Individuals formed a central part of its 'business model' and were designed to generate income such that LPI did carry on the business of

arranging,[24] and **advising on**, SRAs within the meaning of article 3D of CRAWBO.

177. As noted (at [J60]), article 5 of CRAWBO provided (at the material times relevant to this case) that a person was to be regarded as carrying on the activity of **entering into an SRA** by way of business if he carried on the activity of entering into an SRA (unless a 'related person' in relation to the agreement seller). Since NPI was not such a 'related person' in the case of any Affected Individual, I find that NPI was acting by way of business in relation to that regulated activity as well.

178. Finally, the collection of rents from the Affected Individuals renting the properties acquired by NPI was obviously a central part of NPI's business, being its main source of income. Although the rent was paid to NPI, LPI's SRA related activities were also a central part of its business. The evidence shows that, as part and parcel of putting in place arrangements for the SRA transactions (for which it received fees), LPI identified itself as the point of contact for the former owners in the management of their (now tenanted) properties, including with respect to the payment of rent. As such, the requirement for the regulated activity of **administering SRAs** to be carried on 'by way of business' (not modified by CRAWBO) was also satisfied in relation to both NPI and LPI.

179. In light of these findings, I also find that LPI and NPI undertook regulated activities in relation to SRAs for the Affected Individuals as explained above (for the Moroneys) and in Annex B (for the other Affected Individuals), as summarised in Table C above. Not being authorised or exempt, LPI and NPI thereby breached the 'general prohibition' at section 19(1) of FSMA.

D3. ALLEGED BREACH OF THE 'FINANCIAL PROMOTION RESTRICTIONS'

180. The FCA also says that LPI breached section 21 of FSMA by communicating, in the course of business, an invitation or inducement to engage in investment activity. I have already set out (at [J61-64]) the framework for the regulation of the promotion of investment activity under section 21 of FSMA and the FPO. However, the FCA also drew my attention to relevant parts of its guidance, including PERG 8.4.2, explaining that only communications containing a degree of 'incitement' would amount to 'inducements' and that communications of a purely factual nature would not, the intention being "*to capture promotional communications only*."

181. According to PERG 8.4.4, the FCA considers it appropriate to apply an objective test to decide whether a communication is an invitation or inducement, namely whether a reasonable observer would, taking account all the circumstances at the time of the communication (i) consider that the communicator intended the communication to persuade or incite the recipient to engage in investment activity or that that was its purpose and (ii) regard the communication as seeking to persuade or incite the recipient to engage in

[24] Under both limbs of article 25E of the RAO.

investment activity. A communication without an element of persuasion or incitement, it is said, will therefore not be an invitation or inducement.

182. Finally, PERG 8.4.22G(1) also indicates that an invitation or inducement might be intended to encourage its recipient to engage in investment activity with a third party, for example, by means of an introduction where the introducer seeks to persuade the person they are introducing to do business with the third party to whom the introduction is made.

The 'promotional' communication relied on by the FCA

183. The FCA's factual case centres on LPI's website, the domain name for which is owned by DS. I was taken first to the version of LPI's website active as at 25 August 2017. The website shows the name "*LPI*" and the trading name "*EMERGENCY PROPERTY FINANCE*". In terms of the 'message' communicated by the website, it asks "*ARE YOU FACING REPOSSESSION?*" followed by "*YOU CAN KEEP YOUR HOME!*", followed by statements to the effect that the reader did not have to lose or sell their property and the repossession and eviction could be stopped today, with reference to "*24HR – 48HRS PROPERTY LOANS*". The website describes later in separate boxes the activities apparently undertaken by LPI, including reference to the immediate raising of funding, the handling of all court documents and fast emergency loans.

184. The references to loans on LPI's website did not explain whether LPI was the provider or arranger of the loans. This presumably explains the FCA's letter dated 9 October 2017, addressed to DS at LPI's registered address, in which the FCA expressed concerns about LPI (i) providing short-term bridging loans and, therefore, entering into regulated credit agreements despite LPI's lack of authorisation (ii) communicating an invitation or inducement to enter into regulated credit agreements and (iii) claiming on its website that it worked in association with the FCA even though not an authorised person. LPI responded on 12 November 2017 by e-mail through its solicitors, Edward Marshall. LPI denied offering property loans or short-term bridging loans itself or engaging in investment activity but explained, in what the FCA says appears to have been a 'nod' to articles 26, 29, 33 and 33A of the RAO (noted above), that all enquiries were passed to "*Regulated Brokers who then deal directly with the customers …*". LPI agreed to change its website to make that clear (as well as removing the FCA logo).[25]

185. To that end, a subsequent iteration of LPI's website dated 16 November 2017 did not contain the FCA logo and it removed the apparent ambiguity about LPI's role by stating that LPI would provide "*introductions to regulated brokers who can assist with raising immediate funding to save your home*", also explaining that a "*team of authorised regulated brokers can process fast emergency property loans*." Despite this clarification, the FCA says it does not matter that the website suggested the 'controlled activity' would be

[25] This exchange of correspondence is discussed further (at [J195-196]) in the context of whether TS and/ or DS were 'knowingly concerned' in regulated activity within the meaning of sections 380 and 382 of FSMA.

undertaken by third party intermediaries; section 21 of FSMA was still engaged because LPI was promoting the services of those regulated brokers.

Is section 21 engaged in this case?

186. As to whether section 21 was engaged in this case, it is clear that LPI *caused* communications to be addressed to prospective customers within the meaning of section 21(13) of FSMA. That LPI did so is evident from the communication being made through its own website, the domain name for which was owned by LPI's director. Moreover, as Edward Marshall's e-mail of 12 November 2017 makes clear, LPI had the ability to make, or direct changes to, its website (and did so). Finally, as noted (at [J64(c)]), article 6 of the FPO provides that such communications need not be addressed to specific persons but can, as here, be directed to persons generally.

187. The next question that arises is the nature of any relevant 'investment activity' in which LPI is said to have invited or induced the engagement of its prospective customers. The website referred to potential customers (i) being in arrears with their existing secured loans (ii) saving their homes and avoiding repossession (iii) being introduced to "*Regulated Brokers*" and (iv) obtaining further 'property' loans. From this, it is apparent that (i) the relevant loans would not be business loans (ii) they would be secured against the customers' properties and (iii) the customers would continue to live in their properties. As such, I consider the website communicated the ability of those customers to enter into agreements with regulated brokers, the performance of which would constitute the 'controlled activity' (within the meaning of section 21(8) and (9) of FSMA) of 'making arrangements' for those customers to enter, as borrower, into an agreement for the provision of 'qualifying credit' (within the meaning of paragraph 10A of Schedule 1 to the FPO), being credit provided pursuant to an agreement under which (i) the lender enters into an RMC under article 61 of the RAO (noted at [J30]) and (ii) the obligation to repay is secured (in whole or part) on land. In this regard, I agree that, on its terms, section 21 of FSMA does not require the communicating party to be the same party as that undertaking the relevant 'controlled activity' such that, if the former invites or induces a person to do business with the latter, section 21 may still be engaged.

188. As to whether the communications which LPI caused to be made to prospective customers from its website did amount to an 'invitation' or 'inducement', I agree with the FCA that these terms carry a requirement for the element of persuasion or incitement which falls to be assessed objectively having regard to the circumstances of the case at the time of the communication. I am satisfied that this element was present here: the website was explicitly addressed to prospective customers in the precarious position of losing their homes and it explained LPI's fast response and acceptance times, the immediacy of the loans (within 24 to 48 hours), the absence of the need for credit checks, the direct payment of funds and the prospect of money in their bank accounts "*within days*" as well as the availability of the "*LOWEST RATES IN THE UK*". The website also identified the experience of LPI's specialist team, its freephone contact number and availability 7 days a week.

Viewed objectively, such language is properly to be regarded as seeking, and calculated, to persuade or incite prospective customers to avail themselves of the services of the regulated brokers referred to on the website. Indeed, the element of persuasion or incitement in the words used is palpable. I therefore have no hesitation in finding that there was such an 'invitation' or 'inducement' under section 21 of FSMA.

189. Moreover, the communication from LPI's website was self-evidently made "*in the course of business*" within the meaning of section 21 of FSMA. The whole point of the website was for LPI to generate fees from the services being promoted. As the FCA correctly submitted (as noted at [J64(a)]), this requirement presents a lower bar than, for example, the requirement for a 'regulated activity' to be "*carried on by way of business*" within the meaning of section 22 of FSMA (noted at [J25]), let alone as that concept is refined by articles 3A and 3D of CRAWBO (with respect to certain regulated activities in relation to, respectively, RMCs and SRAs (noted at [J53-54] and [J60]). Nor does the fact that the website also promoted non-controlled activities in the form of LPI's 'court based' services alter the analysis. Those 'offending' communications which *did* concern 'controlled activities' were still made "*in the course of business*", whatever additional activities that business may have encompassed. Nor was the exception at section 21(2) of FSMA engaged here. LPI was not an authorised person nor is there any suggestion that the content of LPI's website had been approved by an authorised person.

190. Finally, in reaching the findings I have, I recognise that what was being promoted by LPI was different from what was actually 'received' by the Affected Individuals in the sense that LPI in fact (i) introduced very few Affected Individuals to *regulated* brokers and (ii) played a significantly greater role in the arrangement of RMCs for the Affected Individuals than 'mere' introductions. Nevertheless, despite this mismatch between what was being promoted and the reality experienced by the Affected Individuals, for all the reasons given, LPI was in contravention of section 21 of FSMA.

E. TS' AND DS' POTENTIAL ACCESSORY LIABILITY

191. I now turn to the question of the potential accessory liability of TS and/ or DS for the purpose of sections 380 and 382 FSMA in respect of (i) LPI's and NPI's breach of the general prohibition in section 19 of FSMA and (ii) LPI's breach of section 21 of FSMA.

192. In setting out the overarching legal framework (at [J66]), I have already summarised the helpful guidance provided by *Capital Alternatives* as to what is meant by 'knowingly concerned'.

'Knowingly'

193. In relation specifically to the element of *knowledge*, I have also already alluded (at [J65]) to an argument which the FCA fairly says the Defendants might have sought to run based on the findings in the *Ferreira* case (in the context of section 21 of FSMA). In *Ferreira*, there was no dispute that the

defendant had acted in contravention of section 21(1) by communicating an invitation or inducement to engage in an investment activity. However, section 21(2)(b) disapplies section 21(1) where the content of the relevant communication has been approved by an 'authorised person'. The question arose in *Ferreira* whether the defendant's mistaken belief that the firm of accountants approving the communication was authorised had such a disapplying effect. Although the court at first instance accepted the defendant's account of her state of knowledge, it nonetheless found that the defendant was 'knowingly concerned' in the contravention of section 21(1). In doing so, the court drew on *SIB* v *Scandex Capital Management* [1998] 1 WLR 712, and the structural differences between section 21 of FSMA and its predecessor provision, to conclude that the defendant's mistaken belief as to the status of the approving accountants was irrelevant. The Court of Appeal concluded otherwise, finding (at [36]) that the difference in drafting of the statutes was "*one of style and not substance*" such that the defendant was entitled to pray in aid of her mistaken belief to avoid accessory liability for contraventions of the FPO. The FCA suggested in this case that TS and/ or DS might have relied on *Ferreira* to say that its effect was to impose a higher standard of knowledge on their part for them to be considered 'knowingly concerned' in the relevant contravention for the purposes of sections 380 and 382 of FSMA. The FCA's circumspection as to TS and/ or DS' possible arguments in this regard appears to have been driven in part by the response to the RFI in which (at [8]) the latter denied being 'knowingly concerned' in the contraventions of the relevant requirements of FSMA and the RAO because:-

> "*TS and/ or DS acted upon the advice of solicitors instructed on their behalf namely Edward Marshall Solicitors, who at all relevant times advised the Defendants that the actions of the Defendants were not in breach of the Act or the RAO*."

194. The FCA notes that the focus of this denial is not on their mistaken knowledge or lack of knowledge of the transactions or of the conduct of LPI and NPI amounting to the contraventions, rather than, based on their reliance on Edward Marshall's legal advice, of their legal status. As to this, the FCA says that the relevant knowledge is knowledge of the *factual*, not the legal, basis for the relevant contravention. The FCA also says that TS and DS have not made out any mistaken belief as to the legal position in any event. First, the positive evidential position, such as it is, advanced by TS and DS (based on the seventh witness statement of their solicitor) appears to be silent as to the provision of legal advice to LPI with respect to RMCs. As for SRAs, the position appears to be that the Defendants understood these transactions to be lawful, not because of explicit legal advice to that end, but merely because Edward Marshall acted for, and reported to, different parties to the transactions and did not flag anything amiss. Second, the evidential position, in fact, points to LPI (and therefore TS and DS) being astute to the requirements of the regulatory regime. It is said that this is evident from the FCA's contact with LPI in late 2017 (already noted at [J184] in the context of section 21 of FSMA and the FPO) in which the FCA raised its concerns about LPI's potential engagement in unregulated lending (and related promotion) in breach of sections 19 (and 21) of FSMA. In that apparent 'nod' to articles 26, 29, 33 and 33A of the

RAO, Edward Marshall's response was to say that "[a]*ll enquiries are passed on to Regulated Brokers who then deal directly with the customers although obviously our clients are kept advised of how the matters are progressing*." However, that response was contrary to fact: even though brokers were involved in the RMCs, it was LPI which had most direct interaction with the Affected Individuals and the majority of those brokers were neither authorised nor exempt in any event. The FCA says that the appropriate inference to be drawn is that LPI well understood the legal regime, was aware of its own non-compliance and sought to 'deflect' the FCA by portraying its activities as anodyne compared to the reality.

195. I agree that Edward Marshall's communication to the FCA reflected not insignificant insight on LPI's part as to the operation of the regulatory regime for RMCs. I also consider that Edward Marshall's representation of different parties to the SRAs without expressing any concern does not, without more, indicate a mistaken view by LPI or NPI (and therefore by TS and DS) as to the legal status of the SRAs that were concluded. If anything, LPI's and NPI's awareness of the engagement of the regulatory regime is shown by the steps it took to give the false impression (already noted at [J94] and [J154]) that Affected Individuals entering into RMCs no longer lived at their properties and, for those entering into SRAs, that they only became entitled to occupy their properties as tenants after completion of their sale. Although it could be argued on LPI's and NPI's behalf that these steps were directed to lenders' requirements rather than the regulatory regime, such an argument would have less force in the SRA context where the borrower was NPI, not an Affected Individual. Moreover, lenders' processes were, in any event, likely 'shaped' in not insignificant part by a concern (legitimately) to remain outside the scope of regulation. In my judgment, given LPI's and NPI's efforts (and those of TS and DS on their behalf) to conceal the true position with respect to the occupation status or intentions of the Affected Individuals, a key aspect of the regulatory regime with respect to RMCs and SRAs, the proper inference is that they were well aware of that regime and nevertheless took active steps (illegitimately) to circumvent it.

196. In any event, I agree with the FCA's primary submission that being 'knowingly concerned' in a contravention connotes knowledge of the *facts* on which the contravention depends, not of their *legal effect* (see Scandex (at [720E-H]), as applied or cited with approval in *Financial Services Authority v Fradley* [2004] All ER (D) 297 at [38]-[40]; *Financial Services Authority v Martin* [2004] EWHC 3255 (Ch) at [38]-[49]; *Capital Alternatives* at [802], noted at [J66] (itself cited with approval in *Avacade* at first instance (at [454]-[455]); and *Adams* at first instance ([2020] EWHC 1229 (Ch) at [129]-[130]). *Ferreira* did not question that proposition nor did it seek to impose a higher standard of knowledge for accessory liability to attach. Rather, *Ferreira* decided that, for someone to be 'knowingly concerned', the constitutive elements of the relevant contravention were properly to be read as including section 21(2) of FSMA. I have adopted the same approach when considering below the position of TS and DS in relation to both sections 19 and 21.

'Concerned'

197. As noted (at [J66]), *Capital Alternatives* makes clear that, in addition to actual knowledge of the contravention, the relevant individual must have actual *involvement* therein. The latter is a broad concept, not limited to those with *primary* involvement in the contravention but also encompassing those who 'pull the strings'. Whether such involvement is made out will depend on the facts of the particular case.

'Knowingly concerned' - discussion

198. TS was the Head of New Business for LPI. DS sometimes used the same title.[26] Both were named 'agents' on LPI's standard form of Legal Authority Instruction. DS is the shareholder and director of both companies. DS owns the domain name of LPI's website. TS is DS's father. The FCA says that the evidence of TS's involvement in, and knowledge of, the regulated activities considered earlier takes the form of his interactions with the relevant Affected Individuals as their main direct point of contact. I agree. It is readily apparent to me from my analysis that TS was 'front and centre' of, deeply involved in, and obviously had knowledge of, all the transactions (both RMCs and SRAs) described above with respect to each of the Affected Individuals. As such, I have no hesitation in finding that TS was 'knowingly concerned' in each of the contraventions of the 'general prohibition' found with respect to LPI and NPI for RMCs and SRAs.

199. As the FCA accepts, the position of DS is less obvious. He had less involvement in the transactions described above, he was less 'visible' to many of the Affected Individuals and he featured less frequently on the face of the documents. Moreover, as noted (at [J66]), the fact that (as here) DS was the *de jure* director of LPI and NPI would not, without more, be sufficient to compel a finding that he was 'knowingly concerned' in their contraventions. However, my review of the documents reveals that DS had significant knowledge of, and involvement in, the individual transactions considered in this judgment. Although I do not set out in this judgment each of those activities,[27] it suffices to say that this took many forms, including, for example, for RMCs, DS' assistance in progressing the relevant loan applications, communicating with the Affected Individuals about the loans and entering and withdrawing restrictions at the Land Registry. For SRAs, this included executing sale and tenancy agreements, arranging finance for NPI's property purchases and registering the related charges at Companies House. Although DS may not have been involved in the individual transactions to the same degree as his father, such conduct was still so extensive and critical to their progression, and his knowledge of them self-evident from his involvement, that he too was 'knowingly concerned' in the related contraventions. Although there is no direct evidence of DS' activities in six individual cases,[28] given the evidence as to the nature and extent of his involvement in the many other cases, and the evident incompleteness of the record, I am satisfied that

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[26] Thomas [J109]; Lea [A449]; Tsormetsri [A463].

[27] DS' activities in relation to the individual transactins are distilled by the FCA in its written closing submissions. Having reviewed the underlying documents, I adopt that distillation.

[28] Desouza (12); Hulks (16); Peters (23); Dickens (24); Bhatti (30); Jabaru (31).

DS was knowingly involved in all the contraventions I have found in all the cases.

200. Notwithstanding this finding, I accept the FCA's primary submission that knowledge of, and involvement in, *each* transaction is not a pre-requisite to accessory liability in any event. As *Capital Alternatives* (noted at [J66]) held, a person does not have to be *primarily* involved in the contravention to be 'knowingly concerned' since, otherwise, that person would be able to 'sit back', direct the contravening activities from a distance and still keep his own hands 'clean'. Looking at matters more broadly, it is evident from DS' activities across all the cases that he played such a critical role in the operation of the businesses of LPI and NPI that, although undertaking more of a 'back office' role than TS, DS was still clearly a 'leading light' in both. On this basis too, DS was also 'knowingly concerned' in each of the contraventions of the 'general prohibition' I have found with respect to both RMCs and SRAs.

201. Insofar as the 'financial promotion restrictions' are concerned, TS and DS ran LPI's operations and were obviously both aware of the content of its website, being the principal means for the Affected Individuals to find, and contact, LPI and, thereby, for business to be generated. DS owned the domain name. As such, I have no hesitation in finding that both TS and DS were 'knowingly concerned' in LPI's contravention of the 'financial promotion restrictions'.

202. In reach these findings, I have noted the FCA's circumspection arising from *Ferreira* (noted at [J65]), and the need to consider all the constituent elements of the relevant contravention. As to these, self-evidently, TS and DS both knew that (i) neither LPI nor NPI was authorised nor exempt (such that the 'carve out' in section 19(1)(a) and (b) of FSMA was not engaged) and (ii) the content of LPI's website was not approved by an authorised person (such that the 'carve-out' in section 21(2)(b) was not engaged).

F. EFFECT OF MY FINDINGS/ RELIEF

Section 26 of FSMA

203. As noted (at [J28]), section 26 of FSMA provides that:-

> "*(1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party*."

204. As noted (at [J29]), section 28(3) provides that:-

> "*(3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow–*
>
> *(a) the agreement to be enforced; …*"

205. I have found that LPI and NPI both engaged in multiple breaches of the 'general prohibition'. Those breaches were exploitative of vulnerable

individual consumers. They undertook the regulated activities I have found to obtain significant personal gain. Having regard (as I must under section 28(5) of FSMA) to whether LPI and NPI reasonably believed that they were not contravening the 'general prohibition' by making the agreements, as noted (at [J195]), I am satisfied that LPI and NPI both knew that their actions breached the 'general prohibition'. In those circumstances, I see no basis to depart from the general rule that the relevant agreements (in this case, the Service Agreements in relation to both RMCs and SRAs and the transactions encompassing the latter) are unenforceable. To the contrary, I consider it would be unjust and inequitable for those agreements to be enforced. I reach that view notwithstanding that LPI's 'court-based' activities (not regulated by FSMA) were carried out under the auspices of the same Service Agreements. Section 26 does not require every aspect of the relevant agreement to relate to regulated activities.

Relief sought

206. Having found that LPI and NPI engaged in the regulated activities identified in this judgment, and that the related agreements are unenforceable, I now consider the question of the relief sought by the FCA at this stage of the proceedings, namely:-

(a) A declaration that LPI has contravened the 'financial promotion restrictions';

(b) A declaration that LPI and NPI have contravened the 'general prohibition';

(c) A declaration that the Service Agreements as between LPI and the Affected Individuals (with respect to both the RMCs and SRAs) and the transactions embodying the SRAs are unenforceable against the relevant individuals by reason of section 26 of FSMA;

(d) a remedial order under section 380(2) of FSMA, requiring LPI to remedy its contraventions of the 'general prohibition' by applying to HM Land Registry to remove restrictions against the properties of Affected Individuals in respect of liabilities under the Service Agreements; and

(e) an injunction under s.380(1) of FSMA, restraining continuing or repeated contraventions of the 'general prohibition' and 'financial promotion restrictions' by LPI and NPI.

Declaratory relief

207. The power to grant declaratory relief is contained in section 19 of the Senior Courts Act 1981 and CPR, Part 40.20, the latter providing that:-

> "*The court may make binding declarations whether or not any other remedy is claimed*."

208. As the commentary to the White Book at CPR, Part 40.20 states:-

> "*The power to make declarations is a discretionary power. As between the parties to a claim, the court can grant a declaration as to their rights, or as to the existence of facts, or as to a principle of law (Financial Services Authority -v- Rourke [2002] C.P. Rep. 14 (Neuberger J). When considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration* (*ibid*)."

209. In *Rourke* (a case brought by the Financial Services Authority to enforce section 3 of the Banking Act 1987 with respect to the alleged unlawful taking of deposits without authority), the claimant authority sought declarations that the defendant had accepted deposits on 60 occasions within a specified period in contravention of section 3 and had knowingly made false statements to four separate individuals as to the use of deposits. In light of the terms of CPR, Part 40.20, Neuberger J considered the Court's power to grant declarations to be unfettered, albeit the Court still needed to satisfy itself that the grant of such relief was appropriate.

210. In this case, I am so satisfied in relation to each of the declarations sought: first, in my view, those declarations are consistent with and supportive of, the objects of FSMA and the legislation in issue, including the protection of consumers, the integrity of the UK financial system and effective competition in the markets, and will assist the FCA in the further discharge of its investigatory function to those ends, both in this case and more generally; second, in terms of publicity, although I did not understand the FCA to suffer the same confidentiality constraints as in *Rourke*, the declarations may well be of assistance to the Affected Individuals in this case. All are individual consumers and most are not well resourced and may be unable to bring their own proceedings against the Defendants; third, they may also be of assistance to those individuals who have been potentially affected but for whom there is presently insufficient evidence to bring their cases before the Court; fourth, drawing clearly, publicly and with the authority of the Court, the 'line' of what is (and is not) permissible, may assist in preventing other individuals (intentionally or otherwise) from engaging in the same type of activity.

211. Although as Neuberger J said in *Rourke*, the declarations will inevitably have a stigmatising effect on the Defendants, the unauthorised regulated activity I have found is a very serious matter. The declarations will, however, be of benefit to the Defendants in the sense that the precise ambit of the conduct found, the particular defendants involved, and their respective roles, will be clear. As the FCA points out (and as Neuberger J considered in *Rourke*), the Defendants might argue that declaratory relief in these proceedings would render impossible any future criminal prosecution. However, I understand that there are no current criminal proceedings concerning the subject matter of this civil case. Moreover, any declarations I might make in this case would not be

of *criminal* liability. The question of whether any future criminal trial could be fair would be a matter for the relevant criminal court then.

212. Finally, it might again be argued by the Defendants that a declaration as to the unenforceability of the Services Agreements should not be granted in circumstances in which LPI's 'court-based' services were 'covered' by the same agreements. Although this would not prevent the Defendants' regulated activities from contravening the 'general prohibition' and, as I have found (at [J205]), would not prevent section 26 of FSMA applying, it might be said to be relevant to the exercise of my discretion to grant a declaration as to the unenforceability of the underlying agreements or transactions. However, I would have rejected that argument in this context as well: first, I am satisfied that LPI's central activity was its arranging of secured lending by third party lenders and property purchases by NPI, not its 'court-based' activities; second, the contraventions of the 'general prohibition' I have found were not one-off or trifling but were systematic and I am satisfied that they were undertaken in a deliberate effort to circumvent the regulatory regime; third, even though the impact of the publicity of the declarations sought should not be overstated, I am satisfied that the benefits to the grant of declaratory relief already described far outweigh its potential disadvantages.

213. Accordingly, I accede to the FCA's request for each of the declarations sought, subject to two matters: first, the terms of that relief will need to be carefully framed. The precise formulation can be discussed when considering consequential matters arising from the judgment; second, I presently make no declaration in relation to Ms Richardson's SRA since, as noted (at [B140-141]), she has pursued proceedings seeking more extensive findings than those sought herein (and potentially inconsistent relief). I will therefore reserve my decision as to the grant of declaratory relief in her case until I hear further from the FCA as to the status of her proceedings.

Remedial Order

214. The FCA also seeks a 'remedial order' under section 380(2) of FSMA which provides that, if the Court is satisfied:-

> *"(a) that any person has contravened a relevant requirement, and*
>
> *(b) that there are steps which could be taken for remedying the contravention,*
>
> *the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it*."

215. In this case, the FCA invites the Court to order LPI to apply to HM Land Registry to remove the restrictions registered against the properties of the Affected Individuals. It does so on the basis that this section embodies a very wide remedial power permitting an order to be made in such terms. The FCA again fairly brought to my attention potential arguments open to the

Defendants. First, they might argue that the relief sought was not of a *remedial* nature. Second, they might also argue that section 380(2) needs to be read against section 26 of FSMA which identifies the effect of a breach of the 'general prohibition' as the *unenforceability* of the underlying agreement or transaction. Analogous to the position in *The Royal Bank of Scotland* v *McGuffick* [2009] EWHC 2386 (Comm) in relation to 'enforcement' under the Consumer Credit Act 1974 (at [77]-[83]), the Defendants' refusal to remove a restriction against the property of an Affected Individual might be said not to represent *enforcement* of the underlying Service Agreement such that invoking the remedial power in section 380(2) to compel that outcome would be a step too far. Third, the Defendants might argue that such relief should not be granted *now* in circumstances in which the Court will not be considering at this stage the further relief sought by the FCA in the form of restitutionary orders under section 382. The remedies in sections 380(2) and 382 are not mutually exclusive and, since the facts in any case of an Affected Individual might come within both, such that both remedies are potentially available, it would be imprudent now to consider section 380(2) in isolation.

216. As to the first potential argument above, section 380(5) of FSMA provides that "*references to remedying a contravention include references to mitigating its effect*." The relevant contravention here included LPI 'making arrangements' for, and with a view to, the Affected Individuals entering into RMCs and SRAs. LPI did so in return for fees it sought to secure by way of restriction against their properties. I therefore have no hesitation in finding that causing LPI to remove those restrictions would mitigate the effect of that contravention and, as such, could properly be required under a 'remedial order.'

217. As for the second potential argument, whether or not a refusal to remove the restriction would properly be viewed as the 'enforcement' of the underlying agreement or transaction, is beside the point. Section 380(2) is not, on its terms, constrained by section 26 of FSMA and 'enforcement' should not, in my view, be conflated with remediation.

218. Although remedies may be available under both sections 380(2) and 382 in the individual cases I have examined, I am satisfied that it would be appropriate to make a 'remedial order' under the former at this stage of the proceedings. A common feature of many of the cases of the Affected Individuals is that the continuing presence of the restriction on the register of title to the properties has left them in the invidious position of requiring them either to abandon plans to sell their properties, alternatively pressuring them to pay very large fees under agreements which, as I have found, contravene the 'general prohibition'. Granting a 'remedial order' now would bring that unsatisfactory state of affairs to an end and prevent further immediate harm. Were matters to remain in abeyance, the restriction mechanism could, in effect, continue to be used in furtherance of LPI's financial gain from its contravening activities. I will therefore grant the order sought, subject again to its precise terms, in particular as to which Affected Individuals and properties are still affected by the restrictions registered by LPI.

Injunctive relief

219. Finally, the FCA seeks an injunction under s.380(1) of FSMA, restraining continuing or repeated contraventions by LPI and NPI of the 'general prohibition' and 'financial promotion restrictions'. Section 380(1)(b) provides that the Court may make an order restraining the contravention if it is satisfied that "*that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated*."

220. In this case, I have found that LPI and NPI contravened the 'general prohibition' and LPI the 'financial promotion restrictions'. I am satisfied that the risk of a continued or repeated contravention is a "*reasonable likelihood*". Although no doubt the Defendants would say that they have stopped their activities the subject of these proceedings such that injunctive relief is not required, this would overlook, for example, the strong financial incentive for NPI (and LPI on its behalf) further to administer SRAs by continuing to collect the rent from the former owners of the properties bought by NPI. I am reinforced in my view that an injunction would be appropriate by reason of the Defendants' failure properly to engage in this case with the Court processes through their non-compliance with their disclosure obligations. Moreover, as noted (at [B3]), it is also apparent from Ms Lea's evidence that, on 10 July 2020, the same day the FCA served the asset freezing injunction it had obtained on an interim basis against the Defendants, TS contacted Ms Lea to say he would be providing her with new bank account details for the payment of her rent. Although the Defendants may have an explanation for these matters, in my view, they nevertheless demonstrate a *reasonable likelihood* of further contravention such that I consider it would be appropriate to exercise my discretion in favour of the grant of injunctive relief, both in respect of the 'general prohibition' and the 'financial promotion restrictions'. I do so, subject again to the precise framing of that relief.

G. PROCEDURAL MATTERS

221. I will hear further in relation to consequential matters arising from this judgment, including as to the precise formulation of the Order encapsulating the relief to be granted at this stage of the proceedings and as to their future conduct. As to the latter, there also remains the question of the cases of the potentially affected individuals not presently before the Court and whether I should permit the adjournment of the hearing of the claim in respect of them to the next phase when the court will consider the further relief sought in respect of the Affected Individuals.

222. The FCA's application to that end was supported by the witness statement of Matthew Stone, a lawyer working within the FCA's Enforcement and Market Oversight Division. Mr Stone explained the attempts made by the FCA since January 2020 to identify and contact potentially affected individuals. As a result of its enquiries, the FCA believes that there are 140 properties in respect of which the Defendants provided services to 133 individuals (a small number owning multiple properties). Of those 133 individuals, the FCA has managed to contact 71, 45 of whom are represented in the current claim, there being (at

that stage) insufficient evidence of breach of FSMA in relation to the other 26. Various contact efforts were made in relation to the remaining individuals but the FCA says these were hampered by the Defendants' late and incomplete disclosure and ongoing trial preparations. The FCA anticipates that findings of contravention by the Defendants in relation to the Affected Individuals (as now established by this judgment) will attract the attention and engagement of potentially affected individuals who are unlikely to be able to maintain a claim other than through the representative auspices of the FCA. Indeed, based on the FCA's enquiries, a number of the potentially affected individuals either have (or have had) restrictions registered against their properties, securing potentially significant debts to LPI. They may also have significant claims for other heads of loss.

223. Having considered carefully the FCA's evidence, I am satisfied that it has established a compelling case for the adjournment of the claim in respect of the potentially affected individuals. Although the Defendants will suffer some prejudice by the later determination of that claim, I am satisfied that they bear not insignificant responsibility for that. In any event, I am also satisfied that, were I to decline the adjournment, the prejudice to the potentially affected individuals would far outweigh that experienced by the Defendants. In reaching my decision, I have also had regard to the Overriding Objective, including the needs of other Court users. However, given that there will be a further phase of these proceedings in any event and, in all likelihood, efficiencies as a result of my above findings with respect to the Affected Individuals, I conclude that the adjournment should be granted. I therefore accede to the FCA's application and will consider further the future course of these proceedings following the hand down of this judgment.

H. DISPOSAL

224. Subject to the formulation of the terms of the Order, I will therefore grant:-

(a) declarations as to (i) LPI's and NPI's contraventions of the 'general prohibition' (ii) the unenforceability of the related Service Agreements (for both RMCs and SRAs) and of the transactions embodying the SRAs and (iii) LPI's contravention of the 'financial promotion restrictions';

(b) remedial orders in respect of those properties of the Affected Individuals over which restrictions continue to be registered in favour of LPI, requiring LPI to apply to remove the same;

(c) an injunction restraining further contravention of the 'general prohibition' and of the 'financial promotion restrictions'; and

(d) the adjournment of the hearing of the claim with respect to the potentially affected individuals.