



Neutral Citation Number: [2014] EWHC 383 (Ch)

Case No: HC12A02469

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

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

Date: 20/02/2014

Before :

**MRS JUSTICE ASPLIN**

Between :

(1) AMANDA STEPHANIE CLUTTERBUCK **Claimants**  
(2) IAN SCRANTON PATON

- and -

SARAH MOHAMMED SALEH AL AMOUDI **Defendant**

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Stuart Cakebread and Paul de la Piquerie (instructed by GuneyClark & Ryan) for the  
**Claimants**  
Jonathan Seitler QC and Emer Murphy (instructed by Clarkslegal LLP) for the **Defendant**

Hearing dates: 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18,19, 22, 23, 24, 25 and 26 July 11  
and 12 November 2013

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**Approved Judgment**

**(REDACTED VERSION)**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this  
Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE ASPLIN

**Mrs Justice Asplin:**

1. The Claimants' claim is for fraudulent misrepresentation, deceit and breach of trust. These claims arise out of various property dealings in and around Knightsbridge, Belgravia, Chelsea and Westminster, London, (the Area).
2. The First Claimant, Ms Clutterbuck has since 1985 been engaged in the business of acquiring, refurbishing, letting and selling and financing the development of properties in the Area. The Second Claimant, Mr Paton assists Ms Clutterbuck in her business by finding opportunities to acquire, refurbish, let, sell and redevelop properties.
3. But for the period during which it is alleged that unbeknownst to Ms Clutterbuck, Mr Paton and the Defendant were having an affair, it is not disputed that since about 1994 the Claimants have lived as man and wife. Nevertheless, they maintained separate finances and property holdings, albeit that they have been jointly interested in development projects from time to time.
4. The Defendant, Ms Al Amoudi is the owner of various properties in the Area. The circumstances in which she acquired those properties is at the centre of this case.
5. In summary, the Claimants' case as put in the Re-Re-Amended Particulars of Claim is that Ms Al Amoudi was introduced to Mr Paton by Elliott Scott Nichol, ("Mr Nichol") as a potential joint venturer in relation to property development in the Area and was introduced as a person who represented very substantial Saudi Arabian and other Middle Eastern investors. It is pleaded that amongst other things, it was orally represented that Ms Al Amoudi is a Saudi Arabian princess, the daughter of Sheikh Mohammed Al Amoudi a Saudi Arabian/Ethiopian billionaire, was a member of the Saudi Arabian Royal Family by marriage, that her mother was related to the Saudi Arabian Royal Family and that both Ms Al Amoudi and her family were interested in investing in property in the Area.
6. It is said that the representations together with the manner in which Ms Al Amoudi conducted herself as a woman of immense wealth, were relied upon by Mr Paton and as a result he was induced to enter joint ventures and agreements in relation to properties on his own behalf and that of Ms Clutterbuck. The Claimants contend that the representations were false and were known to be so by Ms Al Amoudi who was guilty of fraud and deceit.
7. It is said that Ms Clutterbuck was wholly unaware of the participation of Ms Al Amoudi in any of the property ventures until 2009 and therefore, that the representations were made to Mr Paton and through him to Ms Clutterbuck whose money was used in the transactions. In fact, Ms Clutterbuck gave evidence that Mr Paton was the person dealing with all the property joint ventures which are the subject of the action and that she was not involved. Save for her involvement in the Hans Place development to which I refer below, I accept her evidence in this regard.
8. In essence, there are two main heads of claim. The first is that pursuant to joint ventures, induced by the fraudulent misrepresentations, the Claimants transferred £2.282m to Ms Al Amoudi or her agents in relation to the purchase of various

properties and in addition, paid between £800,000 and £1m in refurbishment costs in respect of properties all of which are registered in Ms Al Amoudi's sole name.

9. The second head relates to what became known as the Hans Place Joint Venture. The Claimants had already participated in the assembly of a site at 53-56 Hans Place in part through a company called Knightscross Limited in which Ms Clutterbuck had an interest. The assembly consisted of the purchase of various flats within the buildings. The Claimants were interested in extending the scheme to include the entirety of 48-56 Hans Place and 5-7 Herbert Crescent which is adjacent to it.
10. It is said that both Mr Nichol and Ms Al Amoudi were involved and that in April 2008, Ms Al Amoudi undertook to secure Sharia mezzanine financing through a Middle Eastern consortium in the sum of £46m. As a result of an alleged representation by Ms Al Amoudi that a Sharia loan had been obtained, which was untrue, Mr Paton says that he was persuaded to transfer six properties which became known as the Security Properties to Ms Al Amoudi at an undervalue. As a result of what is said to be the fraudulent misrepresentation as to the availability of the Sharia finance and the payment of the alleged arrangement fee, measured against the background of the other alleged misrepresentations as to Ms Al Amoudi's identity, the Claimants seek to rescind those transfers or alternatively, contend that Ms Al Amoudi holds the properties on trust for them.
11. In her Defence, it is said that there were no joint venture contracts or arrangements to which Ms Al Amoudi was a party, whether in relation to Hans Place or otherwise. On the contrary, it is said that any involvement which Mr Paton may have had in Ms Al Amoudi's property dealings was in his role as her trusted adviser in the context of a romantic relationship between them. It is denied that the Claimants paid for the refurbishment of Ms Al Amoudi's properties and it is said that the £2.28m used in the purchase of properties was by way of repayment by Mr Paton of monies which he owed to her.
12. Further, Ms Al Amoudi contends that she had no knowledge of the Hans Place Joint Venture agreement and that the Security Properties were transferred to her at less than their full value as a set off for the monies owed by Mr Paton to her which she had lent to him. She denies any knowledge of Sharia mezzanine finance.
13. Ms Al Amoudi counterclaims for the return of certain documents, a number of items of jewellery which she says that she gave to Mr Paton for safe keeping and in respect of sums which she says she lent to him or gave him for safe keeping and which were not returned.

#### Background to the proceedings

14. I should explain that this matter has been a long time in coming to trial. The claim was commenced in the Truro County Court in February 2010 by Ms Clutterbuck alone. Ms Clutterbuck produced her own Particulars of Claim in which she alleged that she had suffered loss as a result of Ms Al Amoudi's deceit but had not been aware either of Ms Al Amoudi or of the loss until the death of Mr Nichol in December 2009. Mr Nichol was described as Ms Clutterbuck's business partner.

No mention was made of any joint venture but that as a result of deceit Ms Clutterbuck's funds had been transferred to Ms Al Amoudi without Ms Clutterbuck's knowledge or authorisation.

15. In fact, no mention was made of any joint venture in the skeleton argument for the Claimants for the hearing of Ms Al Amoudi's application to set aside the judgment obtained against her in default. Joint ventures were first mentioned in Ms Clutterbuck's second witness statement sworn the day before that hearing. In any event, the judgment in default was set aside in September 2010. The matter was transferred to the Central London County Court and from the Central London County Court to this division of the High Court.
16. On 10 May 2010, Ms Clutterbuck had emailed Ms Al Amoudi's litigation solicitor, Mr Morris about Ms Al Amoudi's possessions which had been left in a garage at 80 Pavilion Road. In the final paragraph of that email she stated:

*"I have had no knowledge of your client whatsoever, until her conversion, and the unauthorised transfer, of my properties into her name, was recently made known to me. I have never given permission to your client to make use of my garaging for storage, nor to have her make use of my flats for her family and friends, without my knowledge or authority. . . . .*

*For the record Ian Paton is under a Court Order not to make contact with me and any liaison necessary in relation to family commitments etc have to be made by appointment with third parties and third parties must also be present. Witnesses will confirm that he has, since I discovered your client's conduct subject to my claim, returned all keys and other documents etc he holds in his possession. . . ."*

17. However, in cross examination, Ms Clutterbuck accepted that the statement in relation to the Court Order was completely untrue. She said that she had made it in order to protect her family from what she described as harassment. She said that her daughter had been subjected to constant ringing of the door buzzer at 54 Hans Place and that over Christmas 2009, her father's home in Cornwall had been searched by police who were looking for a woman in a burkha who had allegedly been kidnapped. This was confirmed by Ms Annett Osborne. Ms Al Amoudi was found to be in her flat in London with the solicitor who had assisted her in her asylum application, Mr Shah. Ms Clutterbuck said therefore, that her ploy was to lead Ms Al Amoudi's solicitors to believe that there was distance between her and Mr Paton in order to avoid such behaviour which she viewed as harassment.
18. I should mention that in March 2010, Ms Osborne had applied for planning permission in respect of premises at Seaforth, Westcliff, Porthtowan, Truro, as agent and in the name of Ms Al Amoudi and had certified that she was the owner of the property. Ms Osborne accepted in cross examination that she knew that Ms Al Amoudi owned the property at the time and that she had been asked to complete the application and make the declaration by Ms Clutterbuck.

19. I should also mention that it was not until April of this year that the allegations concerning Ms Al Amoudi's identity which took up a great deal of time at the hearing and upon which it is said that the Claimants relied and as a result of which were induced to make the payments of £2.28m, to pay the refurbishment costs to which I have referred and together with the alleged misrepresentation in relation to Sharia funding caused them to transfer the Security Properties to Ms Al Amoudi, were included in the pleadings.

### The Witnesses

20. This case turns for the most part upon issues of credibility and accordingly, my assessment of the witnesses and in particular, the parties in this matter, is of particular importance. I do not refer to each and every witness below.
21. I found Mr Paton to be a very unreliable and unsatisfactory witness. In general, questions had to be put to Mr Paton a considerable number of times and often, he failed to answer the questions put to him at all. He often gave long, rambling answers which were not directed to the question and often relied upon stock phrases such as "mutuality of trust" and "accounting basis" rather than give a direct answer. I found him to be generally evasive to the extent that unless his evidence is consistent with contemporaneous documents I prefer the oral evidence of others where it differs from his account of events.
22. In relation to the main transactions, it is Ms Clutterbuck's own evidence that she had no direct dealings with Ms Al Amoudi and that Mr Paton was the person dealing with all of the relevant property joint ventures with which this claim is concerned. For the most part, it appeared that Mr Paton had been the source of Ms Clutterbuck's knowledge of events and I take this into account when assessing the weight to be given to her evidence. To the extent that she had direct knowledge of the relevant events, Ms Clutterbuck's evidence was repetitious and guarded and she often failed to answer the questions put to her and I found that she too was an unsatisfactory witness. When evaluating her evidence I also take account of Ms Clutterbuck's false contention in relation to the fictitious court order and her conduct in relation to Ms Osborne and the planning application to which I have already referred.
23. Mr Stephen Brook, is the senior partner of the solicitors' firm of Brook Martin. His firm carried out the conveyancing work in relation to Mr Paton's property dealings and Mr Brook had a close business relationship with Mr Paton over the period from 2004 until 2009. Furthermore, an offshore company known as Sator, of which Mr Brook's wife is a director and on whose behalf Mr Brook appears to have acted, advanced large sums to Mr Paton in order to help finance his property dealings. It is not in dispute that the interest charged on the loans which remain outstanding, is extremely high.
24. Mr Brook gave evidence in an argumentative and aggressive style. On occasion, he sought to put the Claimants' case rather to confine himself to factual evidence. At times, I found him to be extremely evasive. Whilst giving evidence he also thought fit to request his assistant solicitor Ms Darshna Vagdama to meet him at his offices to search for a document and had spoken to her about it. Without taking that matter into account, I nevertheless, found Mr Brook to be a extremely

unsatisfactory witness and unless his evidence is consistent with contemporaneous documents I prefer the oral evidence of others where it differs from his account of events.

25. Tarka King's witness statement dealt with certain allegations which Lord Mereworth had made to him but for the most part, amounted to a character reference on behalf of Mr Paton. In fact, in cross examination he accepted that he had never met the Defendant, and had no recollection of the alleged meeting in early 2007, at Cliveden Place to which Ms Clutterbuck refers in her witness statement of 30 January 2010 and at which she says that Mr King was present. Furthermore, Mr King accepted in cross examination that he had been over the points in his statement with Ms Clutterbuck. In the circumstances, I do not place any weight upon his evidence.
26. Mr Keith Pickstock is a builder who won a tender in relation to the works at Cliveden Place. He accepted in cross examination that he had been made bankrupt in 2003 and that his discharge from bankruptcy had been suspended indefinitely. He also accepted that he was the subject of a bankruptcy restriction order which was made in 2010 and is due to expire on 26 January 2021 and that such orders are imposed where the bankrupt has been dishonest or is in some way to blame for his bankruptcy. I take this into account when assessing the weight to be given to his evidence.
27. Mr Andrew Ellis was introduced as a witness at a late stage which led to serious difficulties and inconveniences. For example, it was not possible to recall witnesses such as Mr Collins and Mr McCormick in order to deal with the allegations made by Mr Ellis, nor in reality could Mr Paton be recalled to be challenged on Mr Ellis' account. I take this into account when assessing the weight to be given to his evidence.
28. Unfortunately, Ms Al Amoudi's evidence was extremely difficult to follow and I found her to be a deeply unsatisfactory witness. The majority of her evidence was given in a highly emotional manner which verged on the hysterical and barely made any sense, although on other occasions she was quite lucid. Although she had an interpreter for part of the time, she did not always rely upon translation. I also found her to be generally evasive.
29. Mr Fariquain Shah is a solicitor who assisted Ms Al Amoudi in relation to the AIT hearing. He is a director of Alexander Solicitors Limited which trades under the name of Alexander Solicitors and Advocates and specializes in both criminal and immigration work. On balance, for the most part, I found him to be truthful witness save with regard to his contact with Ms Al Amoudi's bank to which I shall refer.
30. Mr Simon Berry, Ms Al Amoudi's conveyancing solicitor who part of the relevant period was at Dexter Montague and is now at Clarkslegal LLP, was a careful and measured witness who did his best to assist the court. I found him to be an honest witness and I accept his evidence.
31. Mr Peter McCormick worked with Mr Nichol for some ten years before the latter's death in December 2009. He was responsible for managing Mr Nichol's

property and business interests. In addition to Randolph Hill Group Limited, he is also a director of Randolph Hill Care Homes Limited, Randolph Hill Care Finance Limited, Randolph Hill Nursing Homes Limited and Aberdeen Property Trading Company Limited, all of which were ultimately owned by Mr Nichol. I found him to be a careful witness who was clear and credible.

32. Mr Peter Misselbrook is a solicitor admitted in Scotland and is a partner in the firm Tods Murray LLP. He has a wide property and business practice and had acted for Mr Nichol and his companies for many years up until his death in 2009 and continues to act for the Randolph Hill Group. He acts for the judicial factor in respect of Mr Nichol's estate. I found him to be a clear and careful witness who was open about the extent of his knowledge of Mr Nichol's affairs. I found him to be a straightforward and honest witness.

### Background in summary

33. In essence, Mr Paton's evidence was that he was involved in joint ventures with Ms Al Amoudi from around 2002 and that he found ultra prime properties in the Area which were rarely available and which Ms Al Amoudi purchased in her own name. The properties were described as "gold dust" and both Mr Paton and Ms Clutterbuck gave evidence that in or around 2007/2008 things were moving extremely quickly in the property market in the Area which I accept. Ms Al Amoudi accepted that Mr Paton was always in the process of working in a property.
34. In closing Mr Cakebread was less clear whether, in fact, there were joint ventures, but nevertheless, submitted that there were property dealings on a scale which reveals a business relationship. Furthermore, it is said that Mr Paton oversaw the refurbishment of properties purchased in the name of Ms Al Amoudi and that the refurbishments were paid for with Ms Clutterbuck's money. All this it is said came about in reliance upon Ms Al Amoudi's representations to Mr Paton as to her identity, that she had access to great wealth which could be deployed in the development of the properties.
35. It is also said that but for Ms Al Amoudi's representations as to her identity, her access to great wealth and the provision of Sharia funding for the project at Hans Place, Mr Paton would not have transferred the Security Properties to her. It is contended that all of the representations are false and were made fraudulently.
36. Ms Al Amoudi's evidence is that she comes from a wealthy background in the Kingdom of Saudi Arabia and came to this country in 2000 as an asylum seeker. She had been married at an early age to a member of the Saudi Royal Family and had escaped the marriage and come to England. In cross examination however, she was reluctant to confirm whether she was or had been married to a member of the Saudi Royal Family. In any event, she says that she was supported by large cash payments and bank transfers from family and friends in Saudi Arabia and that at times she received £50 -100,000 per week. She had become pregnant out of wedlock which would warrant the death penalty in Saudi Arabia, something which brought shame and possible danger to herself and those associated with her.
- [REDACTED]

37. Her evidence is that she entered into a covert romantic relationship with Mr Paton in 2001 without the knowledge of Ms Clutterbuck to whom Mr Paton was otherwise committed. In that context and in the context that she was naive and vulnerable, she says that after having been burgled (albeit that the theft was not reported) she gave large sums of cash which were otherwise kept under her bed and her wedding jewellery to Mr Paton for safekeeping. She says that Mr Paton was always short of money and that she also loaned him money but did not document the amounts loaned or require receipts for the cash and jewellery put in Mr Paton's safekeeping.
38. She says that she barely knew Mr Nichol whom it is alleged was a co-joint venturer save that she lent him her car on one occasion. Although she knew of Ms Clutterbuck she did not meet her, at least in the early years. Her evidence is that as a result of their relationship and Mr Paton's business, he encouraged and advised her in relation to property purchases and that from late 2002 she began to build up a portfolio of properties mostly in London, most of which are rented out in order to provide her with an income. Her evidence is that they were purchased by a combination of mortgage advances and sums received from Saudi Arabia.
39. She denies any form of agreement in relation to her properties whether with the Claimants or anyone else. Furthermore, in relation to the Hans Place project, she states that her only involvement was to make introductions of acquaintances of hers and to sign a memorandum in relation to the apportionment of arrangement fees in respect of the Hans Place development, which never became payable.
40. Despite the emphasis placed upon them and the time spent at trial, in closing, Mr Cakebread conceded that the alleged representations in relation Ms Al Amoudi's identity and background are not the basis for any direct relief sought but should be seen as a backcloth to what is said to be the business relationship between Ms Al Amoudi and Mr Paton and through him with Ms Clutterbuck. However, he submitted that in relation to the Hans Place project, the alleged representations as to identity and background are of direct relevance as the context in which the representations in relation to Sharia funding, the payment of an arrangement fee and the need to pay a one third share of that fee, which are relied upon, were made.

#### The structure of Claimants' case

41. There is no dispute as to the relevant law. First, for the purposes of fraudulent misrepresentation, there must be a clear representation by the defendant to the claimant of present fact or law. Mr Cakebread referred me to the description of a representation for these purposes, set out in Halsbury's Laws of England Volume 76 § 702 which is in the following form:

*“A representation is a statement made by a representor to a representee and relating by way of affirmation, denial, description or otherwise to a matter of fact. The statement may be oral or in writing or arise by implication from words or conduct”*



42. Furthermore, Mr Cakebread points out that if Mr Nichol acted as Ms Al Amoudi's innocent agent in providing a false description of her as to her identity, wealth and access to wealthy family connections, then she is liable for such fraudulent misrepresentation: *Kings North Trust Ltd. v. Bell and Others* [1986] 1 W.L.R. 119.
43. The alleged misrepresentations must be material and Ms Al Amoudi must have intended that they would be relied upon. Furthermore, they must have acted as an actual inducement. Once again Mr Cakebread referred me to a passage in Halsbury's Laws of England at Volume 76 § 764 which is in the following form:
- “. . . Inducement in fact and materiality are distinct and separate matters, and in any form of proceedings it is necessary to establish both. A court may infer inducement from materiality, although such an inference is rebuttable.*
- Actual inducement must be shown, irrespective of materiality. In other words, however probable it may have been in any case that the misrepresentation alleged would influence a normal person to take just the steps which the representee did, yet, if in fact he was not so influenced, he has no cause of action.”*
44. There is a rebuttable assumption that fraudulent representations have been relied upon: *Goose v Wilson Sanford* [2001] Lloyd's Rep PN 189 at 200 to 201. If the misrepresentation is of such a nature that it would be likely to play a part in the decision of a reasonable person to enter into a transaction it will be presumed that it did so unless the representor satisfies the court to the contrary: *Barton v County NatWest Limited* [1999] Lloyd's Rep Banking 408 at §58.
45. Mr Cakebread submits that the misrepresentations were clearly material and were relied upon. He says that Mr Paton's evidence reveals that as a result of the continuing representations made over very many years that Ms Al Amoudi was a very wealthy Saudi princess with access to both her own and others extensive wealth he transferred £2.28m to her solicitor for use in property purchases, transferred the six Security Properties to her at a considerable undervalue, at least one of which was a very valuable ransom strip and paid between £800,000 and £1m to carry out refurbishments on properties held in Ms Al Amoudi's name.
46. It is also necessary to show that the representations were false and Ms Al Amoudi must either have known them to be false or have been reckless as to whether they were true or false. The standard of proof required in the case of fraud is the same as in any other civil matter although the fact that it is a very serious allegation may be relevant to the inherent probabilities of its occurrence: *Cheltenham Borough Council v Laird* [2009] EWHC 1253 (QB) at § 311.
47. Lastly, it must be shown that the Claimants acted in reliance upon the representations or any of them and as a result suffered loss.
48. If these elements are established, it is pleaded that the Claimants are entitled to rescind the alleged joint venture agreement in relation to the project at Hans Place,

the alleged joint venture agreements relating to the transfer of £2.28m and/or the various contracts for and transfers of the Security Properties and/or damages. It is said that rescission of any agreement under which property was passed to Ms Al Amoudi has the result that she holds such property on resulting trust for the Claimants. In addition, the Claimants seek damages for fraudulent misrepresentation.

49. In relation to the £2.28m it is said that the funds were transferred in pursuance of joint ventures, that the agreement was that Mr Paton would identify and, if necessary, negotiate the acquisition of properties which would then be bought in the name of Ms Al Amoudi for the purpose of development within a joint venture. It is contended that the Claimants reserved in themselves the beneficial interest in the monies which gave rise to a proprietary security pursuant to *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567.
50. Accordingly, it is said that the Claimants can trace the funds into the properties acquired using the money and that they have two proprietary remedies; either to recover the money sum advanced, or the whole benefit of the property acquired: *Foskett v McKeown* [2001] 1 AC 102.
51. Furthermore, if Ms Al Amoudi induced the Claimants to transfer the money to her as a result of the alleged fraudulent representations, then she holds title to the money subject to the Claimant's entitlement to rescind the transfer: *Bristol & West Building Society v Mothew* [1998] Ch 1 at 22-23 per Millett LJ.
52. In relation to the Security Properties, if it is found that the transfers were made in reliance upon the alleged fraudulent representations regarding Ms Al Amoudi's status, immense wealth and her claim to have organised a Shariah loan for the development at Hans Place, the Claimants contend that they are entitled to rescind the agreements, as they have done, with the result that the properties, or the proceeds of sale are held on constructive or resulting trust for them.
53. If and to the extent that it is still contended that the amounts by which Ms Al Amoudi allegedly underpaid for the Security Properties were subject to a Quistclose style trust, Mr Seitler on behalf of Ms Al Amoudi submits that such an argument is bound to fail. He says that the transfers of the Security Properties did not result in any cash or monies being held by Ms Al Amoudi. She simply paid less than the headline price. Accordingly, there was no fund to which any Quistclose style trust could attach. I agree. It seems to me that such a principle has no application on the facts which relate to the Security Properties.
54. To establish liability in deceit there must in general be a clear positive act or representation. However, adopting the representation of a third party can be sufficient. In *DGI v Simms & ors* [2009] EWCA Civ 16 (CA) a husband made a fraudulent representation in an e-mail of which Warren J found the wife was aware. On appeal the Court found (*per* Blackburne J at §84):

*“It is sufficient for a person to be liable as a joint tortfeasor if another commits a wrongful act pursuant to a common design between the two of them that such act be committed. It is not necessary for that person also to have committed a*

*wrongful act: see The Koursk [1924] P 140, 155 and CBS Songs v Amstrad [1988] AC 1013, 1054 (per Lord Templeman)."*

55. In the present case, therefore, it would be sufficient in respect of the representations allegedly made by Mr Nichol that they were part of a common design to deceive. Alternatively, as I have already mentioned, if Mr Nichol was innocently repeating what he had been told about Ms Al Amoudi's identity, wealth and connections, and the Shari'a loan, she is liable.
56. It is said that property obtained by Ms Al Amoudi as a result of deceit will be held by her on resulting or constructive trust for the Claimants and that the Claimants will also be entitled to damages for any loss directly flowing from the deceit: *Smith New Court Securities Ltd v Citibank [1997] AC 254 (HL)*.
57. As to 66a Pont Street, a property in relation to which it is alleged that it was sourced by Mr Paton and that he was involved in its refurbishment, the Claimants seek damages representing half of the alleged joint venture profits, an account for half of the rent received and the reimbursement of their refurbishment expenditure which it is said were Ms Al Amoudi's obligations under the alleged joint venture agreement in relation to it.
58. In respect of the properties purchased with the £2.28m, it is said that Ms Al Amoudi has failed to account to the Claimants for the rent received and/or to sell the properties or develop them in accordance with the joint venture agreements. This is an alternative claim to that above in relation to the resulting or constructive trust in the event that the court either finds no trust by operation of law or by virtue of the Claimants' rights following from the fraudulent inducement to enter into the transaction by transferring capital monies and paying for and carrying out the refurbishments.

#### The Claimants' purpose

59. Ms Clutterbuck and Mr Paton began to invest in properties in Central London in or around the summer of 2001. They did so, in part, in anticipation of what they believed would be a change in the law in relation to leasehold enfranchisement.
60. The Claimants developed what Mr Paton described in his witness statement as a long term strategy which became known as the Site Assembly Model ("the SAM"). They sought to purchase flats in a particular building, to enfranchise, seek planning permission for the building as a whole, alone or together with adjacent buildings and then either sought to develop them themselves and sell to an end user or once the components were assembled and whether before or after planning permission was obtained, to sell the entirety on to an investor who would develop the site themselves.
61. The Claimants also purchased properties which were not necessarily in target locations but which could be used as swaps for flats within such a target. In other words, they were purchased in the hope that an owner of a property in a target location could be persuaded to swap their flat for such a property with the consequence of furthering the SAM. If appropriate, such properties would be

refurbished and lease extensions would be sought. This was referred to as the portfolio assembly model, (“PAM”).

62. In May 2002, the opportunity arose to invest in a ground floor flat at 55 Hans Place and Ms Clutterbuck informed Mr Paton that she had done so with two others through a special purpose vehicle company. In his witness statement, Mr Paton stated that the investment followed an oral agreement to proceed on the basis of a SAM and that nothing was written down “because until the site was fully assembled it was felt to be important to retain flexibility in relation to the development.” It was Mr Senan Burke’s unchallenged evidence that it was one of his colleagues, Mortimer Walters who had invested in 55 Hans Place with Ms Clutterbuck.

Mr Paton’s introduction to Ms Al Amoudi

63. Mr Paton states that it was Mr Nichol who introduced him to Ms Al Amoudi at a meeting at the Lanesborough Hotel, London, in the autumn of 2002. He says that, in fact, Mr Nichol introduced him to three women including Ms Al Amoudi whom he described as Saudi Arabian princesses who were interested in investing in property. Mr Paton says that he explained the SAM strategy and also explained that in order to facilitate site assembly it was necessary to obtain other properties which could be used to swap with those within the target site, the PAM. Such properties might be used as swaps or packaged as a rental portfolio to be let or sold to investors. Mr Paton’s evidence was that Ms Al Amoudi showed interest in sourcing trophy properties in Knightsbridge on behalf of her family.
64. Mr Paton says that Mr Nichol contacted him in early 2003 in connection with a problem which Ms Al Amoudi was having with the builders at an investment property she had purchased at flat 4, 14 Dolland Street, Vauxhall, London. In fact, Mr Hickmott gave evidence that Mr Paton requested that he attend the property in order to investigate the problem, which he did.
65. Mr Paton’s assistance with flat 4, 14 Dolland Street through Mr Hickmott and the fact that it had been purchased without reference to Mr Paton, is not disputed. However, the way in which Mr Paton and Ms Al Amoudi met is. As I have already mentioned, Ms Al Amoudi’s evidence is that she hardly knew Mr Nichol and that she met Mr Paton by chance in early 2001, when she was living in Bayswater.
66. Ms Al Amoudi says that by the time of the alleged meeting at which Mr Paton says he was introduced to her she had already been in a romantic relationship with him for approximately twelve months. She says that from around the time she moved from Bayswater to Pimlico at the end of 2001/beginning of 2002, Mr Paton was more or less living with her and they spent a great deal of time together and with her friends Maha and James Ramsden. She says that it was in the context of their relationship that Mr Paton advised her about the purchase and refurbishment of properties on her own behalf and that she both loaned him money and gave it to him for safekeeping. Mr Paton staunchly denies any relationship with Ms Al Amoudi other than in the business sense.

67. It was Mr Ramsden's evidence that he had known Ms Al Amoudi since mid 2001 when she was living in Bayswater and that he helped her find a better flat in Pimlico. Mr Ramsden was also introduced to Ms Al Amoudi's friend Maha to whom Mr Ramsden was married in January 2003. Accordingly, he too became close friends with Ms Al Amoudi and saw her regularly. His evidence was that once Ms Al Amoudi moved to Pimlico, which was around early 2002, both he and Maha saw Mr Paton at the flat with Ms Al Amoudi regularly and that it was obvious to him that they were having an affair. In cross examination it was pointed out that it was Ms Al Amoudi's evidence that she had met Mr Paton in 2001 and quickly became reliant upon him. Mr Ramsden's response was that he could not pinpoint exact dates and that he may not have met Mr Paton at the outset of the relationship. In my judgment, given the passage of time, nothing turns upon this apparent discrepancy.
68. It was also Mr Ramsden's evidence that Mr Paton sought to hide his relationship with Ms Al Amoudi from Ms Clutterbuck. In particular, he recalled an occasion when he was near Hans Place and sought to attract Mr Paton's attention but was told not to do so by his wife because Mr Paton was with Ms Clutterbuck. In his statement he referred to another occasion upon which he said that Mr Paton had ducked into a doorway to hide and had explained that it was because he had seen Ms Clutterbuck on the other side of the street.
69. Mr Ramsden also said that in his opinion Mr Paton was often under the influence of drink or drugs and that given that he had held a licence to sell alcohol for twenty years, he was in a good position to tell and something about which he was adamant. This view was also held by Lord Mereworth, Mr Tesanovic, Mr Elliot Davis and Ms Al Amoudi herself.
70. Mr Ramsden also said that he had seen Ms Al Amoudi hand over what appeared to be large amounts of cash to Mr Paton in envelopes and that she always had cash on her. Nevertheless, he had assisted her in setting up a bank account. He also received sums of £47,500 and £2,500 respectively from Mr Paton in 2003 and 2004 and a sum of £65,000 from Mr Paton's brother in February 2005 which he says he passed on to Ms Al Amoudi and which was not paid directly in case it was discovered by Ms Clutterbuck. His evidence was that Mr Paton owed Ms Al Amoudi considerable sums. In cross examination he also mentioned business dealings between them but in re-examination explained that he had meant that Mr Paton had visited a number of properties with Ms Al Amoudi and had given his advice.
71. Mr Ramsden was cross examined very vigorously but in my judgment, remained a clear and careful witness who did his best to assist the court. He restricted his evidence to the matters upon which he had direct knowledge and was careful to state when he could not remember. When evaluating his evidence I take into account that Mr Ramsden is married to someone who is a close friend of Ms Al Amoudi and on occasion has been described by Mr Cakebread on behalf of the Claimants, as her sister. Nevertheless, I accept his evidence as to the time from which Ms Al Amoudi and Mr Paton met each other and the nature of their relationship. As to the nature of the relationship it is consistent with the evidence to which I shall refer below. I also accept his evidence that Ms Al Amoudi often had cash on her and gave money to Mr Paton.

72. In September 2004, Mr Paton purchased Flat 30, Oakley House. Until the date of exchange of contracts Ms Al Amoudi was named as the purchaser. In his second witness statement, Mr Brook stated that when asked by his assistant about the change of name, he had explained that Mr Paton was Ms Al Amoudi's nominee. Nevertheless, he denied ever having acted for Ms Al Amoudi and said that Mr Paton had used the Defendant's name. His evidence in this regard was extremely evasive but he accepted that, in fact, the purchase had been completed in the name of Mr Paton and that funds were provided by Ms Clutterbuck.

Mr Nichol and the alleged Joint Ventures in general

73. As I have already mentioned, Mr Paton says that he was introduced to Ms Al Amoudi through Mr Nichol in about 2002 and that it was he who described her as Saudi princess with access to considerable wealth. Mr Nichol who died in December 2009 was understood to be the beneficial owner of a company called the Randolph Hill Group which was based in Edinburgh. His business was property development and the operation of nursing homes. Ms Clutterbuck explained that she was led to believe that Mr Nichol had substantial international property holdings and wished to establish a residential property portfolio in central London. It is said that the first project that Mr Paton proposed to Mr Nichol was a joint venture in relation to 90 Eaton Square in 2002. The second with which Ms Clutterbuck was directly involved was a proposal for site assembly and development in relation to 9 Cliveden Place, London, SW1.
74. I should mention at this stage that it was not disputed that Mr Nichol was not in good health, he was an alcoholic and was bipolar. He was sectioned under the Mental Health Act 1983 on two occasions in 2003 and it was Mr Peter McCormick's evidence that thereafter, Mr Nichol was open about his mental health problems. From 2005, Mr McCormick, Mr Nichol's senior manager, held a power of attorney which he used from time to time on behalf of Mr Nichol on the occasions on which he was not in a position to conduct his own affairs.
75. Mr McCormick stated that Mr Nichol was actively involved in property development and that he would expect to speak to him on a daily basis and receive several emails from him every day. He said that he believed that Mr Nichol reported to him upon all of his business dealings whether or not they came to fruition and that it was his responsibility to obtain bank funding for him. He also stated that he believed that he knew of all of Mr Nichol's bank accounts and that he did not believe that Mr Nichol would have had access to large amounts of cash without him having known about it.
76. In his witness statement, Mr McCormick stated that Mr Nichol had established an office in Ealing in 2000 but that it was not until 2005 that he started to spend more time in London and to get involved in property development there. As I have already mentioned, Mr McCormick believed, nevertheless, that he was kept informed of all of Mr Nichol's dealings. He said that Mr Nichol was an extremely experienced and successful businessman who knew the importance of documenting any formal agreement in writing. Mr Nichol's mode of operation was to enter into discussions on a "subject to contract basis" and once terms had been agreed in principle, would pass the matter over to him to deal with the lawyers and the bankers. Mr McCormick maintained a certified copy of a

schedule of Mr Nichol assets and liabilities which was used in order to raise finance on Mr Nichol's behalf.

77. He went on to say:

*"I am confident and certain in my own mind that if there had been any manner of formal arrangement between Elliot and any of the parties to this action, I would have known about it because of my business responsibility and relationship with Elliot."*

78. Mr McCormick's evidence is consistent with the unchallenged evidence of Mr Nichol's lawyer, Mr Peter Misselbrook who acted for Mr Nichol and his companies for many years up to his death in 2009. He pointed out that although it is alleged that Mr Nichol was also a co-joint venturer, his estate has not been joined to these proceedings and referred to the detailed response to a letter purportedly written pursuant to the pre-action protocol on 22 April 2011 alleging joint ventures against the estate, to which there has been no response.

79. He also stated that the only joint venture of which he was aware was in relation to 9 Cliveden Place, albeit that he was not aware of that until after Mr Nichol's death. In fact, in an attendance note of a telephone conversation on 27 January 2010 between Mr Brook, Mr Paton's solicitor and Mr Misselbrook, Mr Misselbrook recorded amongst other things:

*" . . .*

*He was aware of the emails from Amanda Clutterbuck.*

*He [Mr Brook] explained that her boyfriend, Ian Paton, was somewhat of a likeable rogue and knew Elliot well. He could not understand why Amanda was suddenly on her high horse.*

*I asked him whether he was aware of any other joint ventures between Elliot and Ian Patton [sic] and/or Amanda Clutterbuck.*

*He confirmed that he was not aware of any other joint ventures, and like me, he had assumed that her reference to other properties was because she thought that monies paid into the JV account may have been used for other developments being carried out by Elliot. . ."*

80. Mr Misselbrook through his secretary or assistant, emailed Mr McCormick the same day and stated amongst other things:

*"I spoke with Stephen Brook this morning, who was most helpful.*

*He confirmed that he was not aware of any other joint venture between Elliot Nicholl and Amanda Clutterbuck and/or Ian Paton.*

*Apparently, Ian Paton is Amanda's boyfriend, and our description of Ian Paton was borne out by Stephen's comments. . . ."*

In cross examination, Mr Brook contended that when speaking to Mr Misselbrook he had intended to refer only to other written joint ventures. Given the relatively detailed involvement of Mr Brook in the legal issues arising from the developments in which Mr Paton was involved and given his evidence as to the wide ranging nature of the alleged joint ventures with which this matter is involved and in which it is said Mr Nichol was also involved, I am unable to accept his evidence in this regard. It seems to me that on the balance of probabilities, had he considered that there were numerous other joint ventures which were not documented, he would have mentioned them.

81. In fact, rather surprisingly in the circumstances, Mr Brook took on the task of advising Mr Nichol's executors and emailed Mr Misselbrook on 2 February 2010 stating "Naturally you cannot, based on the present unsubstantiated allegations, be expected to voluntarily divulge to Amanda or her appointees information relating to Elliot's other properties."
82. On 25 February 2010, having spoken with Mr Brook, Mr Misselbrook emailed Mc Cormick under the heading "Westbrooke Properties Limited: 9 Cliveden Place, in the following terms:

*"Peter,*

*I have spoken with Stephen, as you will have noted from other emails.*

*I asked Stephen about the "other claims" to which Ian Paton refers. He said that Amanda/Ian had mentioned to him in passing yesterday that they were joint venture partners in Dreyton, [sic] that there was no formal Agreement, but that there was an informal agreement with Elliot, and that you were aware of this.*

*From recollection, you said that you thought that, whilst there may have been discussions about a joint venture, you did not believe that any agreement, formal or informal was concluded. I may have got that wrong. In any event, Ian is apparently putting together emails which he says discloses some agreement.*

*. . . . ."*

83. Furthermore, in her letter of claim of 29 March 2010, Ms Clutterbuck made no mention of any joint venture other than Cliveden. On 21 September 2010, Follett



Stock a firm of solicitors which was then instructed on Ms Clutterbuck's behalf wrote to Mr Martin of Brook Martin, Mr Brook's partner, on the basis that he was instructed on behalf of the Nichol Estate. (I should mention that Mr Brook had clearly stated in an email of 4 February 2010 sent on his behalf by Sophie Berquez to Mr Misselbrook and copied to Mr Martin and Mr McCormick and another, that he was Ms Clutterbuck's solicitor and that she was referring "to my acting for her on other matters generally.")

84. Under the heading, "Clutterbuck v Al Amoudi" Follett Stock gave the following explanation of their client's claim, then in the County Court:

*"Our client's claim against Ms Al Amoudi, arises from a complex set of facts. It is, in essence, a breach of trust claim relating to a joint venture/non-competitive partnership arrangement between our client, Ian Paton, Ms Al Amoudi and Elloit Nichol (now Deceased)."*

Under the heading, "Clutterbuck v The Estate of Elliot Nichol (deceased)" it was stated that Ms Clutterbuck would also have a right of action against the estate "arising from the joint venture/non-competitive partnership arrangement mentioned above." On 29 September 2010, Mr Martin of Brook Martin replied in the following way:

*"We should also point out that although we have knowledge of the joint venture between your client, Ian Paton and Mr Nichol/Westbrooke Properties in relation to 9 Cliveden Place, as this firm prepared the Joint Venture Agreement dated 3 August 2006, neither we nor our client have any knowledge of the alleged "joint venture/non-competitive partnership" involving Mr Nichol to which you refer."*

85. In cross examination, Mr Brook accepted that around the time of this response, he had had lunch with his partner Mr Martin and Mr McCormick. When asked whether they had discussed the joint venture issue he replied evasively that it was not necessarily so. Nevertheless, on the very same day that Mr Martin responded to Ms Clutterbuck's solicitors on behalf of Mr Nichol's estate, Mr Brook signed his witness statement in this matter.
86. It is his evidence that on Mr Paton's instruction he transferred four tranches of money to Dexter Montague, Ms Al Amoudi's solicitors. The sums which are not in dispute were £150,000 on 19 January 2007, £500,000 on 8 February 2007, £1.4m on 21 May 2007 and £40,000 on 23 May 2007. The sums which result in the claim in respect of £2.28m of which the four tranches form part, are dealt with in more detail below and it is not disputed that the sums were transferred.
87. In any event, Mr Brook says that he knew that the monies were being sent in connection with joint venture properties in the course of acquisition by Ms Al Amoudi and that Mr Paton would hold his interest in the joint venture as trustee for Ms Clutterbuck. Nevertheless, in cross examination, he accepted that no letters of authority signed by Mr Paton and addressed to Brook Martin relating to the

payments had been disclosed and that so far as he, Mr Brook was aware there was no documentation to support the contention that the monies belonged, in fact, to the Claimants or at least, to Ms Clutterbuck. Mr Brook accepted that nor was there any evidence of any legal advice about how best to protect the monies, for example, by way of charge. He also accepted that there was no note of any advice given in this regard or even any note of the expenditure which it is alleged some of the monies were intended to cover.

88. Mr Brook says that his understanding was that Mr Paton's interest would be beneficial and that his interest would be a third or a half. In addition, he says that his impression was that it was a casual amicable arrangement. Mr Brook accepted in cross examination that his witness statement had caused some consternation and that he had been telephoned by Mr Martin who asked him to send a note.
89. On 29 October 2010, Mr Brook emailed Mr Misselbrook, Mr Martin and Mr McCormick in the following terms:

*“Just to clarify;*

*1) I was asked to provide a statement that dealt with the transfer by IP of 5 properties to Al M at a significant discount to value as my firm handled the sales 2 years ago. AC and IP's case is that they were cheated out of these properties as Al M was supposed to have raised a £46m Sharia finance loan for 48-50 Hans Place by way of consideration. Al M denies this and says it was IP paying her back monies he owed her (a mere £10m !). I understand that she was unable to provide a scrap of proof at the initial hearing but I was not in Court.*

*2) As far as I know, Elliot knew Al M. If he had any business dealings or jvs [joint ventures] with her then I was most certainly not told nor ever instructed – and I made this very clear when I was asked. My statement makes no suggestion to the contrary and for that very simple reason.*

*3) I was asked to explain the Cliveden deal and the background to the site assembly which I did in a strictly factual manner, stopping at the point that the jv [joint venture] was entered into and msking [sic] no reference to the subsequent dispute.*

*4) I had no choice but to provide the statement as the solicitor handling the 5 sales and Cliveden. No conflict arose thereby as all I stated were bare facts. That apart, the fact of the matter is that I have no knowledge whatsoever of Elliot's connection or dealings with Al M. All I know is that he knew her – ie I know about as much as Peter.*

*Hope this helps.”*

90. Once again, on the same day, 29 October 2010, Mr McCormick emailed Mr Brook and headed his email, "Re: Al Amoudi etc". The body of the email was as follows:

*"Would it also be true to say that it would be surprising to you if a joint venture agreement whether verbally or in writing had existed all this time and neither Elliott, IP nor AC had ever had cause to mention it you, given a fairly constant level of contact with them over the period and you working on all Elliot's London property transactions and (all/some of?) those of IP/AC?"*"

Mr Martin's response was, "Absolutely."

91. I found Mr Brook's attempts to explain the contradiction in his evidence with regard to the existence of the joint ventures in which Mr Nichol was allegedly involved to be entirely unconvincing. He suggested that Mr Martin had asked him to confirm merely that he had told Follett Stock that he had no knowledge of any other joint ventures and that he had responded to the request very quickly. He also stated that what he had told Follett Stock, "taken literally, it is inaccurate."
92. Despite all of this, in his second witness statement signed on 26 April 2012, Mr Brook stated that Mr Paton had informed him that Ms Al Amoudi was a Saudi princess and a member of a consortium led by Mr Nichol.
93. As I have already said, I found Mr Brook's evidence in this regard deeply unsatisfactory. As Mr Seitler said on Ms Al Amoudi's behalf, it appears that Mr Brook was attempting to serve two sets of clients at once. Given the disparity in his evidence and the lack of any of the normal documentation and advice which one would expect to see from a solicitor if joint ventures of the kind Mr Brook contends existed, I reject his evidence in this regard.
94. In fact, on 23 December 2007, Mr Nichol had emailed Mr Brook about a number of properties, one of which was Sloane Gate Mansions. He stated as follows:

*" . . c'd I please have details of the deals which Ian put forward in my name. Also please do not accept any instructions from Ian in my name, in the New Year. You will now be aware that he proposed me as the purchaser of 45 Hans Place to Darshna without my knowledge, and I am not now proceeding after viewing the property! Perhaps we c'd all sit down in the New Year and agree the "ground rules?"*"

95. On 23 February 2008, Mr Nichol had emailed Darshna Vadgama, an assistant solicitor at Brook Martin in relation to 1 and 3 Sloane Gate Mansions and made clear that Mr Paton should take responsibility for any costs to date because he had made it quite clear that he, Mr Nichol, was not instructing Brook Martin in relation to the property. On 6 January 2009, Sophie Berquez had emailed Mr Brook on behalf of Darshna Vadgama in relation to the purchase of 49 Hans Place. She stated that Mr Paton had made an offer of £6.5m for the freehold but

had done so in the name of Ms Al Amoudi. She was concerned because Mr Paton had asked her to write to the vendor stating that Brook Martin were instructed by Ms Al Amoudi. When asked whether he was aware that Mr Paton made offers for properties in the names other than his own, Mr Brook accepted that he was aware that he did so and that he would use Ms Al Amoudi or Mr Nichol's names and added that it was normal practice. In his witness statement he said that he took this practice as an informal joint venture and friendly relationship between Mr Paton, Ms Al Amoudi and Mr Nichol.

96. In any event, Mr Misselbrook's evidence was that it would have been entirely out of character for Mr Nichol not to have reduced any agreement which he intended to have legal effect to writing. He accepted however, that he could have purchased property with a view to a joint venture without informing Mr Mc McCormick in whom he believed that Mr Nichol otherwise confided. I accept Mr McCormick and Mr Misselbrook's evidence in this regard.

The alleged Oriel Agreement and the Middle Eastern consortium

97. It was Ms Clutterbuck's evidence that in late September 2005 she and Mr Paton had a lunch meeting with Mr Nichol at the Oriel Restaurant in Sloane Square, at which Mr Nichol stated that he had £10m in cash immediately available as well as very large resources from a Middle Eastern consortium which were at least £100m. Ms Clutterbuck went on to state that Mr Nichol had said that he could be a cash purchaser in exchange for being offered first refusal on any properties sourced by Mr Paton and herself in Knightsbridge and Belgravia. If the option was not exercised, Mr Paton and Ms Clutterbuck were free to deal with the property as they thought fit.
98. She said that it was agreed that if a property were accepted by Mr Nichol there would be a separate joint venture under a PAM or SAM and that profits would be split 50/50. It was Mr Paton's evidence that all of the joint ventures with which this matter is concerned and therefore, in respect of which it is alleged that Ms Al Amoudi was a party, also involved Mr Nichol. However, there was no reference to this agreement which became known as the Oriel Agreement, in the first version of the Particulars of Claim in this matter.
99. In support of this, Mr Senan Burke's evidence was that in September 2005, Ms Clutterbuck had informed him that the property market was moving so rapidly and decisions had to be made so quickly that she had agreed to enter into a joint venture with Mr Nichol as he had told her that he headed a Middle Eastern consortium with very extensive funds to progress SAMs at the sites at Hans Crescent, Hans Place, Pont Street and Cadogan Square. He stated that Ms Clutterbuck had described the nature of their agreement as that Mr Nichol and his consortium had first choice of all properties that Ms Clutterbuck and Mr Paton were able to source through their connections.
100. However, on 2 November 2005, Ms Clutterbuck sent a paper headed "Re: Prime London Property Fund" to Senan Burke in Dublin. Ms Clutterbuck accepted in cross examination that the paper was for the purpose of attracting Irish or Irish-American investors. The paper made no mention of the Oriel Agreement, of Mr

Nichol, a Middle Eastern consortium, 66A Pont Street or Flat 7, 24-26 Hans Crescent to which I refer below.

101. By an email of 21 January 2006 from “Ian and Amanda:” to Joe Oregon and copied to Senan Burke, headed “Ultra Prime London Property Fund” there was reference to:

*“As we have already explained we have a number of people interested in investing in a fund, with which we are involved. For example, Amanda had supper yesterday with a friend, who manages enormous Venezuelan oil funds in London. He has known Amanda for over 15 years and is fully cognizant of her 28 year property track record.”*

Once again there is no mention of a Middle Eastern consortium, of Mr Nichol or of Ms Al Amoudi. Ms Clutterbuck accepted in cross examination that she had seen the document when it was written and that it was part of what she called “an exit strategy fund potential.” She also mentioned that funds were needed in order to move quickly in the property market. Mr Paton accepted that this had not been mentioned to Mr Nichol but that he was open minded and looking to enlarge the site. The case studies mentioned in the paper were:

1. Hans Place site assembly and redevelopment
2. Cliveden Place house,
3. Chester Square house and mews
4. Double fronted house in Walton Place”

102. In fact, in 2005 and 2006 Ms Clutterbuck worked with some Irish investors to assemble 53 -56 Hans Place. The properties were bought up so that the four buildings were in common ownership. The intention was to demolish behind the façade and to create a substantial redevelopment. In that regard, Mr Paton entered into an option agreement with Lord and Lady Amherst in relation to Flat 3, 55 Hans Place and numerous other flats were purchased in 2005/6. In this regard, Mr Paton accepted that Mr Nichol had not been offered first refusal but he said that Mr Nichol was perfectly happy for him to pursue the matters with Irish investors. There was no evidence whether oral or documentary to support this and I reject it.
103. Mr Seitler on behalf of Ms Al Amoudi points out that this was all contrary to the alleged Oriel Agreement under which Mr Nichol would have had first refusal on each of the properties which were sourced. Mr Seitler also pointed out that there was no mention of the Oriel Agreement in Ms Clutterbuck’s first witness statement and that her explanation in her witness statement of a meeting on 26 April 2006 with Mr Nichol in order to discuss heads of agreement for the purchase of the freehold interest and the transfer of the existing equity interest in Cliveden Place was inconsistent with its existence. In my judgment, given the number of dealings in property which do not appear to have been offered to Mr Nichol pursuant to the alleged Oriel Agreement and the nature and content of the papers written in November 2005 and January 2006 seeking investors, to which I have referred, on the balance of probabilities, it is unlikely to have been concluded and I reject Mr Paton and Ms Clutterbuck’s evidence in this regard. I come to this

conclusion despite Mr Burke's evidence of his conversation with Ms Clutterbuck in September 2005.

The structure and documentation in relation to joint ventures

104. It is the Claimants' case that a joint venture would typically be made partly orally, partly in writing and partly as a result of a prior course of dealing between Ms Clutterbuck, Mr Nichol and Mr Paton and through him, Ms Al Amoudi. In the Claimants' response to a request for further information it is stated in effect, that such arrangements arose under the Oriol Agreement and that the Claimants would source the properties, if a property were accepted by Mr Nichol, the property would either be the subject of a separate joint venture or would be a PAM or a SAM, it would be purchased by Mr Nichol or by implication, by Ms Al Amoudi and that there would be a 50/50 split in profits upon redevelopment and sale or upon fruition of the SAM or PAM whichever was relevant.
105. However, in the original Particulars of Claim produced by Ms Clutterbuck with the assistance of Mr Paton, albeit with only minor legal assistance, the claim is put on a basis which is inconsistent with the joint ventures now alleged. In cross examination, Mr Paton described the content of the Particulars of Claim as "pretty much the most valid statement I think in the whole thing. It is exactly what happened." No mention is made of joint ventures with Ms Al Amoudi, a Middle Eastern consortium headed by Mr Nichol and/or Ms Al Amoudi, the Oriol Agreement, an arrangement fee or Sharia funding. Both the £2.28m described as £2.4m and the refurbishment monies are described as having been wrongfully received by Ms Al Amoudi without Ms Clutterbuck's knowledge or authorisation and used in the purchase and refurbishment of Ms Al Amoudi's own properties.
106. Equally, in Ms Clutterbuck's original witness statement, the content of which Mr Paton confirmed, she states that she understood that only Mr Nichol and his personal fortune was involved. Reference is also made to loans being made to Ms Al Amoudi by Mr Paton on Ms Clutterbuck's behalf but without her knowledge, on Mr Nichol's behalf.
107. In cross examination, Mr Paton described the discrepancy on the basis that "at this point in time, there is no joint venture because, at the end of the day, someone has actually decided not to partake in the joint venture." It seems to me that this explanation is inconsistent with the existence of a joint venture in the first place. Ms Clutterbuck's explanation was that she had 'gone totally deranged when I wrote the statement' and that she had been rushing to do it. This is inconsistent both with Mr Paton's acceptance that the original Particulars of Claim accurately reflected the facts and Ms Clutterbuck's assertion in the contemporaneous email of 10 May 2010 to Clarkslegal LLP to which I referred at paragraph 16, that having discovered Ms Al Amoudi's conduct, all keys and other documents in Mr Paton's possession had been returned to Ms Clutterbuck. In the circumstances, I am unable to accept Ms Clutterbuck's explanation.
108. It was Mr Elliot Davis' evidence that:

*"It is possible that [Mr Paton] was in the background and may have suggested to [Sarah] that she buy property.... I*

*know from my dealings with [Mr Paton] in relation to Hans Place that he would quite often try to get friends or acquaintances to buy properties in sites he was interested in assembling when he did not have the funds to do so himself...during the course of 2008 and 2009, when it looked as if it might be necessary to buy flats that were going to come onto the market within the proposed [Hans Place] site and we did not have the money for this, [Mr Paton] would confidently assert that he could get either [Elliot Nichol] or [Sarah] to buy the flats and hold them while we put together the rest of the project and I expect that in some negotiations he may well have represented that he was acting for [Sarah], or have made bids in her name.”*

109. He went on:

*“[Mr Paton] asked me if I wanted to get involved in the Hans Place – in the development of Hans Place, and packaging it up, and it was pretty much left like that. There was no formal agreement, there was nothing in writing as to who we would profit or I would profit from it, my company, but as we each had our own contacts within there, my element was quite secure. But at any point we could have, either of us, walked away from it without any obligation to the other.... if we had pulled something off or if we had got to the stage of getting an investor who was interested enough to invest in the whole development, then at that point we would have come to an agreement...”*

I accept Mr Davis’ evidence in this regard and it seems to me that on the balance of probabilities, it reflects the way in which the matters in which Ms Al Amoudi was involved were conducted.

110. Furthermore, Mr Seitler points out on behalf of Ms Al Amoudi that it is not suggested that she was present at the alleged meeting which led to the Oriel Agreement or was otherwise a party to it and that the Claimants cannot in effect, rely upon Mr Nichol’s agency through the back door without any basis for doing so. I agree. In my judgment, there is no evidence to connect Ms Al Amoudi with the alleged Oriel Agreement, nor is there evidence upon which to base a claim that Mr Nichol acted as Ms Al Amoudi’s agent to which I refer below.
111. Mr Seitler also says that there is no credible reason why the Claimants should be entitled to 50% of the profits merely by sourcing properties all of which were advertised by estate agents. Mr Paton’s response in relation to the profit share was first that “No one has ever suggested that it was particularly arduous” and secondly that the task was not just to find properties but to put together the SAMs.
112. In any event, as I have already mentioned, the only joint venture which was documented in any way related to 9 Cliveden Place in which it is not alleged that Ms Al Amoudi was involved. It was a venture between Mr Nichol and the Claimants and a corporate vehicle named Westbrooke Properties Limited and was

governed by a written joint venture agreement drawn up by Brook Martin, Mr Paton's solicitors. Mr McCormick had a copy of the document and had dealings in relation to the venture under Mr Nichol's power of attorney. In fact, Mr McCormick wrote to Simone Mason at Brook Martin on 3 May 2006 on Elliot Nichol Trading notepaper and confirmed instructions. He stated that it had been agreed on behalf of Westbrook Limited to purchase the ground/basement and first floor flats including planning permission and to return the building to a house. The joint venture agreement was signed by all the parties and dated 3 August 2006.

113. Mr McCormick's evidence was that Mr Nichol had told him that Citibank would not lend on a project with which Mr Paton was involved and for that reason the venture was put into the name of Westbrooke Properties Limited and funding was obtained through the Bank of Ireland. Mr Paton's interest in the project was charged to Sator in respect of sums in excess of £3.5m.
114. Mr McCormick was cross examined by reference to a file of documents which was produced just before the cross examination took place. Despite the fact that no allegations are made in this matter against Mr Nichol something which Mr Cakebread on behalf of the Claimants confirmed immediately before Mr McCormick's cross examination and had also stated in opening that "we don't know the role of [Elliott Nicholl] in the fraud and, . . . it is not appropriate to speculate", in my judgment, such a position is entirely inconsistent with any claim that Mr Nicholl acted as Ms Al Amoudi's agent, whether innocently or otherwise.
115. Mr Cakebread nevertheless sought to suggest to Mr McCormick that Mr Nichol had been dishonest in his dealings with regard to 9 Cliveden Place and in particular, had "siphoned off" approximately £1m. In short, in this regard, it was Mr McCormick's evidence in cross examination that Mr Paton knew about the £1m equity release and that the accounts openly recorded Mr Nichol as owing £1m. It was confirmed that Mr Nichol's estate would account fully for all monies put into and taken out of the project by Mr Nichol.
116. It was Mr Francis Gonzalez's unchallenged evidence that the confusion over the planning position at 9 Cliveden Place was created by Mr Paton himself. This was consistent with Mr McCormick's evidence that the details about the plans for the property provided to the bank came from Mr Paton. It was also Mr Elliot Davis' evidence that Mr Nichol had complained to him that he had been seriously misled by Mr Paton about the planning position in relation to Cliveden Place.
117. Mr Pickstock worked on the refurbishment at Cliveden Place. It was his evidence that Mr Gonzalez and Mr Nichol had told him that Mr Paton should not be allowed admittance to the site. He had no knowledge of his interest in it or what the arrangements were. In fact, he did not know of Ms Clutterbuck at all until he was contacted by her in January 2010. He had been unilaterally removed from the site by Mr McCormick and Mr Gonzalez in December 2009. He says that this was because he unearthed a false billing scam being run by Mr Gonzalez, Mr Nichol and Mr McCormick.
118. It seems to me that I am not in a position to make any findings with regard to these matters and that in any event, such findings are not necessary for the



purposes of the issues which are before the court in this matter. Furthermore, it seems to me that the relevance of the 9 Cliveden Place venture is only as a contrast to the joint ventures in which it is actually alleged that Ms Al Amoudi took part. In this case there was a detailed, written agreement, signed by all of the parties and drawn up on their behalf by solicitors, something which is patently absent in relation to the alleged ventures with which I am concerned.

119. In June 2006, Mr Andrew Ellis of Wilton Estates, an estate agency based in Knightsbridge acted as buying agent on behalf of Wellard Properties Limited in relation to a property at 11-12 Walton Place. In his witness statement Mr Ellis stated that the company was a consortium SPV. In fact, in cross examination it became clear that he had no knowledge of the ownership of the company. In fact, Mr Nichol went on to buy a property nearby.
120. A Memorandum of Agreement in relation to 56 Hans Place was drawn up and dated 22 July 2006. It was intended to be signed by Mr Paton, Ms Clutterbuck, Mr Sean Collins and Mr Brendan Foster and set out the position and intentions of the parties in relation to a development project at that address. Later that year, another more detailed document entitled “Heads of Terms between Amanda Clutterbuck & Ian Paton (CP) and Sean Collins & Brenda Foster (CF) in respect of redevelopment of 53-56 Hans Place and 5-7 Herbert Crescent, Knightsbridge, London” and dated 17 November 2006 was drawn up. The first paragraph of the Heads of Terms is in the following form:

“Background

*CP have negotiated terms with various vendors to try and enable the purchasing of 53-56 Hans Place and 5-7 Herbert Crescent, Knightsbridge (“the properties”) for the purposes of a redevelopment of the whole site. In doing so they have agreed that CF should arrange finance to buy all of the properties in question. This document sets out the principal terms between CF and CP the “parties” (the parties agree that there will be a comprehensive shareholders’ agreement between themselves and the other equity investors in due course) governing the relationship between them.”*

121. It went on to record that the redevelopment was intended to take place in a tax efficient manner through a company called Knightscross Ltd which was registered in Jersey in which the parties would become shareholders. It was recorded that 5% of the equity of the holding company was due to “Irish investors” Tom Marren and Paul Dempsey, that CP and DF would hold 47.5% and 52.5% of the holding company respectively until the shareholding was diluted by an intended Icelandic investment. The following was recorded under the heading, “Mezzanine Finance”

*“Mezzanine finance is being sought from a number of parties including Investec, Lehman brothers and Merrion Stockbrokers. The purpose of mezzanine is cover to significant shortfall in senior debt interest as a result of low rental yield, acquisition costs, promoter cost and planning*

*costs. Mezzanine finance funds will facilitate repayment of equity to CP as noted above.”*

122. In addition, under the heading, “Current status of the deal” the following was set out:

*“53 Hans Place – A draft share purchase agreement has been sent to the seller’s solicitors.*

*54 Hans Place – In negotiation with Hazen, it is proposed that £1m to be paid to him in the next few days, secured against his existing interests, with an option to purchase the freehold to be signed within 28 days.*

*55 Hans Place – Exchanged with Lady Amhurst. Draft share purchase agreements relating to the other flats have been received. It is intended that Elliot will exchange on the purchase agreements for Flats 1 & 2 and then assign them on to the holding company.*

*7 Herbert Crescent – No contract*

*6 Herbert Crescent – No contract*

*6A Herbert Crescent – Awaiting contract – delayed*

*5 Herbert Crescent – Exchanged Contract- Completion due June 07.”*

As envisaged, Mr Nichol completed the purchase of Flats 1 and 2 at 55 Hans Place and subsequently, transferred them to Knightscross Limited as agreed.

123. In fact, a detailed Shareholders’ Agreement was also drawn up by Blake Laphorn Tarlo Lyons in respect of Knightscross Limited. Schedule 3 to the Shareholders’ Agreement was headed “Business Plan” and was in the following form:

*“1. Complete acquisition of 53-56 Hans Place for agreed amounts and finalise freehold of buildings as soon as possible.*

*2. On completion of this phase (expected March 07) – evaluate options of going for planning on these four properties if outstanding properties are yet to be finalised.*

*3. Maximise profitability with the benefit of input of professional planning advisor – while avoiding section 106 requirements. Inclination would be towards four to eight substantial houses.*

*4. When outstanding properties are finalised evaluate possibility of revaluation of larger site and potential refinancing accordingly.”*

124. It was intended that the purchase of 5 Herbert Crescent be completed on 2 November 2006. There was no reference in the documentation to the property having been offered to Mr Nichol under the terms of the alleged Oriel Agreement. In cross examination, Mr Paton stated that it had been discussed but in the absence of any other corroborative evidence I am unable to accept this.
125. Further, a Memorandum of Agreement dated 30 January 2007 was drawn up, to which Mr Paton, Ms Clutterbuck and Knightscross Limited were parties. It was supplemental to and a variation of a contract dated 16 August 2006 under which Mr Paton had agreed to sell the Third and Fourth Floor Flat at 56 Hans Place and Ms Clutterbuck had agreed to sell the Ground Floor maisonette at the same address to Knightscross Limited. Amongst other things it recorded that Knightscross Ltd had released £1.6m to Mr Paton and Ms Clutterbuck together with a further sum of £750,000 on the date of the Agreement itself and were to be treated as having been on account of the Purchase Price.
126. On 26 April 2007, a similar Memorandum of Agreement was executed between the same parties recording the release of a further £600,000. It was clear from the notation on both documents that Mr Brook had exchanged the contracts. Furthermore, on 10 May 2007, Mr Collins wrote to Ms Clutterbuck and Mr Paton from Knightscross Ltd's address as follows:

***“Re: Advance of £500,000***

*Dear Ian & Amanda*

*I refer to our recent discussions concerning the current funding requirement and in particular the closings on all issues pertaining to No 55 and No 56 Hans Place. As discussed we have identified a funding gap of £500,000 which will need to be bridged urgently in order to deal with our other financial commitments in respect of No 54 Hans Place, stamp duty and refurbishment costs associated with No 54 and No 5.*

*You have agreed that in advance of closing of No 55 & No 56 you will irrevocably instruct Stephen Brook or Brook Martin Solicitors to withhold £500,000 from your net proceeds for the purpose of making an advance to the company. This advance will be transmitted to the company's bank account in Jersey after deduction by Mr Brook of the agreed fees.*

*The company agrees that this advance will be repaid to you immediately upon the earlier of:-*

- 1. The closing/refinance of No 54 Hans Place or*
- 2. The sale of No 5 Herbert Crescent*

*We have agreed to split evenly the Brook Martin costs of £40,500 + vat which are referable to your vendor costs. This amount will be deducted from the repayment.*

*A final reconciliation will also need to be performed regarding costs discharged by you on behalf of the project and rent retained. The net effect of this adjustment will be added to or deducted from the repayment and will be by way of agreement.*

*If you are in agreement to the above I would be obliged if you could sign the attaching instructions and forward same to Stephen Brook.”*

127. In addition, there is a detailed written memorandum of an investors' meeting in relation to the properties at Herbert Crescent and Hans Place held on 26 June 2007 at which it is recorded that Ms Clutterbuck, Mr Collins, Mr Foster, Mr David Meagher and Mr Gudmundur Arnason were present.
128. Mr Collins is a director of Trinity Corporate Finance and stated that since May 2006 he had advanced funds to Ms Clutterbuck in the region of £50m in respect of a number of property venture. In cross examination he confirmed that there had been no reference made to him of Ms Al Amoudi, of Sharia finance or of a Middle Eastern consortium. However, in his witness statement he stated that Ms Clutterbuck had explained that she had a prior agreement with Mr Nichol who headed an investment consortium and that he had first refusal on properties in the target area of Knightsbridge and Belgravia.
129. Nevertheless, Mr Brook stated in his second witness statement that the arrangements in relation to 55 and 56 Hans Place were informal and that the only record of the joint venture in relation to that property was a Deed of Trust dated 16 August 2006 which was not disclosed but was handed up during Mr Brook's evidence. Mr Brook stated that he had not seen the earlier documents. The Deed of Trust provides that Mr Sean Collins and Mr Brendan Foster were to hold two shares in Knightscross on trust for Mr Paton, Ms Clutterbuck, Mr Collins and Mr Foster "absolutely and in equal proportions" and provides for the beneficiary to provide a half of all the costs incurred.
130. In the light of the fact that Mr Brook accepted that he had exchanged the Memoranda, I found his assertion that arrangements were informal to be entirely implausible and accordingly, for this reason amongst others, I have come to the conclusion that Mr Brook's evidence is unreliable and I accept it only where it is consistent with contemporaneous documentary evidence.
131. Mr Ellis' evidence was that the 53-56 Hans Place project was carried out by Mr Paton and Mr Nichol backed by Saudi money. However, the content of the Heads of Terms, the Memoranda and the Shareholders' Agreement do not support such a conclusion. In fact, it is recorded in the Heads of Terms that Mr Foster was to arrange finance to purchase all of the properties in question. Such an assertion is also contrary to Mr Paton's evidence in this regard, and I reject it.

132. In relation to the purchase of 53 Hans Place by a Mr Donegan, Ms Clutterbuck stated in cross examination, “For example, in 53 Hans Place, there was absolutely no joint venture agreement when Mr Donegan bought that within 24 hours.” Mr Seitler points out that this is inconsistent with the Claimants’ assertions that a joint venture arose as soon as any property was purchased by an individual and in particular, by Ms Al Amoudi and I agree.
133. Mr Berry who was Ms Al Amoudi’s conveyancing solicitor for the purposes of all her purchases, was categorical that he had not heard of Ms Clutterbuck or Mr Nichol until the commencement of these proceedings. However, he had come into contact with Mr Paton early on in the transactions and Mr Paton had made contact with him on Ms Al Amoudi’s behalf. He accepted nevertheless, that Ms Al Amoudi’s English was sufficient for her to explain the nature of a transaction to him. He had never met Mr Paton or acted for him and he always obtained instructions from Ms Al Amoudi herself, despite the fact that Mr Paton assisted her from time to time.
134. He also stated that throughout all of the transactions, Ms Al Amoudi had never mentioned that they were part of any kind of joint venture whether with the Claimants, Mr Nichol or anyone else. Nor did his dealings with any third parties, including Brook Martin suggest to him that the transactions were part of a joint venture of any kind.
135. As I have already mentioned, there is no documentation in relation to the joint ventures in which it is said that Ms Al Amoudi participated. Nor is there any evidence of the precise sums invested by any of the alleged parties. When pressed in cross examination, Mr Paton relied upon the phrase “ accounting basis” and “mutuality of trust” but had to accept that no records were kept. Furthermore, there is no evidence as to any agreed provisions as to the treatment of rental income in relation to a joint venture property, any interest to be due upon joint venture contributions, the length of time before a SAM was expected to have come to fruition and any exit strategy.

Alleged Joint Ventures in particular

*66a Pont Street, London SW1X 0AE*

136. The first alleged joint venture in which it is alleged that the Claimants through Mr Paton, Mr Nichol and Ms Al Amoudi were involved related to 66a Pont Street. The Claimants contend that the property was sourced by Mr Paton and that it was intended as a PAM with the potential that it might become a SAM and that Mr Paton contributed to the cost of refurbishment, although the amount of the contribution is unspecified, is not made clear in oral evidence and is undocumented.
137. It was Mr Brook’s evidence that Mr Nichol had told him that he, Mr Nichol and Mr Paton had agreed to proceed with a property in Pont Street and another in Hans Crescent and that when asked whether they were going to record the terms in a joint venture agreement, he was told that it was not necessary or practical because matters moved so quickly and often unpredictably.

138. Mr Pickstock stated that he had been taken there in or around 2006, by Mr Nichol and asked whether it would be possible to “double basement” the whole site. However, as Miss Murphy on behalf of Ms Al Amoudi pointed out to him in cross examination, the basement of 66 Pont Street was occupied at the time. Furthermore, he was unable to provide any corroborating documentation or diary entries and in the circumstances, I am unable to accept his evidence or to infer from it that the property was the subject of a joint venture between Mr Nichol, the Claimants and Ms Al Amoudi.
139. Mr Pickstock added that in 2008, Mr Nichol had taken him back there to a second floor flat which Mr Nichol had explained was owned by his investment consortium. He says he was also taken to a first floor flat and introduced to Arabic women whom Mr Nichol said were Saudi Arabian princesses and that their family were backing his business projects worldwide. In cross examination, he accepted that in fact, the second floor flat was occupied by third parties at the time and that he had not paid much attention to the Arabic women. In the circumstances, I place little weight on this evidence.
140. Ms Clutterbuck accepted in cross examination that no one had told her that 66a Pont Street was part of a joint venture. Having been shown a copy of an email which she wrote to Mr McCormick on 26 January 2010, she also accepted that until 2010, she had thought that the property was purchased as a family home by Mr Nichol and that she had made no mention of a joint venture in the email. It was also her evidence that she had only become aware of Ms Al Amoudi’s connection with the property in 2010.
141. It is Ms Al Amoudi’s evidence that she purchased the basement flat at 66a Pont Street from Jag Bolina for £782,000 having found it through Harrods Estates. She says that although she looked around the property with Mr Paton, he did not find it for her nor was he involved funding the purchase. In fact, in his second witness statement, Mr Paton states that his involvement was to negotiate the terms on Ms Al Amoudi’s behalf through Harrods Estates. From Mr Ramsden’s perspective, the project was Ms Al Amoudi’s although Mr Paton was providing advice. Ms Al Amoudi stated that monies had come from her mother but that having taken advice, the purchase had been funded mostly by way of mortgage.
142. The purchase price was funded by means of a £500,000 mortgage advance from HSBC, £235,850 from Ms Al Amoudi’s HSBC account and a further £80,000 from her HSBC deposit account. Contracts were exchanged for the purchase of the property on 26 August 2004 and the transaction was completed on 3 September that year in Ms Al Amoudi’s name.
143. It is not in dispute that shortly after the purchase, extensive refurbishment works were commenced and that Mr Paton was involved in advising on them and initially in overseeing the builders. The works were halted as a result of lack of planning permission and when they were resumed, they were overseen by Francis Gonzalez whom Mr Phillips, the freeholder had asked to become involved. Email correspondence between Mr Gonzalez and Mr Paton in February 2006 reveals Mr Gonzalez requesting monies from “Sarah” in order to fund the works.

144. Ms Al Amoudi's evidence was that she would give money to Mr Paton and that he would pay the builders on her behalf. In her witness statement she states that she gave him in region of £300,000 from cash which she held. However, she says that he failed to pay quite a lot of the money over and there were difficulties with Mr Gonzalez and the builders who refused to continue because they had not been paid. In particular, Ms Al Amoudi recalled giving Mr Paton £80,000 in cash for a luxury kitchen for the Pont Street flat. However, she says that he did not pay the kitchen company and she confronted him about it. She says that he told her that he had given the money to Mr Nichol who needed it urgently but that he had recovered it and paid the kitchen company. Mr Hickmott stated that he had been involved in the work at the property for eight or nine months and that included re-wiring, carpentry, stud partitioning, the installation of plasma screens, a new kitchen and bathrooms. He also stated that he carried out work at Flats A, 7 and 10, 24 -26 Hans Crescent, 6 Chelsea Cloisters, Flat 7, 50 Hans Place and Flat 1 6-8 Hans Crescent and that he was always paid in cash by Mr Paton.
145. Mr McCormick stated that Mr Nichol loaned Mr Paton £116,594 in order to pay the builders for refurbishment works done at the property which I accept. He also states that he has come across no evidence to suggest that Mr Nichol purchased the property in Ms Al Amoudi's name.
146. This is consistent with an email sent by Mr Paton to Mr Nichol on 3 March 2006, the relevant part of which is as follows:

*“ As a separate case, Sara's project will cost £300K if it is done to the standard I would like to do it to which will include a double sub-basement inc. parking for 3 cars and a sub corridor back to the new lift. This will result in total space in the region of 3600sf 50 metres from Harrods. There is a possible future deal to integrate these levels into the ground floor which can be discussed when you visit.*

*As far as I know Sara can do a short lease agreement as security no more ie. rent to pay off interest/capital expenditure. So rent will be achievable from completion; however, I anticipate that she will be in a position to repay before or very shortly after completion. I would be grateful if you can consider this on cash/return basis; and /or consider assisting me in this regard.*

*I feel highly responsible to try to get them through to July in a position which will assist Sara to resolve things for the family. It is true to say that my heart bleeds for them and the extraordinary trauma they have been through together. On the basis that I am unable to assist I dread to think of the consequences and I am not feeling very happy at this time so I will be grateful for your patience.”*

147. In cross examination Mr Paton was unable to explain how a request to Mr Nichol on a cash/return was compatible with investment in a joint venture in which Mr Nichol is alleged to have been involved. He also accepted that the final paragraph

contained emotional language but referred only to Ms Al Amoudi as a business partner. Whilst I agree that the language used is emotional, I am unable to accept Mr Paton's evidence as to the nature of his association with Ms Al Amoudi. It seems to me that the language used is inconsistent with a purely business relationship.

148. In the same email, Mr Paton had set out details in relation to proposed shares of profit and costs in relation to 9 Cliveden Place which he accepted amounted to ongoing negotiations as to the terms of the joint venture relation to that property. In fact, on 14 June 2006, Mr McCormick was making clear in an email sent on Mr Nichol's behalf, that nothing had been agreed in relation to the Cliveden Place venture. Mr Paton accepted in cross examination that no reference was made at that stage to the alleged Oriel Agreement and stated that this matter was outside it.
149. Mr Frank Phillips was the owner of both the ground and the first floor flats at Pont Street and is the director and chairman of the company which owns the freehold to the building. He gave evidence that Ms Al Amoudi had introduced him to Mr Paton not long after she purchased the basement flat and that it was clear to him that she relied upon Mr Paton's advice in relation to property matters and the impression he gained was that Mr Paton exercised some large degree of control over Ms Al Amoudi.
150. Between February 2008 and January 2009, Ms Al Amoudi rented Mr Phillips' first floor flat on a furnished basis. During that period Mr Phillips recalled Mr Paton describing himself as Ms Al Amoudi's boyfriend on at least one occasion. He also stated that whilst Ms Al Amoudi was living in his furnished flat, Mr Paton stayed there overnight on at least one occasion. In cross examination he also added that Mr Paton would describe his relationship with Ms Al Amoudi as close "as a boyfriend and so would Sarah." He also explained that he would see Mr Paton coming out of the bedroom area of the flat if he came to the apartment, "So from that point of view, visually, it was pretty obvious that they were in a relationship." In cross examination, Mr Paton denied that he had ever slept overnight in the same property as Ms Al Amoudi.
151. I accept Mr Phillips' evidence. He was a careful and honest witness. Further, given the fact that he was not involved in any of the property dealings in this matter and was not otherwise involved with any of the parties, there is no reason to doubt the reliability of his evidence.
152. It is also consistent with the evidence of Mr Gonzalez in this regard. Mr Gonzalez is a surveyor amongst whose clients was Mr Phillips who asked him to become involved in the works to the basement flat at 66 Pont Street. He oversaw some of the work on Ms Al Amoudi's behalf. His unchallenged evidence was that Mr Paton had made it clear to him that he must not mention either Pont Street or the existence of Ms Al Amoudi to Ms Clutterbuck because Ms Clutterbuck was not aware of their relationship.
153. Mr Gonzalez also gave evidence that his initial meetings in relation to the remedial works at the basement flat in late 2004 or early 2005, had been with Ms Al Amoudi only. He stated that he did not meet Mr Paton at that stage, although Ms Al Amoudi mentioned him. He arranged for builders to carry out the works



starting in early 2006. He says that he only met Mr Paton when he submitted his first fee account for the work at Pont Street, on 20 May 2005. At that stage, Ms Al Amoudi had asked him to discuss the bill with Mr Paton which he did.

154. On 14 November 2005, Mr Gonzalez addressed a detailed letter about the works at the property to Ms Al Amoudi. It included one reference only to discussions “with you and Ian.” On 7 December of that year, in an email from Mr Gonzalez to Mr Paton in relation to the works at Hans Place, he made reference to Pont Street which he described as “Sarah’s flat” and further in a letter to Ms Al Amoudi of 2 February 2006, Mr Gonzalez made reference to having started work at “your instruction.” A detailed estimate was sent to her on 24 February 2006 and on the same day Mr Gonzalez wrote to Mr Phillips about the basement flat and stated that Mr Paton was Ms Al Amoudi’s adviser upon whom she relied immensely. Furthermore an email of 27 February from Mr Gonzalez concerning payment for the works refers exclusively to Sarah in that regard.
155. Thereafter, Mr Paton introduced a friend of his, Lady Annabel Bertie who was a designer and from that time onward, Mr Paton was involved with the works. In cross examination, Mr Gonzalez said that Ms Al Amoudi did not reply to written communications and he was left to talk to Mr Paton whom it was clear that Ms Al Amoudi trusted.
156. He also stated that there were problems with payment for the works. All of his communications were sent to Mr Paton’s email accounts. Mr Paton became the intermediary delivering payment mostly by way of cash and usually only part of the amount which was due. Ms Al Amoudi stated that she provided the cash to Mr Paton for onward transmission to Mr Gonzalez and the builders but that she now appreciated that not all of it was actually delivered.
157. Mr Gonzalez stated that Mr Paton often asked him for money but that eventually he borrowed a substantial sum, in the region of £300,000 from Mr Nichol which was used to cover the outstanding payments for the work at Pont Street. Mr Gonzalez stated that Mr Paton had told him this and that it had been confirmed by Mr Nichol. He also denied that there had been any diversion of monies from Cliveden Place to Pont Street. Mr Gonzalez ceased to be involved in the works at Pont Street in September 2006.
158. Mr Gonzalez’ evidence was clear and he answered the questions put to him directly and without hesitation. I accept his evidence which for the most part is also consistent with the contemporary documentation.
159. It is not suggested that any of the other alleged joint venturers owned or purchased any of the other flats at 66 Pont Street, although in his witness statement, Mr Paton states that he and Mr Nichol discussed the fact that the building would be a good example of a SAM. To that end, Mr Paton says that Mr Nichol intended to seek to buy other flats in the building. However, there is no other evidence of this whether oral or documentary and I do not accept it.

160. In 2005, Ms Al Amoudi was living at Flat 11 24 -26 Hans Crescent. Her evidence was that she liked it so much that when Flat 7 came on the market, she decided to buy it for her own use and did so, at a price of £510,000. Contracts were exchanged on 24 November 2005 and the contract was completed on 7 December that year. Ms Al Amoudi accepted that Mr Paton was aware that she was purchasing the flat and looked around it with her. In fact, her evidence was that Mr Paton had encouraged her to buy it. However, she denies that there was any joint venture. The Claimants on the other hand contend that once again, the venturers were the Claimants through Mr Paton, Ms Al Amoudi and Mr Nichol and that Ms Clutterbuck's monies were used in respect of the refurbishment.
161. Ms Al Amoudi paid the purchase price for Flat 7 by means of a £382,500 mortgage from HSBC on a buy to let basis, secured by a charge over the property, together with £51,000 from her HSBC account on 1 November 2005 and a further £102,250 from that source on completion. On 23 November 2005, Mr Berry wrote an attendance note of a conversation with Ms Al Amoudi concerning an extension of the lease under the Leasehold Reform Act. He records that Ms Al Amoudi had said that she had discussed the matter with her adviser, Mr Paton and that as a result the figure of £50,000 should be the initial proposal for the purposes of the section 42 notice. Thereafter, the property was registered in Ms Al Amoudi's sole name and correspondence in relation to the plans, and the structural engineer were addressed to her.
162. It is accepted that Mr Paton engaged his friend Lady Annabel Bertie to re-design the flat and that he contacted Ms Al Amoudi's solicitor, Mr Berry on a number of occasions in relation to a section 146 notice which had been served on Ms Al Amoudi by the immediate landlord in May 2006. The notice alleged that Ms Al Amoudi was in breach of her underlease because she had failed to obtain permission to carry out works at the property. The licence to do so was obtained in March 2007.
163. Ms Al Amoudi says that she got her own builders, Serj Dynty and Serj Korohoda to do the refurbishment work and that she made payments in cash to them. In fact, Mr Paton accepted in cross examination that Ms Al Amoudi had spent £153,000 on the property in November 2005. She stated that a problem arose in relation to the payment for a kitchen at the flat because although she had given cash to Mr Paton to pay the kitchen company, he had not passed the monies on. She says that she ended up having to pay for the kitchen twice.
164. Mr Korohoda's evidence was that he was paid in cash for the work he carried out and that sometimes he received the cash directly from Ms Al Amoudi and on other occasions it was passed on to him by the contractor Serj Dynty. He says that he met Mr Gonzalez at the property and that Mr Paton came on a few occasions but was not involved in the project, never gave him any directions about the work, never really spoke to him and certainly never gave him any money. He neither met nor had heard of either Mr Nichol or Ms Clutterbuck before these proceedings. He accepted in cross examination that he had no way of knowing whose cash it was that he received and whether it had originated come from Mr Paton.

165. I found Mr Korohoda to be an entirely straightforward and honest witness and I accept his evidence. Furthermore, it seems to me that although Mr Korohoda quite properly accepted that he had no knowledge of the ultimate source of the cash which he received, had the monies or some of them, originated from Mr Paton, it would have been more likely than not that Mr Korohoda would have understood Mr Paton to have had an involvement in the project.
166. His evidence is corroborated for the most part by that of Mr Tesanovic, a self employed builder. He had also carried out work at Pont Street for Mr Phillips whom he came to know through Mr Gonzalez. Mr Tesanovic stated that he had worked both at 81 Pier House and 50 Hans Place and that Mr Paton and Ms Al Amoudi were often together. Furthermore, it was his evidence that he had seen Mr Paton take drugs.
167. In cross examination Mr Paton accepted that he had no record of the amounts which had been spent on refurbishment. He repeated that it was all intended to be on an "accounting basis" but had no answer as to the way in which he could remember how much had been spent and upon what or what precisely he meant by "accounting basis".
168. Ultimately, once the works were completed, the property was let out by Ms Al Amoudi through M2 Properties.
169. I should mention that on 12 December 2005 in an email from Mr Paton to Ms Clutterbuck under the heading "PRIME LONDON RESIDENTIAL FUND", in which reference was made to Hans Place, Herbert Crescent and Cliveden Place amongst other properties, the final statement is "Fund marketing to be undertaken in Ireland." The email contains no reference to Flat 7 24-26 Hans Crescent which exchanged that month and is alleged to have been a joint venture property, nor was there mention of the Middle Eastern consortium.

*Flat A 24-26 Hans Crescent*

170. Once again, the Claimants contend that this property was intended to be part of a SAM and was a joint venture between them, Mr Nichol and Ms Al Amoudi. They say that they sourced the property and paid for the refurbishment, although once again, there is no oral evidence or record of the amount spent. It is also contended that monies were transferred to Ms Al Amoudi's solicitors on behalf of Mr Paton and was used in the purchase of the property.
171. Once again it was Mr Berry's evidence that Mr Paton had been named as the purchaser on the estate agent's memorandum and that he had had to correct the fact and inform them that Ms Al Amoudi was his client.
172. Ms Al Amoudi's evidence in relation to Flat A 24 -26 Hans Crescent is similar to that in relation to Flat 7. She says that she discovered that it was on the market after she had purchased Flat 7. Contracts were exchanged on 30 January 2007 and were completed on 9 March 2007. The purchase price was £452,022 of which £225,000 was raised by mortgage from HSBC and the balance was paid from monies standing to her credit at her solicitors Dexter Montague. In fact, as I have already mentioned, on 19 January 2007 a payment of £120,000 was received by

Dexter Montague from Brook Martin and another £150,000 was received with reference in the payment details to “I Paton.”

173. Mr Berry’s evidence both in his witness statement and in cross examination which I accept, was that Ms Al Amoudi had told him that she had loaned Mr Paton considerable sums of money. He had assumed that the receipts related to those loans. In fact, a further £500,000 was received from Brook Martin with reference “HANS” on 9 February 2007. £52,000 was transferred to the file in relation to Flat 7.01 St Johns in order to pay the deposit, to which I refer below. £429,535.99 of the monies then on the client account was transferred to the vendor’s solicitors to complete the purchase of Flat A 24-26 Hans Crescent on 9 March 2007. Of the balance on the client account, £459,325.88 was transferred to the “Flat 7.01 St Johns” file on 9 March 2007 as part payment of the completion monies to purchase that property.
174. Once again Ms Al Amoudi says that the property was refurbished at her expense and is now let out through M2 Property. She accepts however, that some of the cost of the refurbishment was met from monies from Mr Paton which she says were repayments of sums which she had loaned to him.
175. The work at Flat A was carried out by Mr Tesanovic for which he says he was never paid. His evidence was that although Mr Paton came to the flat a few times whilst he was carrying out the work, he took his instructions from Ms Al Amoudi and she was his client. He said that he went with Ms Al Amoudi to choose bathroom tiles which she paid for by credit card. He says that when he confronted Ms Al Amoudi about her failure to pay him she said that she had given the money to Mr Paton for onward transmission to him and that she did not believe that he had not received it. I accept Mr Tesanovic’s evidence in this regard.

*Flat 7.01 St John’s Building*

176. The same is true of Flat 7.01 St Johns although this is said to be a PAM. In this case, the estate agent’s particulars recorded Mr Paton as the purchaser and Mr Berry as his solicitor. Mr Berry wrote to the estate agent on 24 November 2006 in order to correct the error and to confirm that he was acting for Ms Al Amoudi. Mr Berry’s evidence was that he saw nothing unusual in Mr Paton being named as purchaser by the estate agent and that it accorded with his understanding of the matter, namely that Mr Paton had helped Ms Al Amoudi to locate the property. Mr Berry’s file note also recorded that Mr Paton had contacted him about the completion date and the deposit and that he assumed therefore, that Mr Paton was assisting her. Ms Al Amoudi referred to him as a friend.
177. Ms Al Amoudi exchanged contracts for the purchase of the property on 9 February 2007 and completed a month later on 9 March 2007. The purchase price was £800,000 financed by way of a mortgage from HSBC of £325,000, the remainder coming from monies held by Ms Al Amoudi’s solicitor. The flat was purchased from Mr Hugh Freedberg. Relatively little work was necessary and Ms Al Amoudi lived there from June 2007 until January 2008. Ms Al Amoudi accepts that monies from Mr Paton were used to fund the purchase of the flat but once again contends that the monies received by her were re-payments of sums which

she had loaned to him or given him for safe keeping. It is not alleged that Mr Paton contributed towards any refurbishment at the property.

178. Shortly after having exchanged contracts on this property, on 15 February 2007, the Brook Martin general ledger card for Mr Paton reveals a receipt of £120,000 from Ms Al Amoudi. Thereafter, it records numerous payments out of £10,000 together with a sum of £35,000 to Mr Paton. Mr Brook could not shed any light on what the payments may have been used for. However, £113,600 was transferred to other files which Mr Brook accepted related to 4 Sloane Gate Mansions, a property which it is not alleged to have been part of any joint venture with the Defendant. Furthermore, there is an internal memorandum dated 12 September 2008 from Darshna Vadgama to Mr Brook and headed “Ian Paton – 47 Belgravia Court” in which there is reference to £10,400 having been received from Ms Al Amoudi on 20 August which was paid to Bank of Scotland and used to settle arrears “in respect of which they were threatening to take action.” She also adds inter alia:

*“As Mr Berry has not commented on the advance from Sara I am unsure as to how it is going to be reflected in this transaction. Perhaps this is something that needs to be discussed with Ian.*

...

*Ian also needs to sign the letter of confirmation regarding the sale price which is in the financial wallet on exchange as his confirmation of the amount owed to Sara Al Amoudi.*

...

*I have been chasing Mr Berry now for some time to exchange this matter as we have the Licence, everything is in order, the Contract is agreed but Mr Berry simply is not returning my calls and has not confirmed to me how much deposit his client will be placing”*

179. In fact, a draft contract was sent out under cover of a letter to Clarkslegal LLP from Brook Martin dated 29 April 2008. In the letter it stated, “Regarding the purchase price, we are awaiting details of the same from our client and will let you have details shortly.”
180. Meanwhile, in January 2007, Mr Ellis, Mr Paton, Ms Clutterbuck and others, including Mr McCormick but not Ms Al Amoudi had lunch. Mr Ellis stated that Mr McCormick had discussed various projects and that Mr Nichol had a large consortium of Middle Eastern investors. However, Mr McCormick’s email to Mr Misselbrook of 26 January 2010 is consistent with him having knowledge only of the Cliveden Place joint venture.
181. Mr Ellis also stated that Mr Nichol and Ms Al Amoudi were at most of the viewings of properties and that Mr Nichol had told him in the presence of Ms Al Amoudi in 2008 and 2009 that all necessary funding was in place. Given that Mr Paton, Ms Clutterbuck and Mr Nichol had fallen out very seriously in February

2008, to which I refer below and the content of Mr McCormick's email, I am unable to accept this evidence.

*Flat 3.18 St John's Building*

182. A similar pattern emerges in relation to Flat 3.18 St Johns. Ms Al Amoudi exchanged contracts to purchase it on 17 April 2007 and completed the purchase on 9 May 2007. The same parties, namely the Claimants, Mr Nichol and Ms Al Amoudi are said to have been involved in the joint venture in relation to the property and it is said to have been sourced by Mr Paton for the purposes of a PAM.
183. It is not alleged that there was any contribution to refurbishment costs but it is alleged that part of the £1.4m transferred on Mr Paton's behalf to Ms Al Amoudi's solicitors on 21 May 2007 was used to fund the purchase, despite the fact that the transaction was completed on 9 May of that year.

*Flat 3.08 St John's Building*

184. Just as with Flat 3.18, the Claimants contend that there was a joint venture between them, Mr Nichol and Ms Al Amoudi in relation to this flat and that it was sourced by Mr Paton and was intended to be a PAM. It was purchased by Ms Al Amoudi on 31 May 2007, contracts having been exchanged on 10 May.
185. Once again, Ms Al Amoudi says that she found it whilst she was living at St John's Building. The purchase price was £499,000 plus £5,000 for the chattels. The entire sum was financed from Ms Al Amoudi's monies held with HSBC or by her solicitors. It required no refurbishment and was let immediately through M2 Property.
186. In fact, Mr Berry accepted that an analysis of his client ledgers revealed that a sum of £1.4m had been received from Brook Martin via HSBC on 21 May 2007 and that £35,000 was transferred to the client account for Flat 3.18 St John's Building that day and the remainder of £1.365m was transferred to Ms Al Amoudi on 22 May 2007. Mr Berry said that no one discussed it with him at the time and he would have expected Brook Martin to seek to protect the monies if in fact, there was a joint venture of some kind.
187. In June 2007, Ms Al Amoudi had decided not to purchase a property at 8 Walton Place, London SW3. The estate agent's particulars stated that the purchaser was a company to be advised c/o Ms Al Amoudi and a contemporaneous attendance note of Mr Berry records that Ms Al Amoudi did not want to go ahead with the purchase if the lease could not be extended. In fact, the property was purchased by Mr Nichol and the transfer was completed on 25 February 2008, with the help of short term finance from Mr Harrington and Mrs Brook. Mr Paton's evidence was that until he was shown the documentation he had classified the source of the finance in his own mind as Sator.

*The Cadogan Hotel Incident*

188. Shortly before the completion, on 19 February 2008, Mr Nichol and Ms Clutterbuck were involved in a serious commotion at the Cadogan Hotel during which they had a violent disagreement. The following day, Mr Nichol had sent the following email which was copied to Mr McCormick:

*“Hi Ian, I can only say that I am very disappointed at Amanda and your attitude toward the various projects recently. I have worked to the best of my ability to optimise the profit for everyone and I worked entirely in a vacuum. All of a sudden you want to check everything,. [sic] Well I have to tell you that forthwith that will cease.*

*Amanda and you will have access to neither financial records nor drawings until I have completed the schemes in the current form.*

*If you do not trust me, then so be it, but I will not allow this level of interference at this late stage, as I believe that you potentially threaten the integrity of the contracts themselves.*

*I would politely request that you desist from any further action re the sites and the contractors.*

*If you do not heed [sic] my warning, you will leave me no alternative but to legally formalise these actions, as you have no legal/technical right to interfere in the first instance. I simply do not understand your intention, nor do I want to discuss it.*

*To protect your "interest" at Dreyton, [sic] I suggest that Amanda places a similar sum as I am expending on deposit with Brook, or this will certainly harm your equity position. If you have the money then this will not present you with any problem. If not, as I suspect then the accounting at the end will have to reflect that.*

*Normally, I would meet to discuss this but not in these circumstances where you have even managed to upset Peter, with whom I have worked for 11 years without so much as a bad word. I suggest that you respond in writing remembering that I will always accept any reasonable sum to walk from either developments esp in light of recent actions.*

*If you do not want to proceed with any other business together, then so be it. At this stage after a day of fielding all of this nonsense I do not particularly care. I can proceed with Herbert and Sloane Gate if you wish, but I suggest that you are entirely clear in writing before I re-consider them.*

*I might add that I am quite saddened to have to write to you like this but you left me no option. Clearly, I will not be available to meet tomorrow, and suggest that you want a respectable period of time before contacting me in person.*

*Yours regrettably, [sic]*

*Elliot”*

189. Mr Paton’s response of the following day seeks to deal with the points and in the last paragraph states:

*“I am sure we can have our usual constructive and friendly discussions with all concerned present (namely you Amanda and me); I am sure we will find something to laugh about!”*

In cross examination, Mr Paton accepted that “all concerned” were Mr Nichol, Ms Clutterbuck and himself.

190. In further response on 23 February 2008, Mr Nichol referred to “Amanda’s disgusting outburst at my house” and that he hoped that he would never meet her again. He referred to having no option but to take formal legal action to bar Ms Clutterbuck and Mr Paton from “either sites” if they attended there or harassed anyone professionally or personally related to him. Mr Paton stated that merely Cliveden Place and Drayton Court was not the whole picture. It was accepted by Mr Paton that Ms Al Amoudi was not involved in either of those projects.
191. Despite a term in the written joint venture agreement for Cliveden Place requiring consent in writing in respect of any charge over an interest under it, Mr Paton charged his interest in the Cliveden Place joint venture to Sator without having obtained such consent and without having informed Ms Clutterbuck. When asked why he had not charged his interest in other joint ventures allegedly entered into with Ms Al Amoudi which were not in writing, Mr Paton’s evidence was that Mr Brook drew up the documentation in respect of what Sator was interested in. I accept his evidence in this regard.

*Flat 10 24-26 Hans Crescent*

192. This is the third flat which Ms Al Amoudi purchased in 24-26 Hans Crescent. She completed the purchase on 28 June 2007 having exchanged contracts only two days beforehand. It is alleged that the same individuals were party to a joint venture in relation to the flat and that it was sourced by Mr Paton with the intention that it would be a PAM. Ms Al Amoudi says that she found the flat and that she had lived there from January 2004 until August 2005. The purchase price was £622,015 all of which was paid for from Ms Al Amoudi’s HSBC account. On 24 May 2007, £40,000 was transferred to her solicitor on Mr Paton’s behalf for the deposit of £31,000 and a further £617, 800 was transferred on 27 June 2007 in respect of the £591,669.36 balance of the purchase price.



193. Mr Berry stated that the papers in relation to the transaction were forwarded to him from Brook Martin who had been acting for Mr Paton and that this was the first time that he had had correspondence with Brook Martin. Mr Berry's file also revealed that Mr Paton had telephoned to find out whether contracts had been exchanged. It is also now clear that a payment into the client account on 24 May 2007 of £40,000 to which I have referred and of which £31,100 was used to pay the deposit on the transaction, came from Brook Martin.
194. There was an extensive refurbishment which the Claimants say was paid for by them. The one bedroom and one bathroom property was converted into a two bedroom and two bathroom apartment. It is now let through M2 Property.

*The Kiltybegs letters*

195. By a letter dated 1 June 2007 from Mr Paton to Ms Clutterbuck and addressed from The Yard House, Kiltybegs to The Dairy Kiltybegs, under the heading "LETTER OF TRUST RE: PROPERTY PORTFOLIO" Mr Paton wrote amongst other things as follows:

*"I am writing to confirm that I hold the property interest in the Schedule below on trust for you absolutely acknowledging as I do that you have provided out of your own monies all equity therein and have discharged all disbursements legal costs, stamp duties, search fees and other expenses in relation thereto. . . .*

*I also confirm that you have provided the sum of £1.94m which in aggregate has been paid to Dexter Montague Solicitors who represent Mr Nichol and the prospective funder of 48-50 Hans Place to be utilized strictly in the acquisition of joint venture property and my interest in the joint venture is likewise held upon trust for you absolutely.*

*I also confirm that I am holding for you absolutely on trust an aggregate sum of £800,000 which has been invested by way of building costs in joint venture properties disclosed without limitation in the schedule (together with any future monies so invested).*

*. . . . I also agreed to deal or dispose of the properties as you require only and strictly as you direct in writing.*

*. . .*

*Schedule*

*48 Vandon Court, Petty France, Westminster, SW1*

*Flat 7, 50 Hans Place, SW1X*

*30 Oakley House, 103 Sloane Street, SW1X*

*81 Pier House, Cheyne Walk SW3*

*47 Belgravia court, SW1 W*

*Seaforth, Porthtowan*

*Capital sums invested in joint ventures namely £800,000 together with 50% share in profits of joint ventures with Elliot Nichol and his financial partners at:*

*24-26 Hans Crescent*

*50 Cadogan Square*

*Drayton Court*

*St John, Westminster*

*An any other property which may be acquired and refurbished from time to time under this arrangement with funds supplied by Amanda Clutterbuck.”*

196. Ms Clutterbuck accepted that the address from which the letter was sent and that to which it was addressed are very close by and that in fact, the wording for the letter had been provided by Mr Brook of Brook Martin. In cross examination both Ms Clutterbuck and Mr Paton identified a photograph of a small wooden chalet and a converted farm building at the respective addresses and Mr Paton accepted that he used the address from time to time.
197. Mr Seitler on behalf of Ms Al Amoudi pointed out that the letter had not been referred to in Ms Clutterbuck's first witness statement and he suggested that its content was inconsistent with the case put forward at that time which was that Ms Clutterbuck had no knowledge whatever of the transfer of monies to the Ms Al Amoudi without her authority.
198. In fact, as Mr Seitler pointed out when cross examining Mr Paton, the letter refers to £1.94m having been paid to Dexter Montague who are described as the solicitors of Mr Nichol “and the prospective funder of 48-50 Hans Place”. It is not in dispute that in fact, at all material times that firm has acted only for Ms Al Amoudi. Mr Paton accepted neither that the letter was a forgery nor that he had referred to Mr Nichol with reference to Dexter Montague rather than to Ms Al Amoudi because he was seeking to conceal his relationship with the Defendant from Ms Clutterbuck.
199. Furthermore, Mr Paton was unable to explain why Drayton Court was included in the list of properties in respect of which it was said that building costs had been incurred. In fact, the purchase of that property was not completed until 29 June 2007 almost a month after the letter was allegedly written. He also accepted that in the Re-Re-Amended Particulars of Claim it was pleaded that the Hans Place Joint venture was not agreed until April 2008.

200. In fact, but for Belgravia Court, the properties set out in the first part of the schedule to the letter became the Security Properties to which I refer below. Mr Paton was unable to explain why they had been dealt with without Ms Clutterbuck's direction in writing as set out in the letter.
201. In fact, Mr Paton wrote another letter from the same address in Ireland addressed to Ms Al Amoudi which was also dated 1 June 2007. It was in the following form:

*“Dear Sara and Elliott*

*As discussed, I confirm I have today written to Amanda confirming the monies, property, and shares in our joint venture properties listed in the schedule which I am holding on trust. . . .”*

There is also a letter dated 1 February 2007 from the same address in Ireland to Mr Nichol and Ms Al Amoudi in which it is stated that the “£500,000 I have agreed to send to you in the next day or so, I am holding on trust for Amanda Clutterbuck. I will therefore be holding my share in the joint venture investments in St Johns, Westminster and 50 Cadogan Square in trust for Amanda.” The last of the letters from the same Irish address, written by Mr Paton is dated 15<sup>th</sup> May 2007 and once again is to Ms Al Amoudi and Mr Nichol. It is in the following form:

*“As discussed I am writing to confirm that the £1,400,000 I have agreed to send to you in the next day or so, I am holding on trust for Amanda Clutterbuck. I will therefore be holding my share in the joint venture investments in St Johns, Westminster and 50 Cadogan Square in trust for Amanda.”*

202. Mr Paton's evidence was that each of these letters was sent to Ms Clutterbuck and she stated in cross examination that Mr Paton had probably done so, something which she had stated positively in her witness statement. Despite this in the Re-Re-Amended Particulars of Claim it was pleaded that Ms Clutterbuck had no knowledge of Ms Al Amoudi's participation in any joint ventures. Furthermore, despite the letters Ms Clutterbuck accepted that she had not sought to contact Ms Al Amoudi in February 2008. Later in his cross examination Mr Paton stated that he had not sent the letters to Ms Clutterbuck and that otherwise, she would have had the Defendant's name.
203. By an order of 11 October 2011, the claimants had been required to provide electronic copies of the 1 June 2007 letters but have not done so. It seems to me that in all the circumstances including the failure to produce electronic copies, the contrary stance taken in the Re-Re-Amended Particulars of Claim to which I have referred and the inclusion of Drayton Court in the list of properties, on the balance of probabilities, these documents were produced after they were dated in an attempt to bolster the claim and that they were neither produced nor sent at the time.

*The forwarded email*

204. In August 2007 Mr Paton forwarded an email to Ms Clutterbuck in which it was stated that Mr Paton had been concerned about Sarah and asked whether she was “ok”. A subsequent email from Mr Nichol to Mr Paton states that Mr Nichol was surprised that Ms Clutterbuck had queried the first email and proffers the explanation that the original was intended for Andrew at Citibank and not for Mr Paton at all. In cross examination Ms Clutterbuck said that she thought that Ms Al Amoudi was merely a member of Mr Nichol’s Middle Eastern consortium and that there had been a barrage of distractions at the time. Mr Paton did not respond to the challenge that the first email had clearly not been intended for Andrew at Citibank and in relation to why Mr Nichol should be asking Mr Paton about the welfare of Ms Al Amoudi, allegedly a member of his own consortium, Mr Paton stated that she may have disappeared in the middle of the transaction. I find Mr Paton’s explanation inherently improbable. Given the content of Mr Nichol’s email, in my judgment it is more probable than not that he was attempting to provide an explanation in order to assist Mr Paton in what otherwise would have been an awkward situation which had arisen with Ms Clutterbuck.

*Chelsea Cloisters, Sloane Avenue*

205. 6 Chelsea Cloisters was purchased by Ms Al Amoudi on 2 November 2007, having exchanged contracts on 19 October that year. The purchase price was £210,000. The Claimants alleged once again that there was a joint venture between themselves, Mr Nichol and Ms Al Amoudi and the property was intended as a PAM. They contend that they contributed to the refurbishment of the property and that £72,000 which was transferred on Mr Paton’s behalf to Ms Al Amoudi’s solicitors, was used to assist in the purchase.
206. Ms Al Amoudi on the other hand denies any joint venture and says that she was introduced to this property by Mark Howells of Town Base Properties. The purchase price was met by means of £142,402.32 from her HSBC account and as I have mentioned, £72,000 was transferred by Mr Paton’s solicitors, Brook Martin. She says once again that those monies were a repayment by Mr Paton of sums she had loaned to him. She says that she paid for the refurbishment which was carried out by her own builder. The property is let out through M2 Property.
207. On 28 November 2007, Mr Ellis says that he acted as buying agent in respect of an offer for 44-45 Hans Place made by Ms Al Amoudi, Mr Paton and Mr Nichol. In fact, the transaction did not go ahead. The documentation exhibited by Mr Ellis made no reference to Ms Al Amoudi at all. It referred to a new company set up by Mr Nichol. Mr Ellis was referred to Mr Nichol’s correspondence with Mr Brook of 23 December 2007 in which he complained that Mr Paton had put forward his name in relation to various transactions. He stated:

*“You will now be aware that he proposed me as the purchase of 45 Hans Place to Darshna without my knowledge and I am not now proceeding after viewing the property. Perhaps we can all sit down in the new year and agree the ground rules.”*

In the light of Mr Nichol’s complaints and the lack of any other evidence of Ms Al Amoudi’s involvement, I am unable to accept Mr Ellis’ evidence in this regard.

*Flat 7 50 Hans Place*

208. Flat 7, 50 Hans Place as purchased by Mr Paton on 5 February 2007 with the benefit of a mortgage from the Derbyshire Building Society and was refurbished at his or Ms Clutterbuck's expense. It is not one of the alleged stand alone joint ventures but became one of the Security Properties. Nevertheless, I mention it here because of its place in the chronology.
209. By a letter of 28 February 2008, Mr Berry of Clarkslegal LLP contacted Ms Al Amoudi about the proposed payment of £700,000 in respect of the purchase of the long lease of the flat. Mr Berry recorded that he had received the £700,000 from HSBC but that he had had little time to agree documentation with Mr Paton's solicitor. It was as follows:

*“ . . . I enclose a copy of my letter to Brook Martin (without the draft charge) outlining how we intend to protect your position. Assuming the existing Lease can be surrendered you will have a second charge secured behind that of Derbyshire Building Society (who I understand, but have received no evidence of, are owed £1 million.) The mortgagee have not yet been approached to give their approval to this arrangement. Otherwise, you will have a first charge over the new title.*

*I believe that the real value remains at this stage in the existing Lease which expires in 2045 but I am conscious that the money is needed tomorrow. I am not in a position to give any certainty as to the strength of the proposed security. Notwithstanding my reservations please confirm that if Brook Martin give the required undertakings that you are happy for me to transfer the money to them notwithstanding my concerns over the limited security which you will obtain until or if the existing Lease can be surrendered.*

*If you have any questions please telephone immediately.*

*I await your written confirmation.”*

210. The letter to Brook Martin of the same date required three undertakings before the monies could be transferred. They were that the new 999 year lease would be registered in the name of Mr Paton, that Mr Paton would execute and register at HM Land Registry an enclosed CH1 form as a First charge subject to the surrender of the existing lease. The CH1 form recorded Ms Al Amoudi as the lender and Mr Paton as the borrower in respect of a loan of £700,000 to be secured upon the property, all sums being repayable on 31 December 2008. The undertakings were given in a form which was acceptable by way of an email of 6.15pm on 28 February from Mr Brook, albeit sent on his behalf by Carly Oliver.
211. It appears from a fax header on a copy of Mr Berry's letter to Ms Al Amoudi of 28 February 2008, that the letter had been faxed over to Brook Martin at 5.16pm

that day and had been faxed back by Brook Martin to Clarkslegal LLP at 11.32am the following morning. The returned copy included the following in manuscript: "I CONFIRM THIS INSTRUCTION."

212. Mr Berry's attendance note of 29 February 2008 records that he received a telephone call from Ms Al Amoudi just after he received the fax with her confirmation to proceed to transfer the funds to Brook Martin. The attendance note recorded that the call was at about 12 noon. The note records that Mr Berry asked for confirmation "that she freely made her decision and she so clarified. I reread my letter of 28 February and outlined once again my reservations as to the lack of security that was being given by Ian Paton. She confirmed that she understood the position and what I had explained in my letter. She then reiterated her request to transfer 700K to Brook Martin. I said that I would therefore arrange this."
213. Rather surprisingly, having confirmed Brook Martin's fax number, Mr Brook stated that the advice letter must have been sent in error and returned without having been read. I am unable to accept his evidence in this regard. It seems to be very unlikely that one would fax something back if it had been sent in error. It would be necessary merely to destroy the fax which had been received. On the balance of probabilities, it seems to me that the sequence of events is as Mr Seitler describes. This is consistent with the evidence of Mr Paton, Ms Al Amoudi and Mr Berry and is also consistent with Mr Berry's attendance note.
214. Mr Brook was shown his firm's ledger in relation to Flat 7 50 Hans Place which also showed a sum of £100,000 which was paid to Sator Properties Ltd on 17 March 2008. In cross examination, Mr Brook accepted that he had not treated the £700,000 as monies injected into a joint venture at all. He had treated them as monies loaned to Mr Paton by Ms Al Amoudi's mother, rather than Ms Al Amoudi herself and that thereafter he had dealt with the monies in accordance with the instructions of his client, Mr Paton. As a result he had transferred £100,000 to Sator at Mr Paton's instruction.
215. In fact, the charge which Mr Brook undertook to have executed and registered stated that Ms Al Amoudi was the lender, Mr Berry's letter made no mention of her mother and stated that he had had receipt of £700,000 from Ms Al Amoudi's bank, HSBC. In addition, in his witness statement of 29 September 2010 in the Central London County Court, Mr Brook's explanation of the transaction made no reference to Ms Al Amoudi's mother and referred to a loan having been made by Ms Al Amoudi herself. Mr Paton accepted in cross examination that he did not know where the £700,000 came from. It seems to me on the balance of probabilities and given the lack of any written reference to Ms Al Amoudi's mother, that the monies were advanced by Ms Al Amoudi herself.
216. In fact, back in November 2006, Mr Brook's ledger in relation to this property reveals a further £12,000 received from Ms Al Amoudi. His attendance note of 23 November 2006 notes the receipt and states "there is another £48,850 which Ian Paton has to produce and he has assured me he will do so." In cross examination Mr Paton did not accept the £12,000 was a loan. He stated that it was to be dealt with on an accounting basis and was also attributable to a joint venture. I am unable to accept his evidence in this regard.

217. Mr Brook provided a letter of 6 March 2009, which was intended to be circulated to prospective purchasers of 48-56 Hans Place and was in fact, sent to Mr Philip Foster and Mr David Altberg of Strand Partners Limited. The final paragraph of the letter stated:

*“We hope the above gives you the comfort which you are seeking including terms for the acquisition of the entirety of the above properties for our client. . . .”*

218. The letter stated that it was written on behalf of Mr Paton who was described as an established client and dealt with each of 48, 49, 50, 51 and 52 and 53-56 Hans Place. Under the heading “50 Hans Place” it was stated that Mr Paton owned Flat 7. Mr Brook’s explanation was that it was done quickly and that Mr Paton owned Flat 7 beneficially or had control of it. I am unable to accept this evidence.
219. Furthermore, despite an attendance note of 12 January 2009 recording instructions from Mr Paton not to proceed to obtain searches in relation 49 Hans Place and a chain of emails in February in which the vendor is pressing Mr Paton for progress, the letter contains the assertion that matters are progressing.
220. It seems to me that the letter contained a series of serious inaccuracies. For example, in addition to the explanation of Mr Paton’s ownership, under the heading “53-56 Hans Place”, Mr Brook stated that “These are freehold properties owned by a company in which our client has a one third interest.” In cross examination, Mr Brook accepted that this was a “very loose general statement”. In fact, it is wholly inaccurate because Mr Paton did not hold such an interest.
221. It was in 2008 or 2009 that Mr Hickmott says that Ms Al Amoudi told him that her mother was going to transfer to her £100m. He accepted in cross examination that although he did not know whether a joint venture existed or not.
222. Flat 7, Hans Place is one of the Security Properties and was transferred to Ms Al Amoudi in the manner described below on 24 October 2008.

#### *Charges to Sator*

223. Meanwhile, Mr Paton had purchased the property at Seaforth on 5 January 2007. It was registered in his sole name and he entered into a promissory note in respect of £667,500 plus interest of £2,100 per day which was secured by way of a registered charge in favour of Mr Brook and Mr Martin, the partners of Brook Martin. Further sums totalling £119,000 were also borrowed by Mr Paton and secured against the property. There were further promissory notes for varying sums over the period of June, July, August and September 2007.
224. It is the Claimants’ case that Seaforth and other properties were in fact, owned 100% by the Clutterbuck Trust. In the original Particulars of Claim it was alleged that Ms Clutterbuck’s consent had not been sought for the borrowing and Mr Brook stated in cross examination that he did not know whether Ms Clutterbuck had knowledge of the borrowing. He also stated that in fact, he and Mr Martin were acting as nominees for Sator in relation to the borrowing and the security. He accepted that a considerable sum was owed to Sator and that after a horse deal,

interest had stopped running in 2010. Mr Paton at least, thought that he owed in excess of £3m and that it had been outstanding with interest running for five years.

225. Mr Seitler on behalf of Ms Al Amoudi, took Mr Brook to documentation in relation to the purchase of 8 Walton Place by Mr Nichol and 47 Belgravia Court which was purchased by Mr Paton in which Sator was also involved in the former case through the auspices of a Mr Harrington and Mr Brook's wife. Mr Brook rather surprisingly, did not accept that he had placed himself in a position of conflict contrary to Solicitors' Code of Conduct 2007 3.01 (1)(2) + (3).
226. On 8 April 2008, Mr Paton executed a charge over his interest in the 9 Cliveden Place joint venture in favour of Sator Properties Ltd in order to secure bridging loans and finance charges. In fact, under the Joint Venture agreement which Mr Brook had drafted, any assignment required the consent of the other parties. It was Mr Brook's evidence in cross examination that there had been no pressure from Sator to obtain the necessary consent which was eventually obtained after the event in April 2009. Mr Brook stated that the amount owed to Sator was in the region of £2m. In fact, it is quite clearly set out in an email of 12 April 2010 from Janice Sutcliffe of Brook Martin to Mr Misselbrook that:

*"The reasons it took over a year to obtain Westbrooke's consent is that Ian understandably wanted to speak to Elliot thereon before writing to Westbrooke. Despite the passage of time and the ever increasing level of debt to Sator, Ian failed to do this and ultimately Sator insisted that Stephen [Brook] attend to the matter instead as they wanted a secured position."*

Unfortunately, this is another example of Mr Brook's unreliability as a witness.

227. Mr Brook accepted that in fact, he acted for all the parties to the Cliveden Place joint venture and for Sator and that Ms Clutterbuck was not informed of the charge at the time. In fact, it was renewed on 1 April 2010 and Ms Clutterbuck was a party on that occasion. Mr Brook accepted in cross examination that at the time, Mr Paton was borrowing more money from Sator and that once again however, Westbrooke's consent to the charge was not sought. When questioned about why Mr Brook had not suggested that Mr Paton's interest in other joint ventures be the subject of a charge, he responded: "Why should I when there's a very straightforward one that I know and can vouch for?" It seems to me that such a response provides no support for the existence of the alleged joint ventures with Ms Al Amoudi.

*Flat 1, 6-8 Hans Crescent*

228. Flat 1, 6-8 Hans Crescent was purchased by Ms Al Amoudi on 12 September 2008. It is said that it was sourced by Mr Paton on Ms Al Amoudi's behalf. In fact, she accepts that he may have recommended it to her. Once again it is said that there was a joint venture between the same parties and that the property was either intended as a potential SAM or as a PAM. The purchase price was £695,000 of which £600,000 was by way of loan from HSBC. In fact, it was part



of the £4.89m facility which forms part of the narrative in relation to Hans Place to which I refer below. The balance of the purchase price came from Ms Al Amoudi's bank account.

229. Ms Al Amoudi accepts that Mr Paton helped with stripping out the flat. However, permission for the works had not been obtained from the freeholder and a stop notice was served. Thereafter, she says that Mr Paton had no involvement with the refurbishment. The claimants say that they paid for the refurbishment. This is completely contradicted by Ms Al Amoudi.

*The remaining claims*

230. I should add that it is also pleaded that contributions were made to the purchase price of properties at 79 Marsham Street, London SW19 4SB and that contributions to refurbishment were made by the Claimants in respect of 48 Vandon Court, 64 Petty France, London SW1H 9HF, Flat 7, 50 Hans Place, London SW1X 0LA and 81 Pier House, Cheyne Walk, London SW3 5HN. Pier House, Flat 7, 50 Hans Place and Vandon Court are Security Properties to which I shall refer in more detail.

The claim for £2.28m and the refurbishment costs in more detail

231. As I have already mentioned, it is said that pursuant to the joint ventures and as a result of the false representations pleaded at sub-paragraphs 17B-G of the Re-Re-Amended Particulars of Claim to which I refer below, Mr Paton acting on behalf of Ms Clutterbuck transferred various sums of money to Ms Al Amoudi's solicitors, Dexter Montague which totalled £2.282m. The details of the transfers are not in dispute. It is also not in dispute that the bank statements show that the monies paid to Dexter Montague were transferred to one of the Defendant's bank accounts before being returned to Dexter Montague and used in the purchase of various properties, although in some cases, monies were also paid back to Mr Paton. The details of the payments as pleaded at paragraph 28 of the Re-Re-Amended Particulars of Claim are as follows:

*“(1) On 8 February 2007, the sum of £500,000, which the Defendant used to help purchase Flat A, 24-26 Hans Crescent, London, SW1 9LL and Flat 7.01 St John's Building, 79 Marsham Street, London, SW1P 4SB*

*(2) On 19 January 2007 the sum of £150,000, which the Defendant used to help purchase Flat A, 24-26 Hans Crescent, London SW1 0LL.*

*(3) On 19 January 2007 a further sum of £120,000, which the Defendant used to help purchase Flat A, 24-26 Hans Crescent.*

*(4) On 21 May 2007, the sum of £1,440,000, which the Defendant used to help purchase Flats 3.08 and 3.18 St John's Building, 79 Marsham Street, London, SW1P 4SB and Flat 10, 24-26 Hans Crescent.*

(5) *On 23 May 2007 the sum of £40,000.*

(6) *On 16 October 2007 the sum of £72,000, which the Defendant used to help purchase Flat 6, Chelsea Cloisters, Sloane Avenue, London, SW3 3DL,*

*TOTAL: £2,322,000”*

It is accepted that there has been double counting as to £40,000 and that the actual figure in question is £2.28m.

232. Mr Cakebread on behalf of the Claimants drew attention to the fact that in her witness statement of 20 July 2010, Ms Al Amoudi had denied that the Claimants’ funds had been used by her to purchase any properties. Mr Seitler submits that this is quite reasonably explained on the basis that the sole claimant at that stage was Ms Clutterbuck. Once again, it is the Defendant’s case that these sums were repayments of monies owed to her.
233. In relation to the £120,000 which is pleaded at particular (3) to paragraph 28 and said to have been used to help purchase Flat A 24-26 Hans Crescent, Mr Paton accepted that the sum was paid straight back to him on 15 February 2007 with reference to Ms Clutterbuck’s purchase of Flat 4, Sloane Gate Mansions which Mr Paton accepted was not a joint venture property.
234. Furthermore, despite the sums of £150,000 and £120,000 used in relation to Flat A 24-26 Hans Crescent and referred to at (2) and (3) pre-dating the letter of 1 February no mention of those sums is made there.
235. In relation to Flat 7.01 St John’s Building, it is pleaded that the property was the subject of a joint venture between Ms Clutterbuck, Ms Al Amoudi and sometimes Mr Nichol as well. Despite it being pleaded that it was sourced by Mr Paton, purchased by Ms Al Amoudi on the basis that it would be refurbished with funds from Ms Clutterbuck and then sold with the profits being split 50:50 between Ms Clutterbuck and the Defendant, in cross examination, Mr Paton suggested that it was purchased as a swap property and that in fact, there was only a lick of paint which was necessary. The documentation shows that the mortgage was obtained on the basis that the property was “buy to let” and none of the correspondence and attendance notes written by Mr Berry, Ms Al Amoudi’s solicitor, contain reference to a joint venture.
236. Equally, the documentation surrounding the purchase of Flat 3.18 contains no reference to a joint venture and the purchase was completed in the Defendant’s name. In fact, the property was let at the time on a three year agreement and the rent was paid to Ms Al Amoudi alone. Mr Paton stated that nevertheless, it was part of the portfolio. He had to accept however, that it was not purchased in order to refurbish and sell in the way pleaded. The documentation in relation to the purchase of Flat 3.08 St Johns also does not reveal the existence of a joint venture, something which Mr Paton accepted. However, it is pleaded at paragraph 28(4) that on 21 May 2007 £1.44m of Ms Clutterbuck’s money was used by the Defendant to purchase these properties along with Flat 10 24-26 Hans Crescent. In fact, the completion of the purchase of Flat 3.18 had already taken place on 9 May

2007. Mr Paton was only able to say that in fact, he had no idea how the purchase was funded and that he was not privy to all of the joint venture arrangements. Given the Claimants' case that Mr Paton was intimately involved with the alleged joint ventures on the Claimants' behalf, at first sight this may seem rather surprising. However, it seems to me that in the light of the passage of time, the complexity of the arrangements and the number of transactions, there is little if nothing which can properly be inferred from Mr Paton's response.

237. In relation to Flat 10 24-26 Hans Crescent, Mr Paton accepted that the building was modern and that there were 13 other flats subject to sub-leases in the building. Furthermore, reference to the potential for redevelopment along with Basil Street is set out in an email to Mr Nichol from Mr Paton some four months later on 28 October 2007. In relation to the refurbishment of Flat 10 all of the invoices which have been disclosed are addressed to Ms Al Amoudi but for one in the sum of £23,500.
238. In relation to the sum of £40,000 which it is pleaded at paragraph 28(5) was paid on 23 May 2007, the Dexter Montague ledger states "BY YOU – POA" and contains no reference to a joint venture.
239. At paragraph 24(6) of the Re-Re-Amended Particulars of Claim it is alleged that there was a joint venture with the Defendant in relation to 8 Walton Place. In fact, in cross examination Mr Paton accepted that the property was purchased by Mr Nichol and that no funding was provided by the Claimants.
240. There appears to be some level of confusion about the Claimants' case as to the intended use of each of the £2.28m. In the Kiltybegs letters which were also referred to as the Clutterbuck Trust letters, which I have found were created after the event in order to bolster the Claimants' case, 50 Cadogan Square and the properties at St. John's Buildings are mentioned as intended purchases. However, the claim in relation to 50 Cadogan Square is no longer pursued. Furthermore, in his second witness statement, Mr Paton stated that Ms Clutterbuck's money was to be used for funding the purchase of three flats in St. John's Buildings whereas it is now alleged that the monies were also to be used in relation to 24-26 Hans Crescent and Chelsea Cloisters. Furthermore, although the bank transfers of £1.4m, £150,000, £120,000, £500,000 and £40,000 were marked "Hans" or "Hans Place", the Claimants contend that the monies were used in relation to Hans Crescent, Chelsea Cloisters and St John's Building and not Hans Place at all. In particular, the Claimants say that the transfer of £1.4m marked "Hans Place" was used in respect of flats 3.08 and 3.18 St John's Building and Flat 10 24-26 Hans Crescent.

The [REDACTED] the Impostership claims

241. It was some time in 2008 that Lord Mereworth met Ms Al Amoudi. He was introduced to her by Mr Paton whom he had met with Ms Clutterbuck in 2004 or 2005. Lord Mereworth says that Mr Paton had described her as a refugee who was seeking asylum. Mr Paton had suggested that Lord Mereworth might be able to help Ms Al Amoudi in relation to her immigration status. When they met, Lord Mereworth's impression was that Ms Al Amoudi was very frightened and that Mr Paton was very much in control and that he and Ms Al Amoudi were close to such

an extent that it would be indelicate to speak about Ms Clutterbuck. Furthermore, over time, his impression was that Mr Paton had influence over Ms Al Amoudi who would ask his advice whenever she had to make a decision. He came to this conclusion having seen them together on three or four occasions.

242. Mr Paton and Ms Al Amoudi asked him for an affidavit as a character witness and they met on the terrace at the House of Lords to discuss it. Lord Mereworth says that on that occasion, Ms Al Amoudi described to him all that she had gone through when she first came to England and that both she and Mr Paton explained that she was from Saudi Arabia and had had a child out of wedlock. In cross examination, Lord Mereworth said that he was told by both Ms Al Amoudi and Mr Paton that she had been married to the King of Saudi and that he was informed of the identity of her father. He described her father as “Mohammed Saleh . . . whatever his name is”. He said that he was shown a photograph of her mother. Lord Mereworth agreed to give evidence on her behalf and thereafter, Mr Paton came to see him on a number of occasions to discuss the preparation of an affidavit in Lord Mereworth’s name. A draft affidavit was produced with Mr Paton’s help and forwarded to Ms Al Amoudi’s solicitors.
243. Lord Mereworth’s impression was that Mr Paton was using Ms Al Amoudi’s money. He said that Mr Paton had very little money and often borrowed money from him and that he seemed to believe that Ms Al Amoudi was very wealthy.
244. Lord Mereworth [REDACTED] also came to the conclusion that Mr Paton had a drink or a drugs problem and sought to warn Ms Al Amoudi who would not accept it. He also telephoned Ms Clutterbuck to warn her.
245. Although Lord Mereworth is elderly and at times, could not remember precise details, including the alleged name of Ms Al Amoudi’s father and the alleged identity of her husband, in my judgment, there is no reason overall to doubt his evidence and I accept it.
246. The Impostership claim was only introduced by way of re-re-amendment to the Particulars of Claim in April of 2013, over three years since the claim had been issued. The amendments are elaborate and the representations pleaded are lengthy. It is pleaded that the representations referred to in paragraph 17B were made at the alleged meeting between Mr Paton, Mr Nichol and three women, one of whom was Ms Al Amoudi, at the Lanesborough Hotel in October or November 2002. The precise representations are contained in paragraphs 17B-G of the Re-Re-Amended Particulars of Claim are in the following form:

*“17B. At the meeting, the Defendant orally represented to Mr. Paton that: -*

*(1) she wanted to invest in prime London properties;*

*(2) she was looking for a trophy house in the Area;*

*(3) her family had a property in Eaton Square and several large properties in Mayfair;*

*(4) she was interested in general investment properties;*

*(5) she was the daughter of Sheikh Mohammed Al Amoudi, a Saudi/Ethiopian billionaire;*

*(6) she was a member of the Saudi Royal Family;*

*(7) her mother was also related to the Saudi Royal Family;*

*(8) her family were very interested in sourcing trophy properties in Knightsbridge;*

*and*

*(9) she was interested in investment properties for herself.*

*.....*

*17C. Subsequently, in the following weeks, during the course of travelling around London with him and inspecting properties, and during the course of the business relationship, the Defendant represented to Mr Paton that: -*

*(1) her owned the Intercontinental Hotel in Jeddah and the Sheraton Hotel in Addis Ababa;*

*(2) she had access to a vast amount of money emanating from the Middle East, including by reason of her close relationship to Hassan Abdullah Baroom;*

*(3) she was well connected to a network of wealthy Saudi Arabian and Middle Eastern investors, including the Baroom Group of Saudi Arabia, the M.O Al Almoudi Holding Company of Saudi Arabia, the Al Habtoor Group of the United Arab Emirates, and the Holiday Group of the United Arab Emirates;*

*(4) she was personally investing in several property schemes with Mr. Nichol including projects in Dubai, Ukraine and Lebanon;*

*(5) Mr Nichol would lead the investment consortium who she was able to introduce to Mr Paton;*

*(6) she had access to personal money and substantial funds that could be provided by her mother or her family to invest in the acquisition of properties;*

(7) *her friend's father, Mr James Ramsden ("Mr Ramsden"), trained her father's race horses;*

(8) *Mohammed Al Habor ("Al Habor"), a member of her Middle East consortium, wished to purchase 81 Pier House, and that he had requested that she use an interior designer to refurbish the property to his personal taste prior to completion. The Defendant subsequently claimed to Mr Paton that Al Habor did not wish to proceed with the purchase so Mr Paton sourced another party to purchase the property but the transaction was not effected owing to the Defendant's intermeddling.*

17D. *The Defendant also represented to third parties, including Mr Elliot Davis ("Mr Davis") and Mr David Hickmott ("Mr Hickmott"), at various times between 2004 and 2009 (the precise dates of which are unknown by the Claimants), that she had financed the purchase of properties at 53 to 56 Hans Place, Knightsbridge and 5 Herbert Crescent, Knightsbridge.*

17E. *The Defendant admits to having represented to National Westminster ("NatWest") Bank PLC that she had opened her NatWest bank account on or around 13 March 2001, using a false Yemini passport. The Defendant further represented (through Alexander Solicitors and Advocates ("Alexanders"), her solicitors instructed in her Asylum and Immigration Tribunal), to Mr Alex Wade ("Mr Wade") an employee of HSBC Bank PLC ("HSBC") and other unknown employees of HSBC; that her HSBC bank accounts, had been accessed and misused by Mr Paton.*

17F. *Further, the Defendant, impliedly, represented by her conduct that she was, and at all material times postured as a woman of immense wealth: -*

### **PARTICULARS**

(1) *she dressed in the conservative manner of the Saudi high born families, wearing a traditional burkha [sic], at all times, and comporting herself in a manner consistent with other wealthy Arab women in London;*

(2) *she travelled in chauffeur driven luxury cars;*

(3) *she wore and carried conspicuous accessories and accoutrements; and*

(4) *she claimed that she was resident in Mayfair.*

17G. *Mr. Paton relied upon the representations made by the Defendant, as to her identity and personal wealth, and*

*was induced thereby, into entering into the several joint ventures and agreements, hereinafter particularised, on his own and/or Ms. Clutterbuck's behalf."*

247. First, as Mr Seitler on Ms Al Amoudi's behalf points out, this aspect of the claim is only of any relevance if I find that in fact, there were joint ventures between the Claimants and Ms Al Amoudi. If there were no such agreements then there could not have been any acts in reliance upon the alleged fraudulent misrepresentations. If, in fact, monies and properties were transferred to Ms Al Amoudi because Mr Paton owed her money, whatever may have been represented about her and her family is irrelevant.
248. Mr Seitler also points out that representations allegedly made to third parties which are set out at paragraphs 17D and E cannot be actionable by the Claimants. However, as I understand their case, these alleged representations together with all of the "impostership" representations are put forward only as context for the representations allegedly made in relation to the Hans Place project. No separate relief is sought in relation to them.
249. In any event, it was Ms Al Amoudi's evidence that she had never held herself out as a Saudi princess and on the contrary she had been circumspect about herself and her family because of the difficulties caused to her family by her circumstances and her consequent fears.

At least there is no dispute that Ms Al Amoudi travels in a black Range Rover, part of the registration number of which is "HRH" and has body guards. Her evidence in relation to the registration number was that it was a coincidence and then sought to deny knowledge of it. I found her evidence in this regard to be highly implausible and I reject it.

250. In her witness statement, Ms Al Amoudi stated that Mr Paton may have referred to her as "princess" but that "was his word not mine." In cross examination she stated, "I never mentioned my family name. I never mentioned anything because I was so protective. Very scared. I never mentioned nothing about my family." She added, "I will never say that. I will never take my life in danger. I didn't say that."
251. Mr Paton also contends that Ms Al Amoudi represented to Mr Philips that she is a Saudi princess. Surprisingly, if that had been the case, Mr Philips makes no mention of it in his witness statement and it was not put to him in cross examination. In the circumstances, I do not accept Mr Paton's evidence in this regard.
252. Mr Elliot Davis of M2 Properties stated that he believed Ms Al Amoudi to be from a background of considerable wealth and that it was Mr Paton rather than Ms Al Amoudi who had said that she was a Saudi princess. He said that she often had a lot of available capital in the form of cash and that Mr Paton had told him that the funds came from her mother.
253. Ms Negat Ali gave evidence in this regard. She only came forward during the trial and when seeking permission to adduce her evidence at that stage, Mr Halpin, the Claimants' litigation solicitor stated that she had only recently become aware of

the case. However, Ms Ali herself accepted that she had been aware of the litigation since 2010. She also admitted contacting a Mr Sissaye in 2012 to try to encourage him to give evidence. Her further reasons for failing to become involved until the last minute was that she had been too busy and that her partner had advised her against it.

254. She says that she knew Ms Al Amoudi and her mother in Yemen and that they had a bad reputation. She also stated that from 1989 to 1994 Ms Al Amoudi was based in Dubai and was a prostitute, that she met her again in London at Stringfellows in 1996 and that Ms Al Amoudi lived with her for most of 1999. She states that she helped her obtain a mobile telephone contract and that she had a credit card at the time and that she helped Ms Al Amoudi open a bank account. She also stated that Ms Al Amoudi had worked as a hostess at the Stork Club in London and that she had met Mr Ramsden and his wife in their flat in Pimlico to celebrate the Queen's Jubilee in 2002. She went on that Ms Al Amoudi had a baby in the last week of 1999 and attempted to have the baby's surname changed and that she often uses different passports.
255. Mr Ramsden's evidence was that he did not live in Pimlico at the time of the Jubilee and I accept his evidence in this regard.
256. However, Ms Ali had been recorded speaking to a Mr Girmachew Sissaye asking him to give evidence to the effect that Ms Al Amoudi is from Ethiopia and is or was a prostitute and that he would be paid for doing so. When challenged she accepted that the conversation had taken place but denied offering Mr Sissaye money until she was told that her conversation with him in Amharic had been recorded and translated. She accepted that she had offered him money and stated that it was her own. When asked why the court should believe that she would pay Mr Sissaye herself to come to tell the truth she replied merely: "I don't mind."
257. It was the evidence of Mr Morris, Ms Al Amoudi's litigation solicitor, that Mr Sissaye had previously told him on the phone that he would make lots of money if he gave evidence and that he had read Ms Ali's statement and that it was all lies.
258. Although it is not necessary to make a finding in this regard and I do not do so, it seems to me that the natural inference to be drawn from this episode and Ms Ali's evidence that she herself was willing to pay Mr Sissaye to give evidence, is that she herself has been paid to give evidence in this trial. It seems to me that it is extremely unlikely that otherwise, Ms Ali would have offered Mr Sissaye money to see justice done. This is all the more so because in her witness statement she complained that Ms Al Amoudi had not repaid £500 which she says she borrowed from her and also gave evidence that £45,000 had been stolen from her in January 2013.
259. This inference is also supported by Mr Morris' evidence that very shortly after Ms Ali's witness statement was provided on 17 July of this year, Ms Al Amoudi received a telephone call from a woman saying that if Ms Al Amoudi paid her as much as she was being paid, she would tell the truth. When Ms Al Amoudi refused to pay the £100,000 demanded, the woman stated: "We will send you back to Saudi."



260. In any event, whether Ms Ali is being paid for her evidence or whether she merely offered money to Mr Sissaye to give evidence against Ms Al Amoudi, it seems to me that her credibility is seriously dented and I am unable to accept her evidence.
261. I should add that in addition to representations made orally and by conduct, the Claimants rely upon two sets of documents. The second arise from HSBC Private Bank documentation.
262. First, Mr Cakebread sought to rely upon Ms Al Amoudi's statement in relation to her asylum application in March 2002. It made reference to her father being Mohamed Al Amoudi from a powerful business family in Saudi Arabia who owns amongst other things, the Hotel Intercontinental Jeddah and the Sheraton Hole in Ethiopia.
263. However, there is no evidence to suggest that Mr Paton or for that matter, Ms Clutterbuck was aware of the content of this document and it pre-dates the alleged joint ventures. It is not suggested nor could it be, that any representations made to the immigration authorities in the course of the asylum proceedings were in themselves actionable by the Claimants.
264. It was Mr Shah's evidence that he was introduced to Ms Al Amoudi in 2005
265. From December 2006 [REDACTED] Mr Shah says that he met Ms Al Amoudi on some fifteen to twenty occasions and on all but one or two, Mr Paton was present. He accepted that he had also seen Ms Al Amoudi on social occasions and had had dinner with people, Ms Al Amoudi had told him were members of the Baroom family.
266. Mr Shah also stated that he had certified as a true copy a Saudi Arabian passport in the name of Ms Al Amoudi which he said she had produced as hers. In addition, he suggested that he had attended HSBC on Ms Al Amoudi's behalf because she was concerned that Mr Paton was trying to defraud her and had spoken with a Mr Wade. Certainly, neither Mr Frost nor Mr Barriscale were able to confirm that they had had any contact with Mr Shah or that they had received a certified copy of a birth certificate/or a passport relating to Ms Al Amoudi from him and I do not accept his evidence in this regard or in relation to the allegation that Mr Paton was defrauding Ms Al Amoudi.
267. [REDACTED]

268. In her witness statement, Ms Clutterbuck had stated that had either she or Mr Paton known that Ms Al Amoudi was an asylum seeker they would not have entered into any joint venture with her. Mr Paton had no answer to this or to the question of why if he knew she was an asylum seeker he had nevertheless, transferred the Security Properties to her. He merely stated that by September/October 2008 he was fully committed to the transaction.
269. Mr Shah also reiterated his written evidence that Mr Paton and Ms Al Amoudi appeared to be a couple and that Mr Paton appeared to be very much in love. He went as far as to state that Mr Paton had sought advice about becoming a Muslim because he wanted to marry Ms Al Amoudi. He also stated that Mr Paton appeared to have a very significant degree of control over Ms Al Amoudi and that she did not make any decisions without him.
270. Mr Shah also stated that he had never seen Mr Paton sober and that he had also seen Ms Al Amoudi and Mr Paton arguing about money. He said that this was at Pont Street and that Mr Paton had said that he was arranging for the re-mortgages on properties to raise funds for her.
271. For the purposes of this case, it is not necessary to decide whether Mr Paton was habitually drunk or whether he took drugs, save to the extent that Mr Cakebread says that it is relevant to whether it is plausible that Ms Al Amoudi would have lent him large sums of money. However, on the balance of probabilities, given the number of transactions with which this case is concerned, it seems to me to be very unlikely that Mr Shah had never seen Mr Paton sober and I reject his evidence in that regard as a piece of hyperbole. Equally, there is no other evidence to support the suggestion that Mr Paton had contemplated a change of faith in order to marry Ms Al Amoudi and I reject Mr Shah's evidence in that regard.
272. The Claimants also rely upon the content of an internal credit report of 15 February 2008 produced by HSBC. In my judgment, it is quite clear that if and to the extent that any representations contained in the internal bank documentation were made by Ms Al Amoudi, they were not made to the Claimants and furthermore, were not made in this form, to the Claimants at a time which may have led them to rely upon the representations to their detriment in relation to any of the alleged joint ventures and in particular in relation to the Hans Place project and the transfer of the Security Properties.
273. The Claimants themselves stated that they had not seen these documents until recently. At best, as Mr Cakebread put it, the contents of the documents may support the conclusion that Ms Al Amoudi has a propensity to hold herself out as an extremely wealthy Saudi Arabian with connections to the royal family and accordingly, render it more likely that she did so to Mr Paton. Quite clearly, even

if the documents provide support for such a propensity, it would not carry the Claimants far enough, if, in fact, there were no evidence to support the conclusion that the Claimant did in fact, make such a representation to Mr Paton at a relevant time, upon which he relied to his detriment.

274. To return to the document itself, it is an internal credit report which relates to a proposal by Ms Al Amoudi for a £4m loan described as intended “to assist in the purchase of 8 new residential investment properties and to take on her existing RIP portfolio.” The remainder of the explanation is as follows:

***“1. Proposal***

*New prospect, Miss Sara Al-Amoudi (SA) is looking for us to assist in the purchase of 8 new residential investment properties and take on her existing RIP portfolio. All facilities are in personal name. In summary:-*

*Full breakdown in Financial Analysis. £550k is to repay HBEU debt, the balance is new monies.*

*SAs existing portfolio is made up of five residential investment properties in central London, concentrated in the Knightsbridge area. She purchases the properties, improves the interiors and the [sic] lets them through an agency. All properties are let.*

*The new properties arise where SA had invested £10m into a property deal with a private company investing in property around Knightsbridge. We are advised these funds were received from her mother and were paid direct to the company holding the properties. These monies were in effect a gift from her mother that SA used for a property investment. There is no outstanding liability to SAs mother. As part of the return on the funds AM is receiving 7 properties with a value of £6.9m and taking over the debts on these properties of £3.36m, receiving a net £4.54m against her £10m. These properties are all empty and with the exception of 2 are ready to let. In light of the lack of immediate rental income we propose to hold 12 months interest cover as security. Interest will be covered separately as it falls due.*

*The 2 properties that need work are cosmetic improvements, requiring no permissions, and should be ready within 3 months of completion.*

*The balance of £5.5m is to be transferred to SAA via shares in a property holding company. We are advised that the holding company owns a number of properties in Knightsbridge and the eventual cash repayment to Miss Al-Amoudi, will come from the sale of these properties.*

*SA is also purchasing a small new build flat (Vauxhall new build £345k) for a friend to live in. This will produce nil income.*

*In addition to the properties above SA owns another 4 properties in personal name. One of these is her PPR. Total value of the four is c£3m. HBEU hold debt of £729k against these properties. There is no proposal to take these properties/debt over. Details included in the financial section.”*

275. Under the heading, “Background” the following is set out:

*“Client Miss Sara Al-Amoudi is originally from Saudi Arabia. She was married to a senior member of the Royal Family but fled the marriage and now has refugee status in the UK. HBEU and HIMI have completed full satisfactory due diligence to confirm her lineage and the details behind her refugee status.*

*With regard to the source of SAs wealth an element has come from the uplift in the properties within her existing portfolio but the majority of the wealth has come from funds received from her family. SA is the daughter of Sheikh Mohammed Hussein Ali Al Amoudi (SMH). SMH is listed as 77 in the list of the world's richest people with an estimated fortune of \$9.6bn (Forbes). HBEU advise that SA arrived in the UK with c£5m which was received from her family. We are advised funds continue to be received from her Mother and that some level of contact is maintained, however she is officially cut off. We see this money credited into the HBEU bank account and are aware she holds a safe deposit box in Harrods.*

*When SA was first introduced in mid 2007 it was discussed with MENA and in light of the purely UK nature of the relationship they were happy with the account to be based in the UKUHNWOS team.*

*Born 2/4/82. Single with one daughter born 2001.*

*Intro from HBEU Premier in Knightsbridge who have managed her account since she came to the UK 6 years ago. We have received a fully satisfactory GIF. We have started discussions with PBGB Compliance with regard to opening an account.*

*SA is looking to increase the level of her property holding in the UK having seen her father make money from property investment. She was given a number of properties when she moved to the UK and has used small levels of*

*HBEU debt and some drawings from the offshore bond to purchase more.*

*SA has tried a number of routes to obtain a UK passport but to date has been unsuccessful. During 2008, once in the UK for 7 years SA's daughter will receive a passport.*

*For information, recent discussions have included a plan in which SA's mother is to gift a handful of properties to her. These are to be transferred to an offshore company. The actual properties are not decided on yet but are based in Europe.*

### **3. Financial Analysis**

*A full schedule of properties is below.”*

276. The content of the internal credit report was produced by Mr Frost. He explained that the first section was compiled for a mixture of sources being Ms Al Amoudi herself, the main bank HBEU both at a meeting with Ms Al Amoudi and at a separate meeting without her and then a brief telephone conversation with Mr Paton “to fill in the gaps.” In cross examination he stated that words like “company” “investment” and “property deal” were not ones which he would have expected Ms Al Amoudi to have used. He said:

*“That is likely to have come from Mr Paton more than from Sarah. The part about the money coming from her mother was initially mentioned to me by people introducing me to her, the bank in Knightsbridge.”*

277. I should add that it was Mr Frost’s evidence that the transaction was concerned with the repayment of monies due from Mr Paton to Ms Al Amoudi. He was challenged by Mr Cakebread in cross examination as to why therefore, reference is made in the report to investment. His response was that Mr Paton owed Ms Al Amoudi money and that was the thrust of it.

278. As to the paragraphs in the report relating to Ms Al Amoudi’s background including the identity of her father, Mr Frost stated that the information came primarily from HSBC itself in combination with HBEU and that there was input for example, from Andy Rubery. He went on to add that given the complexity of the story that was given to him by his colleagues:

*“the normal checks were very difficult to undertake, so we tried to take additional checks , but its – it isn’t a – there wasn’t a standard, you known, birth certificate, utility bill and passport that one could hope for.”*

279. Lastly, in re-examination, Mr Frost was asked to comment upon a further internal bank document dated 23 December 2008 to which text had been added by Andy Rubery. It stated amongst other things:

*“The RM should be entirely satisfied as to the underlying transaction given the apparent significant discount here. To clarify, we understand that this relates to the outstanding loan provided by our client to Ian Paton – when new properties are purchased, stamp duty is paid on the full market price and the client/Paton agree a reduced purchase price for the property, with the difference between this and the market value deducted from the outstanding loan.”*

280. Mr Frost said that it had taken place after he had left the bank but that it reflected what he understood to be the basis for the deal, namely that Mr Paton was repaying monies to Ms Al Amoudi by means of the reduced sums which she was intending to pay on the transfers. It seems to me that Mr Frost is an impartial witness and I accept his evidence that he was given to believe that monies were due from Mr Paton to Ms Al Amoudi and as to the source of the internal reports.
281. Mr Frost’s evidence was supported by that of Mr Barriscale which I also accept. He joined HSBC in February 2008 and took over Mr Frost’s clients in around April of that year. He says that he first became involved with Ms Al Amoudi’s affairs in May 2008. He stated in cross examination that the details under the heading “Background” would have been supplied by HSBC Bank Europe and that the formal identification available at the time was Ms Al Amoudi’s Home Office Identification Card. He also stated that the bank would have used an online system known as “World Check”.
282. I should add that in 2010, the Ethiopian Review published an article in which it was stated that Ms Al Amoudi is the daughter of Sheikh Mohammed Hussein Al Amoudi whom it is said was listed by Forbes in 2011 as the 63<sup>rd</sup> richest person in the world and who is or was the owner of the Sheraton Hotel, Addis Ababa. The sheikh brought libel proceedings against the publication and was successful. In fact, Ms Al Amoudi accepted that she had signed a document for the purposes of those proceedings in which she had stated that she was not the sheikh’s daughter.
283. Furthermore, the owner of the Intercontinental hotel in Jeddah [REDACTED] is in fact, a different gentleman than Sheikh Mohammed Hussein Al Amoudi. The hotel in Jeddah is owned by Mohammed Aboud Al Amoudi who is related to the sheikh. The exact identity of Ms Al Amoudi remains unknown.
284. Ms Al Amoudi’s evidence in cross examination was that neither gentleman was her father and that she had not said that they were. She said that the confusion arose as a result of a mistake by solicitors. [REDACTED]. It was her evidence that it was Mr Shah who made the same insertion in relation to the documents for the AIT proceedings which also contained a statement of truth. The same reason was given in relation to the bank records. It was suggested by Mr Seitler that the information as to Ms Al Amoudi’s background in those documents may have been gleaned from the internet by the bank itself. Mr Cakebread submits that this is all incredible and should be rejected.

285. Mr Cakebread also draws attention to the fact that in cross examination Ms Al Amoudi both denied that she was a member of the Saudi Arabian royal family and asserted that her husband was a member.

The funds allegedly loaned to Mr Paton – more detail

286. It is Ms Al Amoudi's case that the transfer of the Security Properties to her upon payment of the outstanding mortgage and related debts and the payments in respect of refurbishment of her properties by Mr Paton amounted to repayments of monies loaned to Mr Paton by her. It is Ms Al Amoudi's case that she had considerable sums of money in cash which were provided by her relatives, principally her mother and that they arrived in suitcases and until it went missing, she kept a great deal of money under her bed. In cross examination she was taken to various documents which revealed in fact that a bank account was opened in her name at Nat West as early as March 2001 and that there were considerable transfers made to it including for example, £100,000 from the Saudi American Bank on 12 September 2001 together with £200,000 in December of that year. Ms Al Amoudi stated that the money was from her mother and other members of her family. She nevertheless, stated that she preferred cash.
287. Mr Baroom whom Ms Al Amoudi says is her uncle swore a witness statement. In summary, his evidence was that he is in business with his family dealing in construction materials and large construction and property development projects in Saudi Arabia where he is based. He travels widely and frequently and on average visits the United Kingdom four or five times each year. His passport was attached to his witness statement, together with a bank reference. The passport contains a large number of stamps and visas which are consistent with wide and frequent travel including travel to the United Kingdom.
288. He stated that he was related to Ms Al Amoudi's mother and that she comes from a very well known and trusted family in Saudi Arabia. He stated that since around 2001 he had made regular deliveries of very substantial sums in cash in suitcases, to Ms Al Amoudi and that because of the impact of what Ms Al Amoudi had done upon her family, he was required to keep it all confidential. He stated that the cash was in US dollars, Euros and Sterling and that a typical amount would be £300,000 to £500,000, although on very few occasions it was as much as £1m. Although he kept no record, he states that over the period from 2001 to 2007, he brought in the region of £10m. He says that he brought the cash on behalf of Ms Al Amoudi's mother and that dealing in such amounts of cash is very common in Saudi Arabia. In addition, he made payments from his bank account to Ms Al Amoudi's NatWest and HSBC accounts which total approximately £2m and are evidenced in the relevant bank statements.
289. At the last moment on the eighteenth day of the trial, it was stated that Mr Baroom would not be attending to give evidence and instead, Mr Khalilou Fadiga was called to explain his absence. Mr Fadiga is the principal solicitor and managing partner of Harding Mitchell solicitors.
290. Mr Fadiga stated that he acts for Mr Baroom as a solicitor and that his client had contacted him in some fear and had broken down stating that it would be dangerous both for him and his family were he to attend court in England to give

evidence, despite the fact that he was apparently informed that his evidence was already a matter of public record. Mr Fadiga explained that as a result of the widespread press coverage of the trial in which Ms Al Amoudi was repeatedly referred to as an alleged Saudi princess and a prostitute, Mr Baroom feared reprisals against himself and his family if he gave evidence, the allegation that she is a prostitute being a very serious issue in Saudi Arabia and that Mr Baroom would be seen as aiding and abetting such conduct which is an offence in Saudi.

291. Mr Fadiga was cross examined vigorously about why Mr Baroom considered himself in “extra” danger if he were to give evidence in court in the light of the fact that the relevant matters were already set out in his witness statement. Mr Fadiga explained:

*“So far, the newspapers, thank God, have not been referring to Mr Baroom. By him coming here and giving evidence, clearly you will agree with me that the newspapers would rightly be, you know, referring to him, that he has been here, he has given evidence, he’s the uncle. That’s what he doesn’t want to happen.”*

292. I found Mr Fadiga to be a clear and straightforward witness and I accept his evidence. It seems to me that there is no evidential basis upon which to impugn his evidence and in effect, to conclude that he is part of a strategy to avoid Mr Baroom’s evidence being tested in cross examination and by inference that he is part of the wider alleged fraud.

293. In estimating the weight (if any) to be given to Mr Baroom’s hearsay evidence section 4(1) Civil Evidence Act 1995 provides that the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence and in particular, regard may be had to the matters set out in section 4(2) which are as follows:

*“(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*

*(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;*

*(c) whether the evidence involves multiple hearsay;*

*(d) whether any person involved had any motive to conceal or misrepresent matters;*

*(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;*



*(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”*

294. Although the last minute refusal to attend might be such as to suggest an attempt to prevent the proper evaluation of the weight of Mr Baroom's evidence, when determining the weight to be given to his evidence, I take into account the widespread and sensationalist nature of the press coverage of the trial and the fact that it was reported on the internet and in Saudi Arabia where having a child out of wedlock is subject to the death penalty and prostitution, alleged in the press against Ms Al Amoudi is an extremely serious allegation. One newspaper article stated that Ms Clutterbuck and Mr Paton “*say the ‘princess’ actually worked as a prostitute with her two sisters in a £750,000 flat yards from Harrods*”, an allegation which is not part of the evidence in this case. It was Mr Fadiga's evidence that the Claimants had been seen in discussion with the press during the trial.
295. Taking these matters into account, together with the passport which evidences frequent visits to the United Kingdom, the evidence of receipts from Mr Baroom in the form of entries in Ms Al Amoudi's bank statements and the corroborative evidence of cash received from family, for example from Mr Ramsden, in my judgment, Mr Baroom's evidence should be given reasonable weight although it has not been tested in cross examination. As to the procedural deficiencies in relation to the service of a Civil Evidence Act notice, in my judgment, no real prejudice was caused in the light of the fact that it appears that the Claimants had assumed that he would not attend.
296. In addition to monies from Mr Baroom further considerable sums, for example, £300,000 on 10 September 2003, £280,000 in September 2004 and £300,000 in December 2004 were received from a Hassan Abdulla. Mr Cakebread on behalf of the Claimants pointed out that in her evidence for the purposes of her application to the Home Office Ms Al Amoudi had stated that monies were sent to her by her mother by means of Western Union transfers, that her mother sent her £10,000 per week and that she had a healthy bank account. There was no reference to cash.
297. In a mortgage approval form from HSBC dated 18 August 2004, Ms Al Amoudi is recorded as having £2m in an offshore bank account and as regularly receiving large transfers from her family. It was also stated that she received £5,000 per month by transfer from her mother to pay her mortgage repayments.
298. In fact, between October 2002 and January 2007 she received £2,514,663 into her bank accounts in this way. Ms Al Amoudi stated that she also received £10m in cash although she had no record of it. She says that between 2001 and 2003 she gave Mr Paton in the region of £5m for safekeeping. Nevertheless, it is clear that during this period or at least part of it, she did have a bank account. Her evidence in that regard was far from transparent. She said that she used cash to pay her bills including purchases, builders and service charges. She also states in her witness statement that of the £5m, Mr Paton did not return approximately £1.5m. This was all despite the fact that it was her evidence that Mr Paton was often drunk and that she says that late in their association she found out that he took drugs.

299. Ms Al Amoudi was asked why she was still allegedly lending money to Mr Paton in 2008 when at that same time, the correspondence in relation to the Security Properties suggest that she was seeking repayment of loans from him. Her response was that she was persuaded when Mr Paton bought flowers and that she loved him.

The Hans Place Joint Venture and the Security Properties

300. It was pleaded in the Re-Re-Amended Particulars of Claim that back in about April 2008, Ms Clutterbuck acting through Mr Paton (and without knowledge of Ms Al Amoudi's participation in the agreement) Mr Nichol and Ms Al Amoudi had made a joint venture agreement for the redevelopment of 48-56 Hans Place, London SW1X 0LA. It is said that the agreement was partly oral, partly in writing and partly as a result of a prior course of dealing between Mr Nichol, Ms Clutterbuck, and Mr Paton on behalf of Ms Al Amoudi. It is said that under the Hans Place Joint Venture, the parties agreed:

- a. That Ms Al Amoudi would secure a loan that would provide £46m mezzanine finance to be used to enable one or more of the joint venturers to purchase the properties comprised in Hans Place and to meet the costs associated with the development and that the loan was to comply with Sharia Law;
- b. Ms Clutterbuck through Mr Paton, Mr Nichol and Ms Al Amoudi were each to pay one third of the arrangement fee for the loan being approximately £4.6m;
- c. Upon being notified that the Loan had been secured, Mr Paton would pay approximately £1.6m to the Defendant being a third of the Arrangement Fee;
- d. Ms Clutterbuck would provide Mr Paton with money to purchase flats within Hans Place and for works on those flats, the money and property acquired being held under the Clutterbuck Trust;
- e. Ms Clutterbuck had a 30% interest in 53-56 Hans Place through Knightscross and Knightscross had agreed to sell the remaining 70% interest to Ms Clutterbuck and subsequently, Ms Clutterbuck would sell the 100% interest to Manx Properties Limited.
- f. The parties would obtain planning permission to develop the Hans Place site into luxury accommodation and thereafter, would either onward sell the project with planning permission or develop the properties themselves and sell them to investors and end users;
- g. The net profit would be used first to discharge the loan facility and thereafter as to 33% to Mr Nichol and Ms Al Amoudi in proportions equal to their respective contributions and 50% to Ms Clutterbuck or alternatively, Mr Paton;

- h. Lastly, any interest of Mr Paton in the Hans Place Joint Venture was to be held on trust for Ms Clutterbuck absolutely.
301. I should explain that the freehold interests in 53-56 Hans Place were owned by Knightscross, (54, 55 and 56 together comprising 13 flats) 51-52 Hans Place comprised lateral flats, the freehold of the premises being owned by Searh Guarantees plc, 50 Hans Place was comprised of seven flats in various ownership, Flat 7 comprising 42% of the entire building, 49 Hans Place was a single dwelling the freehold of which was owned by Mr James Agace and 48 Hans Place comprised five flats owned by separate leaseholders.
302. In opening, Mr Cakebread had made clear that the Claimants' case was that each of the joint ventures had included the Claimants, Ms Al Amoudi and Mr Elliott Nichol. In fact, in closing, Mr Cakebread on behalf of the Claimants did not stress the contractual nature of the arrangements and appeared to seek to downgrade whether there was a contract at all and whether and to what extent Mr Nichol was involved.
303. It had been Mr Pickstock's evidence that Mr Nichol had taken him to Hans Place, Hans Crescent and Herbert Crescent as early as 2006 and had told him that he was in the process of buying up the flats in the building in Hans Crescent and that he together with a Middle Eastern consortium was going to buy up the whole Hans Crescent, Hans Place and Herbert Crescent site. In cross examination Mr Pickstock accepted that he was not paying close attention and these appeared merely to be Mr Nichol's ideas and he was not well. Given that there is no documentary evidence to support the alleged incident, I am unable to accept Mr Pickstock's evidence in this regard.
304. Mr Elliott Davis' evidence was that he was involved with Mr Paton in trying to put together a property portfolio at 48-56 Hans Place. This involvement is borne out for example, by an email dated 28 November 2008 from Mr Davis to Mr Paton headed "48 Hans Place - Offer Price" attaching a spreadsheet detailing the initial split of a £8.5m offer and setting out the individual owners' expectations. Furthermore, it is consistent with a letter dated 25 February 2009, written by Mr Davis on M2 property headed notepaper to Ms Darshna Vadgama at Brook Martin in relation to 48 -52 Hans Place. In that letter, Mr Davis explains that prices had been agreed with the relevant leaseholders and the freeholder of 51 and 52 Hans Place and that contracts were expected shortly for the purchase of their interests.
305. It was Ms Clutterbuck's evidence in her first witness statement that Mr Nichol had not been involved with Hans Place in June 2007 and Mr McCormick's evidence was that after the Cadogan Hotel incident, Mr Nichol wanted nothing more to do with the Claimant and in fact, Ms Clutterbuck's evidence was that in early 2008 the Claimants were seeking to extract themselves from their involvement with Mr Nichol.
306. On 9 January 2009, Mr Davis had emailed someone named Sebastian at Gulfstream and Mr Frost who by that stage had moved from HSBC to a firm called "the Buying Solution", a property finding business which was focused on Surrey and Sussex. The email begins:

*“As requested by Ms Sarah Al-Amoudi, please find attached the proposal for the development site at 48-56 Hans Place, Knightsbridge . . .”*

In cross examination, Mr Davis stated that Sebastian was a contact of Ms Al Amoudi’s and that was why the proposal was being sent to him at her request. He also said that the proposed potential investors would be Gulfstream UAE or their potential investors to buy out the entire terrace. I accept his evidence in this regard.

307. On 23 January 2009, Mr Davis emailed Arif Dar who is described as a potential investor providing the recipient with information he had requested about the 48 - 56 Hans Place project at a meeting held the previous day. The relevant part of the email reads as follows:

*“There are 2 potential scenarios for in relation to the above mentioned project.*

***Scenario 1 – Purchase***

*Outright purchase of the site (48 – 56 Hans Place) for £165m.*

***Scenario 2 (preferred) – Joint Venture***

*Immediate cash requirement £32m to purchase 48 – 50 Hans Place*

*Further £8.4m in escrow account and exchange on 51 – 56 for a purchase price of £84m, subject to planning*

*Further £75.6m once planning obtained to complete on 51 – 56 Hans Place*

*We retain 50% of the future profit on the project (i.e. 50% of profit above £116m)*

*As discussed we have been working on the site assembly of these buildings from flats through to freehold purchases since 2001. The properties are currently largely fully let on ASTs. We would welcome working with a like minded jv partner who wishes to maximise the unique potential of the site.*

*Please let me know if you would like to meet tomorrow with Ian Paton and me.”*

308. On 24 January 2009, Mr Paton had emailed Mr Davis. The email reads as follows:

*“Dear Elliot*

*This is the shareholders agreement (JV). Stephen thinks there should also be an explicit JV agreement as well between the parties. I will ask him to send the format we used with Elliott Nichol on Monday for that.*

*You must sanitise the shareholders agreement prior to sending it on ie. Amend it for NEWCO1, 2, 3 etc.*

*In the actual agreement Herald Trust are nominees for the Irish and SJP are the Icelandic investors; the trick in the agreement is that Sean has written himself in as "Shareholders Director". In any new setup based on this format the "Shareholders Director" must be a separate newco based on 50:50 control with the jv partner and subject to the JV agreement.*

*The profit share described in Schedule 5 should be amended to a straight 50:50 split."*

309. On 4 March 2009, Mr Davis emailed Mr Paton about his fees for the work done. The email is headed "48 Hans Place". He states that he needed an agreement that M2's fees would be paid for "by the buyer". On 17 March 2009, Mr Paton updated Mr Nichol on the investors being targeted. The relevant paragraphs of the email are as follows:

*"The latest on Hans Place is that I will be talking to Sebastian later this week...and another developer Urban Life Developments is in Dubai talking to Fortune about putting something together. In the meantime I am talking to Bryan Lincoln of Jeffrey Green Russell ... who has introduced an accountant at Littlejohn in Canary Wharf who has a client buying a house in Eaton Square for £59m who is reportedly interested. Bryan Lincoln is good friends/business associate of a very good friend of Earl of Cadogan and is looking at putting together the enlarged scheme..."*

Mr Seitler submits that the content of the email is consistent with: Mr Nichol and Mr Paton working together and Mr Paton seeking investors to help them buy the properties in 48-56 Hans Place from the individual flat owners. He points out once again that there is no mention of Ms Al Amoudi, Sharia loans or Middle Eastern financing.

310. In cross examination Mr Davis stated that he had started off in the capacity as agent to Mr Paton and as a result of his contacts at 48 Hans Place had become more involved. In fact, he stated that although he had got involved there was nothing in writing and that it was on the basis that either he or Mr Paton could walk away which is what actually happened. I accept Mr Davis' evidence in this regard.

311. It was Mr Davis' evidence that Ms Al Amoudi did not have any financial interest in the project other than in relation to Flat 7, 50 Hans Place but that Mr Paton asserted that he could get both Ms Al Amoudi and Mr Nichol to buy strategic flats and to hold them whilst the rest of the project was put together. In cross examination he added that they would have entered into an agreement if the whole site had been assembled and an investor who was keen to progress it had been found. He also stated that they were looking for a single investor to back the whole project – someone who had in excess of £110m. However, he had no knowledge of any Sharia funding or a Middle Eastern consortium. It was Mr Paton's evidence that Mr Davis was merely his agent and that he did not share information with him about the site assembly at Hans Place. In this regard, I prefer the evidence of Mr Davis.
312. Having been introduced to Mr Paton by Ms Al Amoudi in mid 2008, Mr Besley's evidence was that Ms Al Amoudi told him that Mr Paton was putting together a development at Hans Place. He says that she did not know a great deal about it but that he was eager to speak to Mr Paton because he might be able to introduce investors. He says that he did introduce a number of potential investors but that the matter did not progress. He also says that they progressed as far as a non-disclosure agreement and the terms upon which introduction fees should be split in relation to one Middle Eastern investor which he had identified and which was a fund from the United Arab Emirates.
313. According to Mr Besley, the first version of the schedule setting out the split of introduction fees was produced by his associate Mr Philip Foster. It was the fourth version which was eventually signed on 1 April 2009 at the Sheraton Park Tower Hotel. The non-disclosure agreement was signed at the same time. Mr Besley says that its purpose was to prevent anyone from approaching Mr Foster's UAE contacts.
314. The Schedule which Mr Cakebread described as his "desert island document" sets out what was said to be the value of 53-56 Hans Place and 48-52 Hans Place and includes a marriage value. Under the heading, "Notes" it is stated "Conditions precedent on securing all 9 Properties". Under the heading, "Fee Source" Knightscross is set against 53-56 Hans Place and New Co against 48-52. The combined fee values is stated to be £5.12m and they are split between Savills, UAE Funds Agents, PF/AW, Cliff/AT, IP, Sarah /HS. "PF" is said to be a reference to Mr Foster, "Cliff" is Mr Besley and "AT" his associate Mr Timms. "IP" is said to refer to Mr Paton and "Sarah/HS" is said to be a reference to Ms Al Amoudi and the company which it is said she had set up.
315. In cross examination, Mr Besley said that there had been a number of meetings in order to negotiate the schedule and that Ms Al Amoudi had been present at least one of the preliminary meetings and at final one. He said that Ms Al Amoudi's fees had been negotiated by Mr Paton and that she was receiving more than Mr Besley because she was an introducer and in fact, had introduced him. Ms Al Amoudi sought to minimise her involvement with the schedule. In her witness statement she stated that she had not attended any meetings in relation to it but in cross examination accepted that she may have been present in order to bring Mr Paton clothes and was otherwise eating biscuits. I am unable to accept her

evidence that she was detached from the business of the meeting in the way in which she describes.

316. It was put to Mr Besley that in fact, Ms Al Amoudi had a ransom strip within the target properties, being Flat 7, 50 Hans Place, one of the Security Properties which had been transferred to her in October 2008. Mr Besley denied any knowledge of that. Mr Besley said that despite chasing Mr Paton, ultimately, he could not put the properties together and nothing came of the deal. He described Mr Paton as very dishevelled. He also said that he had kept in contact by email but none had been disclosed.
317. As I have already mentioned, one of the headings in the schedule is “Savills”. It is not suggested by the Claimants that they were a party to any joint venture. The same is true of “UAE Funds Agents”. Furthermore, neither Ms Al Amoudi nor Mr Nichol signed the non-disclosure agreement. I accept Mr Besley’s evidence.

#### The Facility Letters and the Security Properties

318. In fact, the first facility letter for a loan of £4m was dated 25 March 2008. Mr Paton stated that it related to the funding of the purchase of 49 Hans Place. However, by an email to Langton partnership of 5 May 2008 Mr Paton stated that he had not approached the owner of 49 Hans Place and it is clear from the emails with Mr Agace, the owner of 49 Hans Place in November of 2008, that contact had been made only very shortly before the correspondence. Mr Paton accepted that his discussion with Mr Agace had taken place perhaps a week before his first email of 13 November 2008.
319. It was followed by a further facility letter in respect of a loan of £4.89m of 28 July 2008 which replaced the first letter, (the Facility Agreement Letter). The properties to which the Facility Agreement Letter related were set out in the “Security Schedule” to the Letter and included the properties which have become known as the Security Properties. The schedule was in the following form:

#### **“SECURITY SCHEDULE**

*The following security is to be held:*

*Leasehold property known as Flat 4, 14 Dolland Street.  
First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as Flat A, 24-26 Hans Crescent.  
First Legal Charge to be given by Sara Al-Amoudi*

*Freehold property known as Flat 7, 50 Hans Place. First  
Legal Charge to be given by Sara Al-Amoudi.*

*Freehold property known as Seaforth, Porthowan. First  
Legal Charge to be given by Sara Al-Amoudi.*

*Freehold property known as The Lodge, Kingsfold, West  
Sussex. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as 308 St Johns, 79 Marsham Street. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as 318 St Johns, 79 Marsham Street. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as 701 St Johns, 79 Marsham Street. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as 30 Oakley House, 103 Sloane Street. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as 81 Pier House, Cheyne Walk. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as 47 Belgravia Court. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold property known as Flat 1, 6-8 Hans Crescent. First Legal Charge to be given by Sara Al-Amoudi.*

*Leasehold Property known as Plot 3.02 (plot 19) K Point, Kennington Park. First Legal Charge to Be [sic] given by Sara Al-Amoudi.*

*A Security over Cash Deposits to be given by Sara Al-Amoudi over all of your accounts held from time to time with the Bank a Minimum Deposit of £250,000 (two hundred and fifty thousand pounds sterling) to be maintained with the Bank throughout the duration of this facility.”*

320. The remarks recorded in the internal bank documentation in relation to the revised application for the facility include the following:

“ . . . .

*Some of the valuations referred to in the previous submission were verbally given to us by an associate of Miss Al Amoudi, Ian Paton, who runs the privately owned property business (referred to in the remarks) into which she invested £10m of her own money. Paton has a vested interest in achieving the highest possible price for the sale of these properties to Miss Al Amoudi as they form part of the financial settlement for the repayment of her £10m investment. We are not therefore entirely surprised that he has attempted to inflate the values. The properties are being purchased at the price confirmed in our valuation reports.”*



321. Mr Barriscale stated that in July 2008 Mr Paton had accompanied him when viewing a number of the properties that HSBC were proposing to take as security for the £4.89m loan. He had not met Mr Paton before this time.
322. The Claimants say that it was in July 2008, Ms Al Amoudi represented to Mr Paton and through him to Ms Clutterbuck that she had secured a Sharia loan to facilitate the development of the Hans Place site and that she had paid the arrangement fee in full. The representation was allegedly made orally and by production of the Facility Agreement Letter. In fact, in closing, Mr Cakebread submitted that I should take a wider approach and that the other more general representations which it is alleged were made as to Ms Al Amoudi's identity and background and her wealth should be taken into account when determining whether the specific representations pleaded with regard to the Hans Place Joint Venture would have been relied upon. In other words he says that they are relevant background.
323. It is said that the representations were made for the purpose of inducing Mr Paton and through him, Ms Clutterbuck to pay to Ms Al Amoudi a one third share of the arrangement fee, a sum of around £1.69m.
324. Further, it is said that in reliance upon the representations and in order to provide £1.69m being the one third share of the alleged arrangement fee, Mr Paton entered into sale contracts for the transfer of the Security Properties to Ms Al Amoudi at what are said to be undervalues. As a result of those undervalues it is said that in effect, Mr Paton and through him, Ms Clutterbuck made payments to Ms Al Amoudi by receiving only part of the sale price from Ms Al Amoudi. She says of course, that these differences or balances were part repayments by Mr Paton to her of sums she had loaned to him.
325. The Facility Agreement Letter is dated 28 July 2008. It is on HSBC Private Bank headed notepaper and is signed by two Associate Directors, Private Banking, one of whom was Mr Peter Barriscale. It is addressed to Ms Al Amoudi at 66A Pont Street. It contains an offer made to Ms Al Amoudi of a loan account facility of £4.89m on detailed terms. The purpose of the facility is described as "refinance and assist with the purchase of a portfolio of residential investment properties" and the "Arrangement Fee" is stated to be £21,700 payable on acceptance of the offer. The details of the necessary security by way of first charge is set out in a schedule to the Facility Agreement Letter. It contains the details of thirteen properties and security over cash deposits to be given by Ms Al Amoudi over all her accounts held with the bank with a minimum deposit of £250,000.
326. The properties which together are referred to as "the Security Properties", the sums and the details of the transactions are as follows:

<b>Property Address</b>	<b>Date Purchased by Defendant</b>	<b>Sale Price</b>	<b>Amount of Sale Price Retained by the Defendant</b>	<b>Balance Paid by the Defendant to Mr Paton</b>
Seaforth,	23 Dec 2008	£600,000.00	£275,000.00	£325,000.00

Porthowan				
Flat 7, 50 Hans Place	24 Oct 2008	£2,000,000.00	£909,000.00	£1,091,000.00
Flat 30, 103 Sloan Street (aka 30 Oakley House)	13 Oct 2008	£770,000.00	£180,000.00	£590,000.00
81 Pier House, Cheyne Walk	15 Sep 2008	£875,000.00	£155,000.00	£720,000.00
Flat 48, Vandon Court, 64 Petty France	12 Jan 2009	£300,000.00	£100,000.00	£200,000.00
The Lodge, Kingsfold	15 Sep 2008	£350,000.00	£71,000.00	£279,000.00

Each of the contracts for sale in relation to the Security Properties contains a definition of “Purchase price for the Property” which set out the full price and then recorded an amount to be paid by Ms Al Amoudi and a balance described as part payment of monies owed by Mr Paton to her. For example, the definition in relation the 81 Pier House is in the following form:

*“Eight hundred and seventy-five thousand (£875,000.00) which is to be constituted as to the sum of £720,000.00 paid by the Buyer to the Seller and as to the balance of £155,000.00 as part payment of the monies owed by the Seller to the Buyer.”*

327. Mr Berry, Ms Al Amoudi’s conveyancing solicitor said that he had discussed the transactions with Ms Al Amoudi at the time and that she had told him that she had agreed with Mr Paton that in order to raise funds and reduce his debts to Ms Al Amoudi, which she had said were considerable, Mr Paton had agreed to transfer the Security Properties to her but that in each case, Ms Al Amoudi would pay only the amount necessary to redeem Mr Paton’s mortgage with the balance of the purchase price being treated as a partial repayment to Ms Al Amoudi of the sums Mr Paton owed her. He says that he received the draft contract documentation for all of the Security Properties but for 48 Vandon Court from Brook Martin in April/May 2008. He received the draft contract in relation to Vandon Court in October that year.
328. He says that he first discussed these transactions with Ms Al Amoudi in May 2008 and in fact, it is not disputed that Ms Al Amoudi told Mr Berry that the arrangement was in order to enable Mr Paton to repay debts he owed to Ms Al Amoudi. Mr Berry wrote to Brook Martin on 21 May 2008 in the following terms:

*“Our client has now received confirmation of funding from HSBC Bank plc.*

*Our understanding of the arrangement which has been reached between the parties is that your client is to transfer the properties and our client is to settle the mortgages registered against them. The effect of this will be to reduce the amount of funds owing by your client to ours.*

*As HSBC will be funding the payments to discharge these mortgages we should be grateful if you could in each case provide current redemption statements.”*

329. Further, there is an attendance note of a meeting between Ms Al Amoudi, Mr Berry and another member of the staff of his firm on 26 August 2008 in which it is recorded inter alia:

*“ . . .*

*Purchases – client has concerns about figures to be inserted in contracts. She must recoup the money which she has lent to seller. This will not clear the debt – he still owes her further funds.*

*. . . .*

*Discussion re redemption of seller’s mortgages – this was the basis of the agreement. Client did not want to pay any more. We required proof of amounts outstanding. . . .*

*...*

*Client signed all SDLT forms – both MSR and SCB explained that the question of the “debt figure” needed to be resolved as the correct figures had to be provide to Inland Revenue. Client understood all this.”*

330. There is also evidence that the mortgagee in respect of one of the Security Properties was putting pressure on Mr Paton. He was also under pressure from the freehold owners of various of the leasehold properties in respect of outstanding ground rent and service charges. Notices of default had been served and there was a threat of possession proceedings. There is a wealth of evidence in this regard. For example, there are numerous letters from Brook Martin on behalf of Mr Paton to ClarksLegal LLP acting for Ms Al Amoudi emphasizing the need to proceed quickly to exchange and completion in relation to the Security Properties. The first of such letters was on 12 August 2008. In a letter of 18 August 2008, Brook Martin stated:

*“As I advised, my client needs to explain to his lender why exchange of Contracts has not taken place . . . My client has tried to appease his lenders by advising exchange of Contracts is imminent however they are becoming*

*extremely frustrated at the lack of progress in this matters [sic]”*

The letter of 9 September 2008 expressly states, “we cannot underline the importance to you of exchanging in this matter . . . today”. There are also letters from Brook Martin to Mr Paton’s lenders in August and September of 2008. For example, in an email of 20 August 2008 from Sophie Berquez of Brook Martin on behalf of Darshna Vadgama, to Keith Brown of Salt Finance, headed 81 Pier House and Flat 7 50 Hans Place, she states:

*“Further to our telephone conversation of yesterday, I hope to be placed in funds today with the monies to forward to you to settle the arrears.*

*I will contact you as soon as the funds have been received into my account and when I will be forwarding the same to you.*

*On having spoken again with the purchasers solicitors I believe that they are working through the papers as a matter of urgency to ensure that they will be in a position to exchange contracts by the end of this week.”*

Mr Brook accepted in cross examination that he was trying to appease the lender in at least some of the letters. There are also letters from Mr Paton’s mortgagees seeking an update on exchange and completion and stressing that arrears must be paid. For example, there is an email of 23 September 2008 from Keith Brown of Salt Commercial seeking information as to the likely date of exchange on the Hans Place property at “circa £1.1m given the loan account arrears that we are currently experiencing.”

331. In addition, many of the Security Properties had substantial service charge and ground rent arrears. Flat 7, 50 Hans Place had arrears of £8,300, 81 Pier House £6,735 and the management company had threatened proceedings in respect of the arrears, 30 Oakley House, £3,754.40 and the freeholder company referred to Mr Paton as a repeat offender in this regard, 48 Vandon Court had arrears of £4,394.
332. The amounts paid by Ms Al Amoudi in relation to each Security Property correlate directly with the amount due in respect of each outstanding mortgage.
333. It was both Mr Paton’s evidence and that of Mr Brook that initially the intention had been that Mr Paton would charge the Security Properties and Mr Brook stated that that was the intention as late as early August 2008 and that it was his understanding that it was part of a complex arrangement by which Ms Al Amoudi would provide a loan of around £5m which was to further enable her to put in place a £50m loan to purchase 48-50 Hans Place through her connections in Dubai. Mr Brook’s explanation for a change from a charge to outright sale was because Ms Al Amoudi had already incurred large fees in relation to 48-50 Hans Place.

334. Mr Paton stated that the value of the properties had been discussed between himself, Mr Nichol and Ms Al Amoudi but that the bank had insisted upon their own valuers who had arrived at a much lower figure. He also endorsed and explained Ms Clutterbuck's first statement in which she had said that Mr Paton had made short term loans to Ms Al Amoudi on behalf of Mr Nichol. Mr Paton explained that the loans were the equities in the Security Properties.
335. In fact, as I have already mentioned, a draft contract for sale had been received in relation to 47 Belgravia Court, Ebury St. London SW1 as early as April 2008. Furthermore, Mr Berry of Clarkslegal LLP had sent a letter dated 21 May 2008 to Brook Martin, in the following form:

*"IAN PATON TO SARA AL-AMOUDI*

*SEAFORTH WESTCLIFF PORTHTOWAN TURO [sic]  
TR4 8AE*

*47 BELGRAVIA COURT EBURY STREET, LONDON  
SW1W 0NY*

*FLAT 30 OAKLEY HOUSE, 103 SLOANE STREET,  
LONDON SW1X 9PP*

*81 PIER HOUSE CHEYNE WALK LONDON & PARKING  
SPACE 129 SW3 5HN*

*FLAT 7 50 HANS PLACE LONDON SW1X 0LA*

*We write further to our letter of 13 May.*

*Our client has now received confirmation of funding from  
HSBC Bank plc.*

*Our understanding of the arrangement which has been  
reached between the parties is that your client is to transfer  
the properties and our client is to settle the mortgages  
registered against them. The effect of this will be to reduce  
the amount of funds owing by our client to ours.*

*As HSBC will be funding the payments to discharge these  
mortgages, we should be grateful if you could in each case  
provide current redemption statements. . . "*

336. In this regard, Mr Brook accepted that it was not his evidence that by May 2008 fees had been incurred. His response to the letter from Clarkslegal LLP was a short email to Darshna Vadgama which stated "no way". The following day, 23 May, Ms Vadgama emailed Mr Paton stating that Mr Paton would have seen from the previous email that Mr Brook 'is not in agreement with the proposal made by the purchasers [sic] solicitor. I therefore, await your instructions as to how the sales are to proceed."

337. However, in a letter of 17 June 2008, Brook Martin wrote to Clarkslegal LLP in respect of the Security Properties, setting out a purchase price in relation to each and stating that the price was dependant upon completion within four weeks of the date of the letter. The prices each reflected the mortgage values and were:

47 Belgravia Court	-	£589,000.00
Kingsfold Lodge	-	£273,000.00
Seaforth Westcliff	-	£604,000.00
Flat 7 50 Hans Place	-	£1,066,000.00
Flat 30 103 Sloane Street	-	£434,500.00
81 Pier House	-	£714,100.00

338. By a letter of 3 September 2008, from Clarkslegal LLP to Brook Martin, Mr Berry stated as follows:

*“TRANSFER OF PROPERTIES FROM IAN PATON TO  
SARA AL-AMOUDI*

*In order to protect the position of our client’s Mortgagee for each of the six properties being sold we shall require the Contracts to refer to the full market value on the basis of the figures contained in the valuation undertaken on behalf of HSBC Private Bank. The respective figures are:*

<i>30 Oakley House</i>	<i>770,000</i>
<i>Flat 7, 50 Hans Place</i>	<i>2,000,000</i>
<i>81 Pier House</i>	<i>875,000</i>
<i>47 Belgravi a Court</i>	<i>625,000</i>
<i>Seaforth</i>	<i>650,000</i>
<i>Kingsfold Lodge</i>	<i>350,000</i>

*For SDLT purposes, we shall be paying 4% on the combined values of the above because the sales are related transactions.*

*There can be no suggestion that any of the sales are at undervalue and the Contracts must show that full consideration has been given.*

*We shall require the following additional clause to be added into each Contract:*

*“the purchase price of £ is to be constituted as to the sum of £ paid by the Buyer to the Seller and as to the balance of £ as part payment of the monies owed by the Seller to the Buyer.”*

*The purpose of these transactions is to reduce the debt owed by your client to ours. In respect to Kingsfold Lodge we cannot understand why the monies to be passed to your client should be as high as £279,000. On a recent redemption statement from Bank of Scotland dated 18 July the redemption figure is just over £260,000. Even if no payments have been made since that date we cannot believe that the redemption figure would exceed £264,000. There are no estate agent’s fees. Allowing for your fees, we do not see why the consideration passing to your client should exceed £267,000.*

*Because of your client’s financial position we must insist that the deposits be retained by you after exchange. This is non-negotiable. . .”*

339. Further, that day Mr Paton wrote a letter to Brook Martin from the Yardhouse, Kiltybegs address headed “Kingsfold Lodge, Marringdean Road, Billingshurst RH14 9HE.” The body of the letter which was signed by Mr Paton is in the following form:

*“I hereby confirm that the sale price for this property is to be £350,000 however, on the basis that I owe £71,000 to Ms Sara Al-Amoudi, the total consideration due to me under the Contract is £279,000.”*

In fact, Mr Brook accepted that he had dictated the letter which Mr Paton had signed and that there would have been one in relation to each of the Security Properties. It contains no mention of Sharia funding or the alleged share of £1.69m of a facility fee. Once again on 4 September 2008, Brook Martin wrote to Clarkslegal LLP in relation to Kingsfold Lodge and stated:

*“ . . .*

*Regarding the purchase price, as we advised during the course of our telephone conference call this morning, the actual amount to be sent to us on completion must remain at £279,000.*

*Lastly, our client explained to you the reasons as to why the deposit must be released to us on exchange. Please confirm by return the total amount that will be placed as deposit. . .*  
*.”*

Contracts were exchanged on 4 September with an agreed completion date of 15 September 2008. As soon as the deposit had been received, on 5 September 2008, Sophie Berquez of Brook Martin emailed Bill Mackie (Credit Risk) of Bank of Scotland in relation to “Ian Paton – Ac No 6008367” stating that she was pleased to be “in a position to send to you £25,000 towards the arrears that are currently outstanding.” She added:

*“I trust that the bank will be satisfied with the amount being sent and that this will be sufficient for the bank to hold off any recovery proceedings at present thus allowing us to proceed with the sale.*

*I will let you know once exchange of contracts has taken place in respect of Flat 30 Oakley House however please confirm by return that no further action will be taken at present. I understand that the Purchaser’s Solicitor will be in a position to move further with Flat 30 Oakley House next week.”*

Mr Mackie’s response was:

*“... ”*

*I would confirm that we are agreeable to withholding any recovery proceedings provided we receive the sum of £25,000. I would ask that should the purchaser’s solicitor not be in a position to make further progress by the end of next week we would require proposals for meeting the monthly interest instalments going forward.”*

340. The following day, Mr Berry wrote to Brook Martin in relation to 81 Pier House and reiterated that an additional clause would be needed in the contract “to show that the purchase price was being constituted both by a cash payment and by partial settlement of the debt owed by your client to ours.” Similar wording was used in another Clarkslegal LLP letter to Brook Martin of 13 November 2008 which related to 48 Vandon Court. It stated “...£260,000 is far greater than our client was anticipating to pay allowing for the continued repayment of the monies due to our client from yours.”
341. Thereafter, an attendance note written by Mr Berry and dated 18 November records that Ms Al Amoudi was not intending to proceed but might review the situation if Mr Paton were willing to accept less than £200,000. “The key will be whether the redemption on his mortgage allows this.” In fact the purchase price of £200,000 was agreed. The same pattern emerges in relation to the purchase of Seaforth, Porthowan. Mr Berry’s attendance note of 26 November 2008 records that Ms Al Amoudi was unwilling to proceed unless the cash element of the purchase price was £300,000. An email from Darshna Vadgama on Mr Paton’s behalf dated 3 December 2008 states that the figures were £350,000 in respect of Seaforth and £210,000 for Vandon Court and that Mr Paton would be speaking to Ms Al Amoudi direct and thereafter, a compromise figure of £325,000 was agreed.



342. In cross examination, Mr Brook stated that the reference to a debt was to the third share in the facility fee being the £1.69m. However, given the figures, on Mr Brook's understanding of the debt, the transfer of the final property would have extinguished rather than reduced the debt.
343. In fact, Mr Paton accepted that the figures set out in the table which I have reproduced at paragraph 326 above, cannot support the conclusion that the figure of £1.69m was paid to the Defendant. This is because there was a second charge in respect of £700,000 secured upon Flat 7, 50 Hans Place leaving 'sale price retained by the Defendant' of £209,000 rather than £909,000.
344. In fact, the percentages which appeared in paragraph 46(8) of the pleading had originally been 50% to Mr Nichol and the Defendant and 50% to Ms Clutterbuck. In the re-re-amended form, they are 33% to Mr Nichol and Ms Al Amoudi and 50% to Ms Clutterbuck. Obviously, they do not amount to 100%. It was said in the skeleton argument on behalf of the Claimants that there was a typographical error and that each of the Defendant, Mr Nichol and Ms Clutterbuck/Mr Paton were entitled to 33% each. It was also explained in a reply to a request for further information that it was intended that the Claimants, Mr Nichol and the Defendant would establish Manx Properties Limited as a mezzanine vehicle for the purchase of the sites at 48-56 Hans Place and that that vehicle would sell the assembled properties on.
345. Mr Paton refused to accept that the percentages had been changed to make reference to an entitlement to 33% or one third to Mr Nichol/Ms Al Amoudi in order to fit in neatly with the £1.69m which he says is the amount provided to Ms Al Amoudi being a third of the arrangement fee for the alleged Sharia Loan. This is something to which I shall return.
346. He also stated that despite the fact that it was envisaged that Manx Properties Limited would be the vehicle, Ms Al Amoudi was to be the borrower in relation the alleged Sharia funding. He stated that it was initially to be the Defendant and that he was the junior partner and that there was discussion about putting up the security properties to which I shall turn.
347. It appears from the Brook Martin ledger for the sale of Seaforth, Porthowan that the monies remaining on the account were transferred to "SB loan" and Mr Brook accepted that from time to time he had lent Mr Paton money. He also accepted that the payment of £250,000 from the proceeds of sale of the Seaforth property had been transferred to an account which was concerned with his wife and with Sator.
348. 47 Belgravia Court is also a property which appeared on the schedule to the Facility Agreement Letter. However, it is not alleged that it was a property subject to a joint venture in which the Defendant was interested. It was accepted by Mr Paton that in August 2008, Ms Al Amoudi had provided £10,400 in respect of the property. An attendance note of 12 September 2008 by Darshna Vadgama states that there were arrears to be settled and that the £10,400 had been paid to settle them in order to avoid action being taken in respect of them. The note also refers to amounts owed by Mr Paton to Ms Al Amoudi.

349. As I have already mentioned, it was Mr Paton's evidence that at first he thought that the Security Properties would be charged but that it was in April that he realized that they would be sold. He also said that it was at the end of July that he realized that the loan referred to in the Facility Agreement Letter would apply to the whole Hans Place project rather than merely number 49 and it was in early September that he had come to the conclusion that the Security Properties were to be used to repay the debt of £1.69m in respect of one third of the arrangement fee for the Sharia loan which he believed was already in place. This was inconsistent with Mr Paton's witness statement and the further information provided.
350. In addition, it was accepted that as it was a condition of the loan that HSBC took a first charge on each of the properties and there were various outstanding mortgages totalling around £4.4m, in fact, the facility would only have released approximately £500,000 to the Defendant. Mr Paton's response was that the details of the release of £500,000 were not any part of his calculation.
351. In fact, Ms Al Amoudi had neither secured a Sharia Loan nor paid the arrangement fee and her evidence was that she did not discuss Sharia loans with Mr Paton or anyone else and knew nothing about them. She also stated that she never discussed providing any kind of mezzanine finance in relation to the Hans Place development whether of £46m or any other sum. Furthermore, she denies telling Mr Paton that she had paid an arrangement fee or asked him to contribute towards such a fee. She also denies having told Mr Paton that she represented a consortium intending to invest in the Hans Place project, involving Mr Nichol, her family or anyone else.
352. It is also said that in September 2008, in order to prevent Mr Paton from rescinding the contracts for the sale of the Security Properties, Ms Al Amoudi represented that a letter from the Wealth Management Division of Barclays Bank plc addressed to "Princess Sarah" at Manx Developments, Isle of Man, vouching for the credit of the Cohen family in relation to an intended investment of £165m was genuine and did so in order to induce Mr Paton to believe that wealthy investors were interested in purchasing the assembled development at Hans Place. It is also alleged that Ms Al Amoudi represented that Mr Alex Wade of HSBC had himself verified the reference, that her family were well acquainted with and did business with the Cohens and induced Mr Paton to complete the transfer of the Security Properties to her in reliance on the authenticity of the Reference.
353. On 10 December 2008, Alexandra Marsden of Kings Sturge sent out a proposal in relation to Hans Place to a Richard Osborne Young. "Sharia Law format" and "NO interest Sh/Law arrangement fee figure" is written in manuscript on the proposal. There is no evidence as to the source of the manuscript notes.
354. Lastly, it is said that Ms Al Amoudi knew of the falsity of the representations and the Claimants in their pleading at least, seek rescission of the Hans Place Joint Venture, or damages in lieu under section 2(1) Misrepresentation Act 1967, the recovery of the Security Properties and damages for deceit.
355. Mr Seitler on behalf of Ms Al Amoudi pointed out to Mr Paton that the transfer of the Security Properties was a very expensive way of paying the £1.69m as part of the arrangement fee and that it made no sense and that if it had been intended to

be temporary a restriction on sale by Ms Al Amoudi would have been included. Mr Paton's evidence was that it would have been insulting to include such a restriction and that it was nonsense to suggest that the transfers were to pay an existing loan. He also added that the "security arrangement" was only short term and had been discussed with Ms Clutterbuck in March 2008. He admitted that he had not told Ms Clutterbuck that the properties had been transferred and was expecting to be "in a better position."

356. Mr Seitler also submits that the fraudulent misrepresentation claims in relation the Hans Place project cannot survive if the joint venture is not also established because it was alleged that in reliance upon the alleged representations the monies were transferred by Mr Paton for the purposes of and pursuant to the joint venture. He says that if the joint venture is not pursued, the only reason for the transfers can be the loan repayments for which Ms Al Amoudi contends and to which the representations are immaterial.
357. Nevertheless, in cross examination, Mr Seitler had quite properly questioned Mr Paton on the alleged agreement in relation to the arrangement fee. He was asked about the failure of the pleaded percentages in relation to shares of net profit to amount to 100%. As I have already mentioned, the original pleading had stated that 50% was to be shared between Mr Nichol and Ms Al Amoudi according to their contributions and 50% was to go to Ms Clutterbuck or alternatively, to Mr Paton. In his opening skeleton, Mr Cakebread had suggested that there was a typographical error in the amended pleading. It was suggested that the attempt to introduce one third shares was in order to be consistent with the allegation that Mr Paton had been required to pay one third of the alleged arrangement fee for the Sharia Loan which was all that the equities in the transferred Security Properties would bear.
358. Mr Paton was unable to explain the changes in the case in relation to the Sharia funding and the Security Properties. He described the circumstances as a "moving feast". It was his evidence that it was in early September 2008 that he realized that the Security Properties were needed not in order to secure a loan but to repay a debt for a third of the Arrangement Fee for a Sharia Loan. However, he had already accepted that he had realized in April 2008 that the Security Properties would be sold rather than mortgaged. This was long before the Facility Agreement Letter upon which Mr Paton relies.
359. It was also Mr Paton's evidence that the transfer of the Security Properties was intended to be temporary. Mr Seitler submits Mr Paton's evidence is contrary to his case that the transfers were intended to meet the contribution to the alleged arrangement fee. He also says that such a position is also inconsistent with any belief that they would be re-transferred once the Sharia loan was in place because the Security Properties were transferred from September 2008 despite it being the Claimants' case that they were told that the Sharia loan was in place in July of that year. I agree.
360. In addition, he said that at one stage he thought that a charge would be taken over them. Mr Barriscale confirmed that HSBC would never have lent on such a basis.

361. As to the remainder, Ms Al Amoudi denies any knowledge of a Sharia Loan or an arrangement fee and also denies having made the alleged representations.
362. In addition, in relation to the Facility Agreement Letter, Mr Seitler points out that it is written to Ms Al Amoudi and not by her. Furthermore, he emphasizes that it makes no reference to a Sharia Loan, an arrangement fee (but for £21,700 in relation to the facility itself), nor does it refer to 48-56 Hans Place. The expressed purpose of the loan also makes no reference whatever to the payment of an arrangement fee on the alleged Sharia Loan. Furthermore, it is said that in July 2008, the loan referred to in the Facility Agreement Letter had not been drawn down and could not have been given the fourth condition precedent namely: “The Borrower’s solicitors or other legal representatives will confirm to the bank that the properties are being purchased by the Borrower with good title and free from any encumbrances.”
363. Furthermore, it is said that in cross examination, Mr Paton appeared to abandon any claim to have relied upon the Facility Agreement Letter. The cross examination went as follows:

*“Q. ... this is the facility letter that is said to have taken you in.*

*A. She has been represented as a Saudi princess, a daughter of a billionaire, who has access to vast amounts of money, and the finer details of her loan, which you say releases GBP 500,000 to her, was not part of my calculation.”*

#### *The Reference*

364. The Claimants also rely upon the Cohen reference letter dated 8 September 2008, (“the Reference”). It is written on Barclays Wealth headed note paper and is addressed to “Princess Sarah, Manx Developments – Tenon IOM”. It is signed by Paul Wiggins who is described as a Corporate Manager with Barclays Bank plc. It states:

*“I have been approached by the Cohen Family to express my opinion on there [sic] capability to deliver a deal greater than £165 million.*

*It is of my believe [sic] that they [sic] family have enjoyed great success in business for many tens of years in two main areas the Clothing business and the Property Sector. I have seen them deliver deals equal too [sic] and greater than the amount expressed above in total. . . .*

*I am of the firm belief that they will only take on what they can comfortably deliver. . . .*

*I do hope that this letter is of sufficient comfort for you to make your decision around this transaction.”*

365. In relation to the Reference, Mr Seitler points out that it is stated in the Claimants' own Further Information that the Reference was provided by the Cohens' solicitor to Mr Stephen Brook who was the solicitor acting on behalf of Mr Paton. In fact, it would seem that it was an attachment to an email dated 9 September 2008 from Dorsey & Whitney (Europe) LLP to Brook Martin. In the body of the email it is stated that the writer acts for the Cohen family and understood that Mr Brook was instructed on behalf of Manx Developments described as the freehold owners of 48-56 Hans Place. It is stated:

*"We understand that terms have been agreed for a proposed purchase of the properties at 48-56 Hans Place between our respective clients on the following terms, subject to contract:*

*A call option in our client's favour for a period of four months;*

*Option price of £1;*

*Purchase price of £165 million;*

*Exclusivity for our client for the 4 month option period."*

366. It was Ms Al Amoudi's evidence that she did not see the Reference at the time and that the reference to "Princess Sarah Manx Properties" was included without her knowledge or consent. In her witness statement she accepted that she had introduced Isaac Cohen to Mr Paton but stated that she did not know why the Reference was addressed to "Princess Sarah" and believed that it may have been something which Mr Paton may have done in order to appear impressive to would be investors. She also denied any knowledge of Manx Properties before the commencement of this action. Mr Seitler also points out that the Reference contains no hint of funding being in place in relation to Hans Place.
367. The Claimants allege that the Reference is a forgery. In cross examination Mr Paton's evidence was that it was implicit that Barclays considered the Reference to be a forgery from the fact that the Barclays Fraud department had been investigating and could not find a copy of the letter on their systems. Mr Paton also mentioned telephone conversations with Barclays which he says gave the clear impression that it was a forgery. He stated:

*"The final communications between the solicitor and Barclays resulted in a statement from Barclays, which states that the document was produced by Barclays Wealth. The person who produced the document has left the bank. It cannot be relied upon, and I'm not sure if it confirms that they don't retain a copy on the files, but it certainly is a document that can't be relied upon."*

He went as far as to say: "I don't think there is any contention that [the Reference] is regarded as a bona fide document."

368. However, by an email dated 7 September 2012 from John Merrett of Barclays to the Claimants' then solicitors, Mr Merrett stated as follows:

*“with regard to [the Reference] we believe that this document was written by Paul Wiggins and sent to the addressee. No evidence was discovered during our investigation to suggest otherwise . . . In addition, we believe the letter was sent at the request of “ . . . the Cohen Family” . . .” and only sent to the addressee specified on the face of the letter.”*

Further, in a letter dated 19 April 2013 from Barclays to the Claimants' present solicitors, Barclays state:

*“ . . . at no point have Mr Merrett or Barclays stated that [the Reference] is fraudulent and/or a “forgery” . . . Mr Merrett's position in relation to the letter remains as set out in his email of 08.09.12 [ie he believes the document was written by Paul Wiggins of Barclays and sent to the addressee] . . . ?”*

369. Mr Cakebread also submits that from December 2007 until August 2009, there is no evidence that Mr Paton sought alternative funding for the Hans Place project and that this is consistent with him having thought that he already had it by way of the Sharia loan. In fact, by an email of 19 November 2007, Mr Paton had contacted a gentleman called Fariba and had described an opportunity in “site assembly/development.” The email went on:

*“As discussed there is a window of opportunity to become involved in this site assembly/development...An incoming investor will initially purchase 53-56 Hans Place with a view to purchasing the additional buildings...We are interested in investment partners to assist in the ongoing assembly of the site to 13 buildings...Funding requirements for the site are in the region of £220m (9 buildings) and Herbert Crescent £60m (4 buildings). Build costs are estimated at £30m...The end user in mind is an embassy/royal family/ultra high networth individual...”*

370. A similar email including an additional passage was sent to the same person later that day. It read:

*“As I have mentioned the time frame for becoming involved is shortening rapidly as a very reliable purchaser has already agreed to take on two individual buildings to assist with the enlargement of the site. In any event, this may not be necessary as my own financial partners who include a large European pension fund are increasing their exposure in the area and have also shown an interest...”*

371. Furthermore, on 5 May 2008, Mr Paton emailed Peter Bell at Langton Partnership, setting out the purchase costs of the various elements of the Hans Place project. Mr Seitler submits that this is wholly inconsistent with the Claimants' case that Mr Paton believed that the £46m Sharia Loan was in place and was to be used to buy the various elements within the project. Furthermore, the emails reveal that £46m would in any event, have been insufficient for the task. Mr Seitler also points out that the email correspondence makes no reference to Mr Nichol, Ms Al Amoudi or Middle Eastern investors at all.
372. However, on 2 February 2009, Mr Paton emailed Mr Davis stating that he had spoken to a friend of his with connection with the Abu Dhabi royal family who may be interested in 48-56 Hans Place. Further, on 10 February 2009, Mr Paton emailed Mr Paul Jarvis at Pyle Owen, (Property Consultants) introducing the Hans Place development to him. He described it as "the proposal for the development of the site at 48-56 Hans Place". He attached a development appraisal of the site from King Sturge and commented that conservative assumptions had been used in the appraisal including a 7% finance rate. In addition, under the heading, "The proposed joint venture proposition is as follows:" he added:

*"The proposed joint venture proposition is as follows:*

*Purchase of 48-50 Hans Place for £32m*

*Further £8.4m in escrow account and exchange on 51-2 and 53-56 for a purchase price of £84m, subject to planning.*

*JV agreement to share profit after planning on 50:50 less running yield (i.e. 50% of profit above £116m)*

*Regarding the planning, there have been detailed discussions with the planners regarding the four buildings at the end of the terrace which has been positive. There is support in principal for the total demolition of numbers 54 and 56 and the retention of facades of 55 and 53 with the demolition behind.*

*In addition to the scheme described above, there is a further opportunity to enlarge the site by buying four more buildings on Herbert Crescent (numbers 5, 6, 6a, 7) for we expect around £30m. I am in discussions with Quinlan Terry Architects and the London Planning Practise [sic] concerning a master scheme for both the buildings in hand and the enlarged site.*

*There may be other workable permutations subject to discussions [sic] with your client."*

373. Thereafter, on 13 March 2009, Brook Martin acting for Mr Paton sent out a letter to David Altberg of Strand Partners Limited which purported to set out the current

position in relation to the acquisition of each separate property within the Hans Place project. For example, under the heading: “48 Hans Place” it explained that Mr Paton had been in negotiation with each of the five long leaseholders and that individual sets of contract papers were beginning to arrive. The letter ends:

*“We hope the above gives you the comfort which you are seeking including terms for the acquisition of the entirety of the above properties for our client. . .”*

374. On 16 March 2009, Mr Paton emailed Jeffery Green Russell stating that he was discussing acquisition arrangements with two parties based in Dubai and further on 28 October 2009, Mr Draper of Jeffrey Green Russell emailed Mr Paton asking for permission to send on the details of the Hans Place project to “a contact who may have someone who is interested in investing £75m in your project.”

375. Mr Elliot Davis’ evidence on this point was as follows:

*“...what we were looking for initially, or throughout my dealings with 48 through to 52, was a single investor to back the whole proposition...One single investor. It wasn’t – it didn’t need to be – you say institutional investor. We were looking for sovereign wealth funds, we were looking for individuals who had in excess of GBP110 million...*

.....

*we were actively looking for an investor. Stage 1: find an investor; stage 2: do the acquisition. As opposed to your stage 1, which was, buy the components and then flip it on to an institutional investor. We needed an investor. There was none forthcoming.”*

376. It was Mr Paton’s evidence in cross examination that they represent attempts by him to find an ultimate end user for the completed project although he was “always interested in expanding the site still further”. I am unable to accept his evidence in that regard. In my judgment, none of the communications to which I have referred can be construed to relate to an end user purchaser. They provide details of the state of the assembly of the site and seek finance in that regard. Furthermore, in my judgment all of these communications are entirely inconsistent with Mr Paton’s evidence first that he believed that funding for the site assembly stage of the project and necessary works was already in place and secondly with the Joint venture between the Claimants, Ms Al Amoudi and/or Mr Nichol as pleaded. None of them refer to funding already being in place or even part funding being in place. They each appear to be attempts to obtain such funding and accordingly, are entirely inconsistent with the Claimants’ case as to the alleged representation about the alleged Sharia Loan. I also consider them to be inconsistent with the alleged joint venture.

377. I should also mention that rather strangely, Mr Danny Yeung gave evidence that in October 2009, Ms Clutterbuck and Mr Paton had agreed to sell 81 Pier House, one of the Security Properties to him for £1.6m. In fact, the property had already



been transferred to Ms Al Amoudi. In any event, in his statement Mr Yeung said he had seen that blood stains on the carpet at the flat. However, in cross examination he admitted that he had not seen the carpet but had been told about it. However, in cross examination, he reiterated that he had met Ms Al Amoudi and that she had told him that she was a princess and the daughter of a rich man from Ethiopia, that she was abused by her husband and was unhappy in her marriage. In fact, Mr Yeung admitted that he could not remember the details about the incidents described in his statement and had been reminded by Mr Paton about dates and events. He also accepted that his statement had been written by a solicitor. The evidence he gave in cross examination was confused and in some part different from his statement and I am unable to accept his evidence.

378. Lastly, in cross examination, Mr Paton accepted that as at the date of the alleged breach of the Hans Place joint venture agreement, there was nothing legally enforceable in relation to the flats at 48 Hans Place, and equally all agreements were subject to contract in relation to 49 and there was nothing binding in relation to 50 and 51-52. In fact, the same was true in relation to 53-56 Hans Place.

The remainder of the relevant chronology

379. Meanwhile on 9 January 2009, Mr Barriscale from HSBC accompanied Ms Al Amoudi and Mr Paton to view Mr Paton's mother's house at Kingsfold, Billingshurst, West Sussex. Mrs Paton says that Ms Al Amoudi informed her that she was a Saudi princess and that her father was very rich.
380. It was Mr Paton's evidence that prior to the visit there had been a discussion about putting her property into a joint venture for the mortgage value only and as she owned the property outright, she would receive a substantial part payment. She says that the proposal as outlined by Ms Al Amoudi was that she could remain in the property as long as she wished to do so. There was talk, she said of seeking planning permission for a nursing home within the grounds. She says that she was astonished to discover from Mr Barriscale's notes that it was proposed to take out indemnity insurance as a result of the sale at a substantial undervalue and that the reason for the undervalue was described as a debt owed by her son, Mr Paton.
381. In cross examination, she said that in fact, Ms Al Amoudi had visited the property on a previous occasion as well as with Mr Barriscale and that Mr Nichol had also visited the property in between the two visits by Ms Al Amoudi and that he may have mentioned the nursing home idea. She also accepted that it may have been her son who told her that Mr Nichol had suggested that there be a sale for the mortgage value only.
382. Mrs Paton was shown an internal HSBC document dated 19 December 2008 in which it is recorded:

*“Sara has today advised me that she is interested in purchasing a property in Billingshurst, West Sussex, being an 8 bedroom detached house dating back to c1600 with 5 receptions, cellar and 5 acres of gardens.*

*The intention would be for Sara to live there with her daughter, although she would retain her unencumbered flat in Knightsbridge. The property requires some modernization but she has been offered it at £600k and again this is being purchased from Ian Paton at a substantial discount to the market value, which I would put closer to £1.25m . . .”*

383. She accepted that Ms Al Amoudi had suggested that she wanted to purchase the property for her own use when she first visited but by the time of the second visit there was talk of a nursing home. She stated if the proposal was for a nursing home she would have been part of the joint venture and also confirmed that she had not offered the property at £600,000. She was surprised that there was talk of debt and a discount when the house was hers. In fact, it was sold in March 2009 for £1.1m.

384. Mr Barriscale did write a “call report” of the visit on 12 January 2009. Amongst other things, it records:

*“Like most of the other property she has acquired, this is being purchased from Ian Paton at what appears to be a significant discount from the true market value.*

*In each case the price stated in the transfer is the true market value and the contract states that the difference between the price and the cash transfer is in lieu of monies owed by Paton to Al-Amoudi. Further, on each transaction the solicitor has purchased an indemnity policy to protect against any claim of sale at an undervalue.*

. . .

*The proposed purchase price is £1.2m albeit the actual cash consideration will be £700k of which we will fund maximum £600k. This is subject to PV and we have today instructed Knight Frank (Paul Baker, Guildford Office) to value this on our behalf.”*

385. Mr Paton says that whilst they were there and in the presence of his mother, Mr Barriscale recommended Ms Al Amoudi as a purchaser for the property as she was a Saudi princess and a highly valued customer of the bank. He also says that he discussed the Hans Place project with Mr Barriscale who agreed that as Ms Al Amoudi’s family were committed to the project there would be no difficulty with the transactions proceeding. Mr Barriscale says that he has no recollection whatever of any discussion with Mr Paton on that occasion, regarding the Hans Place project about which he had no idea. Furthermore, he had no access to information about the financial affairs of Ms Al Amoudi’s family and therefore, could not have given Mr Paton any reassurance that they were committed to the project. Furthermore, he has no recollection of entering into any discussion with Mr Paton’s mother or providing any endorsement of Ms Al Amoudi’s credentials. In cross examination he made clear that he considered it very unlikely that he

would have made those kind of comments in relation to Ms Al Amoudi's family and her credentials to an associate of a client. I accept Mr Barriscale's evidence in this regard.

386. Further, on 21 July 2009, Mr Davis wrote to Cherie Matthews about 48-56 Hans Place. He explained Mr Paton's interest in the various elements and asserts that there are contracts outstanding with Mr Paton's solicitors in relation to leasehold interests which Mr Paton had agreed to purchase. It makes no mention whatever of any interest held by Mr Nichol or Ms Al Amoudi or Ms Clutterbuck for that matter. The letter makes no reference to a Sharia loan or Middle Eastern funding. Lastly, it records Mr Davis' understanding that Ms Matthews' client is proposing a formal offer for the properties. In my judgment, it is clear from the letter as a whole that the reference to an offer for the properties is a reference to the initial purchase of the outstanding leasehold and freehold elements in the project. Furthermore, it seems to me that its content is inconsistent with the Claimants' case.
387. To complete the chronology, Ms Al Amoudi says that in June 2009, Mr Paton went on holiday with her to Thailand. Mr Paton does not deny that he went with her although he does not mention it in his witness statement. Whilst they were there they had an argument and Ms Al Amoudi told him that their relationship was at an end. She says that over time she had come to realize that Mr Paton had a serious drug problem but that she had thought that it had been cured. There was a short period when Ms Al Amoudi was involved with Mr Patrick Ribbsaeter until September 2009 when a violent incident took place between Mr Ribbsaeter and Ms Al Amoudi's chauffeur. Ms Al Amoudi says that she spent Christmas 2009 with Mr Paton at 47 Belgravia Court but that she discovered him preparing drugs on Boxing Day and left immediately making it clear that she wanted nothing more to do with him.
388. Ms Al Amoudi states that over the next few days, Mr Paton sent her many text messages pleading with her not to end the relationship but that they were accidentally deleted. However, before their deletion she says that she went through them with her solicitor, Mr Morris and he wrote them out. In cross examination Mr Seitler put to Mr Paton a number of text messages dated between December 2009 and January 2010 which had been transcribed. They were sent to Ms Al Amoudi's mobile telephone number from a mobile number which Mr Seitler suggested was that of Ms Clutterbuck. The first two of the messages are as follows:

*"Please my darling please let me show you I will never let this happen again. I will stay away from all those things. I never seen you so upset. I am really sorry. You known in your heart that it is not my world. You will see everything will change. Please give me another chance. I saw so clearly for the first time how wrong it all is when I made you so unhappy. I love you more than all this xxx"*

*"I am so in shock. I cannot stop loving you. I feel a part of my soul is missing. I miss you so much. I just pray and wish you would call me xxx."*

The remainder are in a similar vein.

389. There is also a transcript of another text message from Ms Al Amoudi to Ms Clutterbuck's mobile phone number dated 31 December 2010 which reads as follows:

*“After all this time and things I did for you, that you would give me a slap in the face like that and hurt me like my worst enemy wouldn't hurt me. What you did to me and my child is unforgivable. I will never forgive or forget this. This is the final straw. How heartless could you be?! The pain you caused me will leave a scar forever. It is not about the money, I don't care about that at all. I am not planning to take it to my grave. I would never hurt you or backstab you like you did me. Not for anything and especially not for money. You are the lowest of the lowest.”*

390. Mr Paton did not confirm Mr Seitler's suggestion that Ms Clutterbuck had confiscated his mobile phone but did accept that the phone was hers and that he gave out her number. He made no comment about the content of the texts themselves. Ms Clutterbuck accepted in cross examination that Mr Paton may have used her telephone. She dismissed the content of the texts as another example of what she described as the nonsense produced by the Defendant.
391. Mr Morris, Ms Al Amoudi's solicitor gave evidence about the text messages, the records on Ms Al Amoudi's mobile phone having been destroyed. He explained that he had been shown the texts at his offices in October 2010 and had made rough notes of their contents. They were subsequently forwarded to him and the forwarded material was the same as what he had viewed the previous day and corresponded with his manuscript notes. He explained the importance of retaining the phone and the messages so that they could be removed and stored properly but thereafter, the records were destroyed. As I have already mentioned, I found Mr Morris to be a careful and honest witness and I accept his evidence.
392. Ms Al Amoudi also says that in January 2010, she contacted Ms Clutterbuck for the first time and explained that Mr Paton desperately needed help for his drug problem. She says that Ms Clutterbuck stated that she had known about it for twenty years.
393. Ms Clutterbuck was also cross examined as to whether she knew that Mr Paton had gone to Thailand with Ms Al Amoudi and responded for the first time that she had picked him up from the airport. However, a chronology which she prepared for the Judicial Factor in relation to a claim against the estate of Elliott Nichol made no reference to it at all and on the contrary under the heading “May/June 2009” merely records that “ALM travels to Thailand. Both she and EN become un-contactable regarding the Sharia mezzanine funding facility.” Given the content of the chronology which she herself prepared, I am not able to accept Ms Clutterbuck's evidence in this regard.


Sums loaned and invested

394. As I have already mentioned, it was Ms Al Amoudi's evidence that she had loaned Mr Paton considerable sums over a period from about 2004. She had no record of the sums but stated in her witness statement that between 2005 and 2007 she had loaned him £80,000, £30,000, £40,000 and a further £75,000 in relation to a property at 14a Collingham Place and that during 2005 she gave him £300,000 in a number of instalments to enable him to carry out a luxury refurbishment at a duplex apartment in Hans Place. The Claimants deny that any works were carried out at Collingham Place. I am unable to accept their evidence in this regard. There is a Tomlin Order of June 2007 in respect of a dispute which relates to the property which required £280,000 to be paid within seven days and which made reference to the need for remedial works. This is consistent with the evidence of Mr Davis that major repairs had to be carried out there in 2008 which I accept.
395. Ms Al Amoudi also says that in November 2006, she lent him £240,000 and a further £80,000 in relation to 81 Pier House and £250,000 in relation to 30 Oakley House, followed by an additional £80,000 to extend the lease and a further £90,000 for refurbishment. She says that in 2008 she lent 450,000 euros which Mr Paton said was to purchase a house in Italy followed by a further 220,000 euros which Ms Al Amoudi says that Mr Paton owed a business partner in France. This is all denied.
396. She also says that she loaned him money in relation to a business venture in China in the sum of £380,000 which Mr Paton does not appear to refute. In addition, she says she gave him two diamond necklaces, a set of diamond earrings and two diamond rings which she says she agreed could be taken to Ms Clutterbuck's brother, Guy, a jewellery expert and sold to which I refer under the Counterclaim below.
397. As I have already mentioned, there is documentary evidence that Ms Al Amoudi contributed £12,000 and £700,000 in respect of the extension of lease at Flat 7, Hans Place. I should add that it was Mr Paton's evidence which I accept, that until the Security Properties were transferred to Ms Al Amoudi they were his, albeit held for Ms Clutterbuck and were not part of a joint venture.
398. I should also mention that not only was it Mr Ramsden's evidence that Ms Al Amoudi gave cash in envelopes to Mr Paton but Mr Davis also stated that Ms Al Amoudi told him that she had entrusted large amounts of money to Mr Paton for safekeeping and had loaned him sums.

### Conclusions

(i) *Existence of a relationship between Ms Al Amoudi and Mr Paton*

399. In my judgment, it is clear that Ms Al Amoudi was actively involved in the property market in the Area and was closely advised by Mr Paton. However, I accept Mr Seitler's submission that the backcloth for that involvement and advice was a close relationship between Mr Paton and Ms Al Amoudi which went further than that of business partners and led to a situation in which they spent a great deal of time together and considerable reliance being placed upon Mr Paton by Ms Al Amoudi.

400. I accept Ms Al Amoudi's evidence in this regard. In my judgment, it is supported amply by other oral and documentary evidence. As I have already mentioned, it was Mr Ramsden, Mr Phillips Mr Gonzalez, Mr Davis, Mr Tesanovic, Mr McCormick and Lord Mereworth's evidence that Ms Al Amoudi and Mr Paton were boyfriend and girlfriend or at least had a very significant relationship in which Mr Paton exercised a large degree of influence over Ms Al Amoudi. Mr Shah went as far as to suggest that Mr Paton wanted to marry Ms Al Amoudi, evidence which I have rejected.
401. The existence of such a relationship is also consistent with Mr Gonzalez' email to Mr Phillips of 24 February 2006 to which I referred at paragraph 154 above, in which he stated that Ms Al Amoudi relied upon Mr Paton immensely. Given that the email was contemporaneous and was passing between two individuals who at the time were entirely independent from the issues in this dispute, I place considerable weight upon it.
402. Furthermore, there can have been no reason for such a statement in the final paragraph of Mr Paton's email to Mr Nichol of 3 March 2006 to which I referred at paragraph 146 above. This was not disclosed by the Claimants and was provided to Ms Al Amoudi by Mr Nichol's estate. In cross examination, Mr Paton was unable to explain why he should feel highly responsible or that his heart should bleed if his relationship with Ms Al Amoudi was only one of business. He was only able to respond that "probably because we were doing lots of things at the time" which in my judgment is no explanation at all and from which I conclude that he was untruthful in this regard.
403. Mr Nichol's attempt to assist Mr Paton in obfuscating the nature of his relationship with Ms Al Amoudi when an email was inadvertently forwarded to Ms Clutterbuck in August 2007, to which I refer at paragraph 204 above, in my judgment is also consistent with a clandestine romantic relationship.
404. 
405. By comparison I place less weight upon the alleged text messages to which I referred. Nevertheless, in my judgment, they are also consistent with a close relationship between Mr Paton and Ms Al Amoudi going far beyond that of business partners. Ms Al Amoudi's evidence was not clear as to whether she had sent the text messages at all. However, they are clearly romantic in nature. Mr Paton asserted that the mobile number was not his but was Ms Clutterbuck's. However, it was Mr Davis' evidence that the number was one of Mr Paton's many

numbers and that from time to time, Ms Clutterbuck confiscated Mr Paton's mobile phone. I accept Mr Davis' evidence in this regard.

406. In my judgment, Mr Paton and Ms Al Amoudi's trip to Thailand is also consistent with a close romantic relationship, although I place less weight upon it than the direct oral evidence and the emails

In this regard, I take into account that although it was accepted in cross examination that Mr Paton had accompanied Ms Al Amoudi to Thailand, in his witness statement Mr Paton only made an oblique reference to Ms Al Amoudi having gone there. In addition, Ms Clutterbuck made no mention of the trip in her lengthy witness statements but stated for the first time, in cross examination that she had picked Mr Paton up from the airport after the trip. It seems to me that the Claimants were seeking to avoid any inference which might be drawn and that once it had been admitted that Mr Paton accompanied Ms Al Amoudi, Ms Clutterbuck was seeking to limit the damage caused and did so in a way which was unconvincing.

(ii) *Joint ventures in general*

407. It was the Claimants' case that all of other joint ventures with which Ms Al Amoudi was concerned also involved Mr Nichol and that the agreement or arrangement in relation to them emanated from the Oriel Agreement. First, I have already found that in my judgment, it is more likely than not that the Oriel Agreement was never agreed in the way in which the Claimants allege. Even if it had been, in my judgment, there is nothing to bind Ms Al Amoudi to its terms. As Mr Seitler points out this appears to be an attempt to mount an agency claim by the back door and without any supporting evidence, but for Mr Paton and Ms Clutterbuck's assertions that Mr Nichol represented that he could count on monies from a Middle Eastern consortium and that Ms Al Amoudi was a Saudi princess. Even if these representations were made it seems to me that they are insufficient to form the basis for a claim of agency by Mr Nichol on Ms Al Amoudi's behalf, whether innocent or otherwise.
408. Furthermore, if I am wrong and the Oriel Agreement was entered into and in addition, it bound Ms Al Amoudi, her interest, if any, in any joint venture would be 50% shared with Mr Nichol and certainly would not be a one third interest as alleged in relation to the arrangement fee for the alleged Shariah loan. It would also mean that each of the alleged joint ventures or arrangements would necessarily also involve Mr Nichol which is in fact, not only the Claimants' pleaded case but also Mr Paton's evidence.
409. However, in my judgment, there were no joint ventures involving Ms Al Amoudi whether with or without Mr Nichol. At best, it seems to me that the truth may lie in the way in which Mr Paton put it in cross examination. He said that strategic properties were purchased by individuals whether Mr Nichol, Mr Paton or Ms Clutterbuck with the intention to keep matters fluid and that in the future it might be appropriate to enter into a joint venture agreement. This was certainly the evidence of Mr Davis in relation to Hans Place to which I referred and accords with the evidence of both Ms Clutterbuck and Mr Paton themselves and the way in which the claim was first put in the Particulars of Claim.

410. In my judgment, it is also consistent with the fact that there are no records of how much was spent on refurbishment of any particular property or the precise destination of any of the capital payments in relation to purchases which has had to be pieced together from conveyancing ledgers and bank statements. It seems to me that Mr Paton's "accounting basis" only makes any sense if records of contributions were kept which they patently were not.
411. Equally, it seems to me that the charge taken in relation to the £700,000 advanced in order to extend the lease at Flat 7, 50 Hans Place, is inconsistent in itself with the existence of a joint venture. Furthermore, this conclusion is supported by Mr Berry's evidence that he did not understand it to be a joint venture contribution which I accept, the fact that it was used by Mr Paton to assist in paying sums due to Sator and Mr Brook's evidence in cross examination that he treated it as a loan rather than a joint venture contribution.
412. There are also numerous bank transfers from Ms Al Amoudi to Mr Paton totalling £192,900. However, it is clear from the documentation that the entirety of £120,000 which was transferred on 15 February 2007 was not used in relation to any of the alleged joint ventures and that £30,000 transferred on 29 October 2007 was used to pay Moran & Co who have no connection with the alleged joint ventures. Equally, the documents reveal that the £10,400 transferred by Ms Al Amoudi to Brook Martin on 20 August 2008 was used by Mr Paton to pay the mortgage on 47 Belgravia Court, a property which is not alleged to be the subject of a joint venture.
413. Furthermore, such a conclusion is consistent with the evidence of Mr McCormick and Mr Misselbrook as to Mr Nichol's practice in relation to property matters and their knowledge of his involvement in joint ventures in the London property market. It seems to me that had joint ventures been agreed upon which included Mr Nichol, Mr McCormick in particular would have known about them and they would have been documented.
414. That brings me to the contrast between the way in which the Cliveden Place project was documented and the alleged joint ventures or business arrangements alleged by the Claimants to have existed in relation to Ms Al Amoudi. It is stark. Quite clearly, when business arrangements were in place, the Claimants were used to documenting them in a highly sophisticated way. Not only was there a written agreement in relation to Cliveden Place but in other circumstances in which there was a consortium of investors involved there was a shareholders' agreement, memoranda and notes of investors' meetings. Furthermore, the Claimants made use of special vehicle companies and, for example, where an agreement existed, having purchased a property Mr Nichol transferred it to the special corporate vehicle in accordance with the agreement.
415. It seems to me that had there been a joint venture or ventures in which Mr Nichol and Ms Al Amoudi were involved, given Mr McCormick's evidence about Mr Nichol's practice, the fact that Ms Al Amoudi was alleged to represent a consortium and the alleged value of the potential developments, there would have been agreed documentation.



416. Furthermore, as I have already found, although there is email correspondence from time to time between Mr Paton and Mr Nichol, for example, in which “Sara’s project” is mentioned, and Mr Nichol is asked for a loan and his general involvement with Hans Place, there is no evidence of Mr Nichol’s involvement in the specific properties which the Claimants contend were subject to joint ventures with Ms Al Amoudi.

*(iii) Joint ventures - specific*

417. There are additional factors in relation to a number of the specific properties which in my judgment are inconsistent with the Claimants’ case. With regard to 66a Pont Street, but for Mr Paton’s assertion which I have rejected, there is no evidence that it was either a PAM or had the potential to be a SAM. Furthermore, but for the email correspondence about a loan from Mr Nichol to Mr Paton in order to assist in the completion of the refurbishment works and the suggestion that it might have been intended as a family home, there is no evidence of Mr Nichol having been involved in the project. Accordingly, it seems to me that even if the Oriel Agreement was reached and also bound Ms Al Amoudi which I have rejected, there is no documentary evidence of Mr Nichol’s involvement as a joint venturer. Furthermore, it seems to me that Mr Paton’s request for a loan from Mr Nichol on a cash/return basis and his reference to “Sara’s project” made in his email of 3 March 2006 are inconsistent with the existence of the joint venture or arrangement.

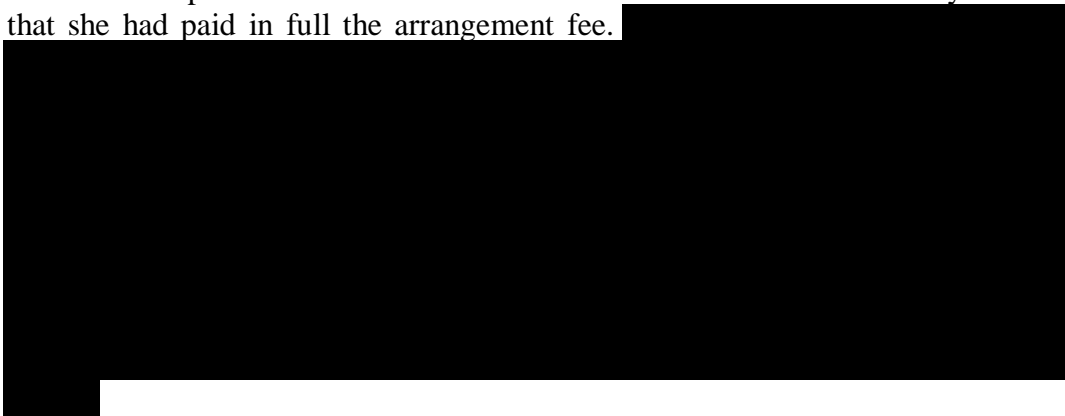
418. Further, in relation to Flat 7, 24-26 Hans Crescent, although this may have been one of the Claimants’ target areas and it is clear that as with the other properties, Mr Paton advised Ms Al Amoudi, I place some weight upon the absence of any reference to the property as a joint venture in Mr Paton’s email to Ms Clutterbuck of 12 December 2005 to which I referred at paragraph 169 above. Had there been a joint venture or an arrangement in relation to the property, it seems to me that he would have referred to it. In addition, this conclusion is supported by Mr Korohoda’s evidence that Mr Paton only came to the property on a few occasions, so far as he was aware, was not involved in the project and that he had not heard of Mr Nichol or Ms Clutterbuck. Once again there is no documentation to support the conclusion that there was a joint venture or other agreement and nothing which suggests that Mr Nichol was involved with the property in any way.

*(iv) Hans Place and the Security Properties*

419. In relation to Hans Place, not only is there no documentation in relation to what is alleged to have been a very sophisticated multi-million pound redevelopment but it is also alleged that it included Mr Nichol. This is despite the fact that the joint venture is alleged to have been agreed in April 2008 which is after the incident at the Cadogan Hotel. The email correspondence to which I have referred, reveals that after the incident in February 2008, Mr Nichol wanted no more to do with Ms Clutterbuck and Ms Clutterbuck herself stated that she and Mr Paton were seeking an exit strategy from involvement with Mr Nichol.

420. It seems to me on the balance of probabilities, such an important arrangement would be documented in full had it existed in the form in which the Claimants allege. Furthermore, it seems to me that the emails of 23 and 24 January 2009 to

which I referred at paragraphs 307 and 308 are inconsistent with the Claimants' position. Although reference is made to work on site assembly, they seek a joint venture partner and refer to the need in the future for a joint venture agreement. In my judgment, the content of the emails and that at paragraph 309 are consistent with the search for investors to assist in buying up the individual flats in 48-56 Hans Place. They make no reference to Ms Al Amoudi, a Middle Eastern consortium or Sharia funding and in my judgment, support the conclusion that the joint venture in relation to Hans Place had yet to come to fruition.

421. I am not persuaded by Mr Cakebread's submission that unless there were joint ventures and in particular, in relation to the proposed Hans Place development it would have made no commercial sense to allow Ms Al Amoudi to obtain a ransom strip. She purchased three flats in 24-26 Hans Crescent and had Flat 7, 50 Hans Place transferred to her as one of the Security Properties. In this regard, I have accepted the evidence of Mr Davis that Mr Paton would quite often encourage friends to buy properties in sites in which he was interested. However, in my judgment, this does not lead to the conclusion that a joint venture had been concluded.
422. In my judgment, neither is the Claimants' case assisted by Mr Cakebread's "desert island document." It seems to me that it is evidence of the involvement of various parties including Ms Al Amoudi, Savills and others in seeking to put together the individual properties at Hans Place in order to be able to proceed with a joint venture redevelopment of the whole in the future. It evidenced the way in which fees were to be paid to those parties were the redevelopment to become possible once the "condition precedent of securing all 9 Properties" had been achieved. As I have already mentioned, it is not suggested that Savills or "UAE Funds Agents" were joint venturers.
423. Further, in my judgment, there is no evidence to support Mr Paton's claim that Ms Al Amoudi represented to him that she had secured a Sharia Loan of any kind or that she had paid in full the arrangement fee. 
424. Further, the Facility Agreement Letter itself made no reference whatever to Sharia finance and in any event had yet to be drawn down. Furthermore, it is clear from the internal bank documentation that Mr Paton himself was instrumental in obtaining the facility and accordingly was aware of its nature. Furthermore, in my judgment it is more likely than not that he was also aware that the Security Properties were contained in the Security Schedule to the Facility Agreement Letter. As I have already mentioned, it was Mr Barriscale's evidence that Mr Paton viewed some of the properties with him, which I accept. What is

more, it is clear from the internal bank documentation that Mr Paton had been active in seeking to negotiate the valuations of the Security Properties, the purchase of which was to be financed by the loan to Ms Al Amoudi from HSBC to which the Facility Agreement Letter related.

425. My conclusion in this regard is strengthened by the extent of the documentation passing between Brook Martin and Clarkslegal LLP which refers to the reduction in price paid for the Security Properties on the basis of monies owed by Mr Paton to Ms Al Amoudi. The sheer volume of those communications of which Mr Paton was fully aware and in relation to which he gave express instructions to Brook Martin, in my judgment, militates against a conclusion that the reason for the reduced payments was other than that which appeared in correspondence produced by solicitors acting for both parties. It is also matched by the internal bank documentation. By comparison, but for two notes in manuscript, the source of which remains unknown, there are no references whatsoever to Sharia finance whether at a level of £46m or otherwise, nor is there any reference to an arrangement fee of £1.69m in that regard. The only arrangement fee of which there is documentary evidence is in respect of the Facility Agreement Letter itself and is in the region of £21,000.
426. This conclusion is also supported by the ample evidence of serious pressure upon Mr Paton as a result of arrears in relation to his properties. The picture is one of a mortgagor, eager to discharge his outstanding obligations and debts.
427. Furthermore, as was accepted in cross examination, as a result of the second charge on one of the properties, the total alleged under value would not have amounted to £1.69m in any event.
428. In addition, there is no evidence to support a one third split in the alleged facility fee which would render the contribution due from Mr Paton to be £1.69m. The lack of such evidence coupled with the unsatisfactory way in which the pleading was amended and my conclusion that Mr Nichol was not involved in relation to the alleged funding is all inconsistent with the Claimants's case.
429. I am also unable to accept Mr Paton's evidence that in some way the transfer of the Security Properties was intended to be temporary. Had this been the case it would have been documented in some way and there is not a scrap of documentary evidence in support of such a suggestion, nor is there any suggestion that advice in this regard was sought or given.
430. Furthermore, in the light of the evidence of the financial pressure upon Mr Paton including the considerable sums due to Sator and the documentary evidence produced by Mr Paton's solicitors, Brook Martin on Mr Paton's instructions to the effect that excess of the value of each property over the sums paid by Ms Al Amoudi represented repayment of monies due to her from Mr Paton, in my judgment, the claim that the Security Properties were transferred in reliance upon the alleged representations as pleaded in the Re-Re-Amended Particulars of Claim cannot be sustained.


*(v) Transfers of cash*

431. The existence of the relationship between Ms Al Amoudi and Mr Paton also has some bearing upon Ms Al Amoudi's defence in relation to the refurbishment costs and the transfer of £2.28m used in property transactions. Mr Cakebread says that this is a real indicator of the existence of joint ventures. It is admitted that sums were received and used for property purchases.
432. Mr Seitler emphasises that such payments and the large amounts which it is alleged were lent by Ms Al Amoudi to Mr Paton or given to him for safekeeping can be explained on the basis of their relationship. He says that this is the case despite the fact that it is Ms Al Amoudi's evidence that Mr Paton was often drunk and that she discovered, albeit belatedly that he had a drug habit.
433. Were the monies paid by Mr Paton on his behalf and that of Ms Clutterbuck in relation to the properties and their refurbishment contributions referable to a joint venture, for a specific purpose and held in trust or were they to be set off against monies owed by Mr Paton to Ms Al Amoudi?
434. Mr Cakebread relied heavily upon the fact that there is little or no documentary evidence of receipt of large amounts in cash by Ms Al Amoudi and therefore, that it is difficult to see how she could have been in possession of the sums which she says that she lent Mr Paton. He also suggested that her defence that she continued to lend money in 2008 despite seeking its repayment by way of the transfer of the Security Properties is inconsistent. In addition, he drew attention to what he submitted was the inconsistency between the alleged hoarding of cash and provision of it by Mr Baroom and others and the existence of bank accounts from which Ms Al Amoudi sought to distance herself and the payment of monies to her by bank transfer and Western Union.
435. In my judgment, it is not necessarily inconsistent to have bank accounts and receipts by way of transfer as well as receipts in cash, particularly where as Mr Baroom and Ms Al Amoudi points out, it is a cultural norm to deal in cash. I have already accepted the evidence of Mr Baroom about the cash delivered to Ms Al Amoudi, although I do not give it the full weight which I would have accorded to it had he been cross examined. There is also documentary evidence of substantial bank transfers which are not in dispute. In support of Mr Baroom's evidence that he delivered large amounts of cash and that of Ms Al Amoudi that she kept very considerable cash sums, it was the evidence of Mr Davis that Ms Al Amoudi told him that she would keep hundreds of thousands of pounds in cash with which she went shopping, which I accept. This is also borne out by the content of the various internal HSBC reports which make reference to monies received from family members and access to cash gifts and cash reserves.
436. Whilst without evidence to corroborate it, I do not accept Ms Al Amoudi's evidence that she kept her cash under the bed until a burglary which was not reported and that thereafter, she gave it together with jewellery to Mr Paton for safe keeping, it seems to me that there is ample evidence to support the conclusion that over the relevant period she received very considerable amounts in cash.
437. Furthermore, in my judgment, over the period from 2001 until 2008, Ms Al Amoudi made substantial cash payments to Mr Paton. I come to this conclusion in part as a result of the conclusion that throughout this period they had a very close

relationship and spent a great deal of time together and that Mr Paton accepted that he did receive money from her. I also place reliance upon Mr Paton's failure to refute Ms Al Amoudi's evidence about her contribution to investments in China, the evidence of the substantial remedial works at Collingham Place and the evidence of Mr Ramsden and Mr Davis to which I refer at paragraph 398. This is also to be measured against the background that Mr Paton owed very considerable sums to Sator and that it was the evidence of a number of the witnesses, including Lord Mereworth (who had no reason but to be impartial) that Mr Paton had no money.

438. It is also consistent with Mr Berry's evidence that he was confident that he was aware that before January 2007 considerable sums were owed by Mr Paton to Ms Al Amoudi and had suggested that she put in place documentation formalising the lending which had come to nothing.
439. In any event, as I have already said, had the position been otherwise, it seems to me that it would be very surprising that both Mr Brook on Mr Paton's behalf and on his express instruction and Mr Berry would have recorded the basis of the transfer of the Security Properties as they did. The transfers make express reference to the reduced sums paid being as a result of part payment of monies owed by Mr Paton to Ms Al Amoudi. It is difficult see why such a formula should be adopted on Mr Paton's express instructions unless it reflected the position.
440. In my judgment, furthermore, there is neither documentary nor credible oral evidence that the £2.28m paid by Mr Paton and the alleged monies spent on refurbishment were in furtherance of any joint venture. I have already found that such arrangements did not exist but in any event, it seems to me that the Claimants' case in this regard has shifted to an extent that it is reasonable to draw the inference that there was no agreement as to the way in which monies which were transferred should be treated or the properties to which they were to be attributable. It seems to me that this is inconsistent with the existence of the joint ventures which the Claimants allege.
441. Accordingly, in my judgment the £2.28m and those sums which were spent by the Claimants on refurbishment of properties owned by Ms Al Amoudi are more likely than not to have been repayments of sums loaned to Mr Paton by Ms Al Amoudi. I come to the conclusion about the monies lent despite Ms Al Amoudi's evidence about Mr Paton's drunkenness, drug habit and unreliability in paying builders. It seems to me that her behaviour can be explained by reference to their relationship.
442. If I am wrong about the £2.28m I should add that I do not consider that the evidence is sufficiently clear to form the basis of any kind of Quistclose or other trust. As I have already mentioned, the Claimants' case in relation to the properties to which the monies were alleged directed changed and the documentary evidence provided no clear and reliable indication of the properties to which the monies were allegedly directed. The same is true and to a greater extent in relation to the alleged refurbishment monies. There is no documentary proof of the amounts spent, the works paid for or a breakdown of the amounts in respect of each alleged property.

*(vi) Impostership*

443. In the circumstances, therefore, it is unnecessary to determine whether the alleged representations as to her identity, status and source of wealth were false. I have found that there were no transactions entered into in reliance upon the alleged representations. In any event, as Mr Cakebread conceded in closing they were intended as a backcloth and no direct relief was sought in relation to them.
444. In any event, had it been necessary, I would have decided that as a result of their close relationship Mr Paton was fully aware of Ms Al Amoudi's status and her estrangement from those with whom she was otherwise connected in Saudi Arabia, albeit that she received considerable sums from her mother clandestinely. Accordingly, I would have decided that Mr Paton and through him, Ms Clutterbuck could not have relied upon the alleged representations as to identity, status leading to access to great wealth in the manner alleged.
445. Having said that, had it been necessary, I would have found that Ms Al Amoudi's father is not the person stated in the documents produced for the Home Office, and the bank references, something which Ms Al Amoudi accepted in cross examination. In relation to the bank documentation, it was clear from the evidence of Mr Frost and Mr Barriscale which I have accepted that the information came from numerous sources including internal bank reports and checks.
446. 
447. I accept Ms Al Amoudi's evidence that she did not refer to herself as a princess which she described as Mr Paton's words and not hers. This is consistent with Mr Davis' evidence that she did not hold herself out as a princess to him but that Mr Paton had done so and the evidence of both Mr Shah and Mr Ramsden that she was reluctant to discuss her family. I also accept Mr Barriscale's evidence that he did not know the identity of Ms Al Amoudi's husband and therefore, could not have endorsed it to Mr Paton or his mother, as he alleges.
448. If it had been necessary, I would also have accepted that Ms Al Amoudi is from or is at least connected with Saudi Arabia. This is borne out by her birth certificate, the evidence of Mr Baroom and to some extent by the transfers received from the Saudi American bank. I have rejected the evidence of Ms Ali for the reasons already stated.
449. As to the alleged representation that Ms Al Amoudi is a woman of some wealth, it follows from the findings that I have already made that it is true. She received considerable sums from Mr Baroom, had a high standard of living and purchased flats including two in Dolland Street with a combined value of £675,000 without the need for a mortgage. The HSBC documentation also makes reference to an offshore bank account with a credit balance of around £2m.

450. As to the alleged representation of Sharia funding for the Hans Place project and the payment of an arrangement fee, I have already found that on the balance of probabilities no such representation was made. In addition, I have found that the Security Properties were transferred to Ms Al Amoudi at less than their full value for the reason expressly stated in the transfers, namely in part payment for monies owed by Mr Paton to Ms Al Amoudi. Had the alleged representations as to Sharia funding and the payment of an arrangement fee been made, they would quite clearly have been false.
451. I also reject the Claimants' allegation that the Reference in relation to the Cohen family was a forgery and that representations as to its genuineness were knowingly false. In my judgment, Mr Paton's evidence that it was implicit that Barclays considered the Reference to be a forgery conflicts directly with the content of the emails to which I referred at paragraphs 368 and 369 which are from an independent source and which I prefer.

*(vii) Trust claims*

452. Lastly, for the avoidance of doubt, I should add that in my judgment, the Claimants' trust claims fail. As I have already said, there is insufficient basis for any Quistclose trust and I have found that the Kiltybegs letters purporting to create a Clutterbuck Trust were produced after the event in order to bolster the claim. Furthermore, I have decided that the transfer of the £2.28m and any refurbishment monies were by way of set off against monies owed by Mr Paton to Ms Al Amoudi.

The Counterclaim

453. There are three elements to the Counterclaim. First, Ms Al Amoudi seeks the return of monies loaned to Mr Paton or given to him for safekeeping which she says have not been returned. It is said that £1.5m was given to Mr Paton for safekeeping and that sums of £338,000 and 670,000 Euros were loaned and not returned.
454. Secondly, she seeks the return of certain wedding jewellery which it is also alleged was given to Mr Paton for safekeeping and thirdly, she seeks the return of certain documents stored for her by Mr Paton and not returned.
455. The claim is in breach of contract, conversion by a bailee, restitution and breach of trust by a bare trustee. It is made against Mr Paton alone. It is agreed that the issue of the value of the jewellery would have to be dealt with by way of expert evidence post trial, if this aspect of the counterclaim is successful.
456. It is not in dispute that bailment arises when a party is put in possession of goods, the possession is voluntarily assumed and the bailee knows of the existence of the bailor. Even a bailee who is not being remunerated has a duty to take reasonable care of the goods. A bailee is liable for conversion of the goods placed in his possession where he wrongfully detains them, destroys them, loses them or does anything with them which is inconsistent with the bailor's rights: section 2(2) Torts (Interference with Goods) Act 1977. The bailee is not liable if he can show that the loss, destruction or injury arose without his fault.

457. Equally, it is not disputed that a restitutionary claim arises where a defendant is enriched at the expense of a claimant, the enrichment was unjust and there is no change of position or other defence available to the defendant. In this regard I was referred to Halsbury's Laws of England Volume 88 5<sup>th</sup> Ed at [401].
458. Lastly, a bare trust arises where property is vested in one person on trust for another where there are no active duties arising from the status of trustee. The trustee's sole duty is to deal with the trust property in the way in which the beneficiary directs him to act: Snell's Equity 32<sup>nd</sup> Ed [21-027]. Failure to deal with the property in the way instructed amounts to a breach of trust.

(i) *Monies*

459. It is accepted that these claims stand or fall with Ms Al Amoudi's defence to the claim. Ms Clutterbuck and Mr Paton's defence is that there were no loans in the first place, as alleged or at all. For the most part the evidence is that the sums were either loaned or entrusted for safekeeping by way of cash and that accordingly, there is limited documentary evidence of the sums outstanding.
460. However, in addition to Ms Al Amoudi's evidence which Mr Seitler urges me to accept, he refers me to three pieces of what he says is supporting evidence. First, there is an attendance note of 26 August 2008 which records a meeting between Mr Berry, Ms Al Amoudi and a member of staff of Clarkslegal LLP. It concerns the transfer of the Security Properties and includes the following:

*"Purchase – client has concern about figures to be inserted in contracts. She must recoup the money which she has lent to seller. This will not clear the debt – he still owes her further funds."*

461. Secondly, it is said that Mr Berry's evidence in cross examination supports Ms Al Amoudi's case that large sums remain outstanding. He stated:

*"I just knew that the sums were very considerable and that, in each case, the debt was only being reduced by a relatively small proportion for each of the properties that were being transacted".*

462. Thirdly, it is said that Mr Barriscale's understanding of the proposed purchase of Kingsfold House, Billingshurst by Ms Al Amoudi was also consistent with large sums remaining outstanding from Mr Paton to Ms Al Amoudi. Mr Barriscale understood that Ms Al Amoudi would pay £700,000 against a purchase price of £1.2m, meaning a debt repayment of £500,000. The call report which he compiled which was dated 12 January 2009, the same day as completion of the sale of the last Security Property, provides inter alia, as follows:

*"Like most of the other properties she has acquired, this is being purchased from Ian Paton at what appears to be a significant discount from the true market value."*



*In each case the price stated in the transfer is the true market value and the contract states that the difference between the price and the cash transfer is in lieu of monies owed by Paton to Al-Amoudi. Further, on each transaction the solicitor has purchased an indemnity policy to protect against any claim of sale at an undervalue.”*

463. I have already found that Ms Al Amoudi loaned considerable sums to Mr Paton. Unfortunately however, there is no documentary evidence of the precise amount alleged to be outstanding once the Security Properties had been transferred nor is there any means by which that could be properly gauged. The only evidence is of a general nature by Ms Al Amoudi and by Mr Berry and Mr Barriscale who say that as a result of what she had said they believed that further considerable sums were owed. It seems to me that given the period over which the loans were allegedly made and the number of properties and other liabilities involved without any documentary evidence this is too vague and is insufficient as the basis for a specific claim in relation to £1.5m. Accordingly, in my judgment this element of the counterclaim is insufficiently proved.

(ii) *Jewellery*

464. It is Ms Al Amoudi's evidence in her third witness statement, that when she came to the United Kingdom in 2001 she brought with her certain items of jewellery which she thought she might be able to sell if she urgently needed money. After a theft from her flat in 2001, she decided to entrust it all to Mr Paton for safekeeping. She says that it comprised:

- a. A Cartier diamond necklace made with platinum, the diamonds being “D” diamonds set at regular intervals around the necklace with a large diamond of four or five carats in the centre. She says that it was a wedding gift which in 2001 was worth approximately US\$1.3m;
- b. A Cartier diamond ring also in platinum, the diamonds being “D” diamonds the central stone being sixteen carats and the ones to the right and left being slightly smaller. Her evidence is that it was given to her on her engagement worth approximately US \$700,000 at that time;  
and
- c. Another Cartier diamond ring also in platinum with a single large “D” diamond in the centre given to her on her marriage and which was worth approximately US \$500,000 at that time.

465. In Ms Al Amoudi's third statement she explains that Mr Paton told her that he would ask Ms Clutterbuck's brother, whom he described as a gem specialist, to value the jewellery. She also says that Mr Paton told her that the stones contained some sort of security code which made them difficult to sell but that Mr Clutterbuck would be able to sort it out. In fact, Mr Guy Clutterbuck's unchallenged evidence was that he denied that he had valued the items of jewellery for Mr Paton.

466. It is Mr Paton's position that this is all a fantasy and that he was never entrusted with any jewellery at all. It is said that there is no documentary evidence of the existence of the jewellery and despite being asked to obtain copy receipts from the relevant jeweller both in correspondence before trial and during cross examination, Ms Al Amoudi failed to do so. Mr Cakebread also points out that in cross examination, that having pleaded that the jewellery related to her engagement and marriage both of which were alleged to have taken place before she came to the United Kingdom and that the items were made by Cartier, Ms Al Amoudi appeared to suggest that receipts could be obtained from Chopard or from Cartier at Harrods, despite having also stated in cross examination that the items were purchased by her mother in Saudi Arabia. She also stated "probably Elliott have full insurance". Despite having made such an assertion, no insurance documentation identifying the jewellery was available. Immediately, thereafter, for the first time, Ms Al Amoudi stated that in fact, she had seen Ms Clutterbuck wear a piece of her jewellery at another hearing in this matter in the County Court and went on to explain that they were her earrings. When asked whether it was the first time she had made the allegation she responded:

*"You know, I am a woman. That is really- I don't hate them. I don't have no – I feel – maybe she's angry because I understand her I was with Ian. I'm sorry. I think she's angry because of I am with Ian, and I really apologise if that's the case, but I didn't do anything to her. And that's what I think. So if she have my jewellery it's not now going to – she have taken my whole things that I love, because she completely deny taking. After that, the Judge say "you have to give her, you have to open the safe". She open and she give me whatever she decide not wanted. I didn't say anything."*

Very shortly thereafter, the hearing was adjourned because Ms Al Amoudi was unable to continue to give evidence.

467. Furthermore, Mr Cakebread submits that the pieces of jewellery are all alleged to relate to Ms Al Amoudi's marriage but that there was no cogent evidence before the court that the Defendant was married at all. Ms Al Amoudi staunchly refused to answer Mr Cakebread's questions as to the identity of her husband and did not take up Mr Cakebread's suggestion that she could obtain a marriage certificate from the Saudi embassy. Accordingly, Mr Cakebread asks me to draw an adverse inference. Mr Seitler submits that the identity of Ms Al Amoudi's husband is irrelevant to the claim and that given Ms Al Amoudi's circumstances it is not surprising that she is unwilling to reveal the identity of her husband and that in the circumstances, it is unrealistic to expect to seek a marriage certificate from the embassy.
468. In the absence of any documentation whatsoever, this aspect of the counterclaim turns solely on the credibility of the witnesses. In this regard, I am unable to accept Ms Al Amoudi's evidence. There were no details as to the date on which it is alleged that the items of jewellery were handed over, there was no attempt to obtain any evidence of them, despite Ms Al Amoudi's reference in cross examination to the likelihood that they had been insured, the suggestion that they

were to be valued by Ms Clutterbuck's brother was not borne out and in cross examination Ms Al Amoudi seemed uncertain whether the jewellery had in fact, been purchased by her mother in Saudi Arabia or whether it had been bought at Harrods in London whether from Cartier or Chopard, two entirely different scenarios. When all of this is put together with Ms Al Amoudi's immediate digression in relation to Ms Clutterbuck and some earrings, in my judgment, the counterclaim in respect of the jewellery must fail.

*(iii) The Documents*

469. This is a straightforward claim in conversion. Ms Al Amoudi says that she gave Mr Paton some of her chattels including documents for safe keeping and that they have not been returned. Following the issue and service of the Counterclaim some of Ms Al Amoudi's property was recovered from garages at 80 Pavilion Road and although Ms Clutterbuck had confirmed to Ms Al Amoudi's solicitors on 4 May 2010 that the property stored at the garage included documentation, no documentation was amongst the items recovered.
470. It is also said that some of the documentation in question,  has been disclosed by the Claimants in this action and therefore, there can be little doubt but that they remain in their possession and within their control.
471. It does not appear therefore, that there is any defence to this element of the counterclaim.
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