Neutral Citation Number: [2024] EWHC 2018 (Comm)

Case No: CC-2022-LDS-000015

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
CIRCUIT COMMERCIAL COURT (KBD)

Westgate House, 6 Grace Street,
Leeds

Date: 6 August 2024

Before :

HER HONOUR JUDGE CLAIRE JACKSON
Sitting as a Judge of the High Court

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Between :

TIMOTHY HOLMES	**Claimant**
- and -	
1. CHRISTOPHER DOWNING	**Defendants**
2. THOMAS PEARS CHAPLIN (As the personal representative of Meyrick Cox, deceased)	
3. CRESSIDA ROSAMUND COX (As the personal representative of Meyrick Cox, deceased)	

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Ms Justina Stewart (instructed by **Best Solicitors**) for the **Claimant**
Mr Daniel Hubbard (instructed by **Dumonts Solicitors**) for the **First Defendant**
Mr Matthew Maddison (instructed by **Spencer West Solicitors**) for the **Second and Third Defendants**

Hearing dates: 8-10, 13-14 May and 17 June 2024

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APPROVED JUDGMENT

This judgment was handed down remotely at 10am on 6 August 2024 by circulation to the parties and their representatives by email and by release to The National Archives.

Her Honour Judge Claire Jackson:

Introduction

1. Timothy Holmes (herein "the Claimant"), a property intermediary, claims the sum of £900,000 together with interest from Christopher Downing (herein "the First Defendant") and the personal representatives of the estate of Meyrick Cox, deceased (Thomas Pears Chaplin and Cressida Rosamund Cox, herein referred to respectively as "the Second Defendant" and "the Third Defendant").

2. The Claimant's primary case is that the First Defendant and the estate of Mr Cox are indebted to him for the sum of £900,000 for services he provided in relation to the acquisition of properties in the North-East of England. In particular, the Claimant claims £700,000 for his services for acting as an intermediary in the acquisition of a portfolio of properties known as CB161 and £200,000 for his services in their acquisition of an apartment block in Newcastle-upon-Tyne known as CB182. The Claimant's secondary case is that a lesser sum is due to him in relation to CB161 together with £200,000 in relation to CB182.

3. Mr Cox died on 1 November 2020. As personal representatives of the estate of Mr Cox, the Second and Third Defendants accept that they have no first-hand knowledge of the matters in the case. Despite this there was, as set out below, a dispute on the papers at the start of the trial between the First Defendant and the Second and Third Defendants. By the conclusion of the trial this dispute had resolved.

4. Together the Defendants accept that the First Defendant and Mr Cox's business model involved purchasing properties, entering into long leases with 'Social Renters' then selling on those properties to institutional investors. They accept that the First Defendant and Mr Cox purchased CB161. It was common ground in the pleadings

that they also purchased CB182, however the First Defendant denied this during his evidence. Despite the acquisitions of CB161 and CB182 the Defendants deny the claim asserting that whilst the Claimant may have provided a service in relation to the acquisition of CB161 it was on terms which resulted in the amount payable to him being £0. The Defendants deny that the Claimant provided any service pursuant to an agreement in relation to CB182.

5. This judgment is handed down following the six-day trial of the claim and the filing of closing submissions by Counsel. By the conclusion of the trial the papers before the Court comprised 22 lever arch files together with written opening and closing submissions and authorities bundles. The evidence at trial took over 5 days. In order to ensure that this judgment focuses on the issues that I was tasked with determining at trial I will not refer to all the evidence presented to or given to the Court at trial. Nor will I refer to every submission made by Counsel whether at trial or in their submissions. Despite this I have read all the papers placed before me in preparing this judgment and I have taken into account all the evidence and submissions presented.

Background

6. To understand this judgment a number of individuals, some of whom appeared as witnesses at the trial must be introduced. They are:

Paul Daniel	An individual working alongside the Claimant in relation to CB161.
Emma Lloyd	The solicitor who acted for the First Defendant and Mr Cox in relation to the acquisition of property including CB161 and CB182. At the relevant time Ms Lloyd worked at DLA Piper.
Jessica Few	Vice President of Operations of the 2020 Initiative which was the entity through which the First Defendant and Mr Cox promoted, and in part, operated their business model. Ms Few has further been appointed as director of a number of

	companies owned by the First Defendant.
Lynne Yule	Manager of CB161 before its acquisition by the First Defendant and Mr Cox.
Peter Mitchell	A Trustee of various charities and companies operating under the Big Help umbrella, including Big Help Project and Big Help Homes.
Michael Black	Director of Housing at either Big Help Project or Big Help Homes.
Andrew Moorhead	Head of refurbishment at Big Help Project.
Michael (Mick) Murray	A director of Hadrian Residential Limited which owned CB161 prior to the sale which is the subject of these proceedings.
Glyn Smith	A director of Hadrian Residential Limited.

7. The following background is common ground between the parties.

8. On 10 January 2020 a meeting took place between the Claimant, Mr Daniel, and the First Defendant (acting on behalf of himself and Mr Cox) at which an oral agreement was reached concerning the fees to be paid to the Claimant and Mr Daniel in relation to CB161. The parties do not agree what the terms of the agreement were.

9. On 6 March 2020 a meeting took place at the offices of DLA Piper in Birmingham, attended by the Claimant, the First Defendant and Ms Few, at which meeting a different oral agreement was reached between the Claimant and the First Defendant (acting on behalf of himself and Mr Cox) in relation to CB161. Ms Lloyd was not in attendance at the full meeting but did make an appearance at it.

10. CB161 was acquired by the First Defendant and Mr Cox for £8,250,000. Following the acquisition, they leased it to a charity, Big Help Project ("BHP"), and sold it (with the benefit of that lease) to a third party (the "Investor"). The Claimant was prohibited by an Order of Mr Justice Foxton from serving evidence about how and to whom CB161 (and CB182) were disposed to. The amount of money generated by the disposition was not a matter on which the Claimant was prohibited from serving

evidence. The Claimant was not involved in the sale to the Investor and at no stage was it agreed that he was to benefit from that sale.

11. So far as CB161 is concerned the disputes before me are the terms of the agreement(s) dated 10 January 2020 and 6 March 2020, and whether as a result the Claimant is entitled to a fee of £700,000 or some other sum for the services he provided in relation to the purchase.

12. The First Defendant and Mr Cox acquired CB182 either in their own names and sold it to a third party or they acquired it on behalf of a charity. The Claimant seeks a sum, £200,000, for the services he says he provided in relation to the purchase pursuant to what the Claimant says was an oral agreement reached in April 2020. In relation to CB182, there is a dispute about whether any agreement was made at all. It is however agreed that if an agreement was reached that in doing so the First Defendant again acted on behalf of himself and Mr Cox jointly.

The Claimant's Case

13. As to CB161 the Claimant's case is that on 6 March 2020 the First Defendant and Mr Cox agreed to pay him a fixed sum of £700,000 upon their completion of the purchase of CB161, in consideration of certain services provided or to be provided by the Claimant in connection therewith. The Claimant states he provided those services.

14. The Claimant disputes the Defendants' right to deduct one-third of any retention and/or contribution relating to CB161, made by the First Defendant or Mr Cox, from his payment. The Claimant further disputes the amount of the retention and contributions which the Defendants say was held back or paid in relation to CB161.

15. As to CB182 the Claimant's case is that an oral agreement was made on or about 9 April 2020 by which the First Defendant and Mr Cox agreed to pay him £200,000 on completion of their acquisition of CB182, in consideration of certain services provided or to be provided by the Claimant in connection therewith. Again, the Claimant states he provided those services.

The First Defendant's Case

16. At the outset of the trial the First Defendant's case on CB161 was that the sum agreed as the interest of the Claimant in the acquisition, £700,000, was agreed to be net of a one-third share of (i) any retention held back by the Investor and (ii) any contribution which the First Defendant and Mr Cox paid to BHP. The First Defendant asserted that the sums retained together with the contribution were of such a sum that the one-third share was greater than £700,000 and therefore no sum is due to the Claimant.

17. Following the conclusion of the evidence portion of the trial, but prior to the filing of written closing submissions, Mr Hubbard on behalf of the First Defendant, confirmed that:

> "*[The First Defendant] no longer contends that the full amount of the retention (468k) should be deducted from the Claimant's entitlement in respect of CB161. Instead, consistent with the evidence which he gave at trial, and with the pleaded case of the Second and Third Defendants, The First Defendant will contend that only the half of that sum paid to Big Help (234k) should be so deducted.*"

18. The First Defendant continued to assert that the deductions were greater than the £700,000 claims and that no sum was due to the Claimant.

19. The First Defendant denies that any agreement was reached with the Claimant in relation to CB182 and asserts that the person he dealt with in relation to that property was the seller's retained agent. Further the First Defendant denies that the Claimant provided the services the Claimant asserts he was required to provide in relation to the purchase.

The Second and Third Defendant's Case

20. The Second and Third Defendants adopt the First Defendant's defence in relation to CB161 and CB182. In their pleaded case they further contended that the First Defendant did not act for Mr Cox in reaching any agreement that was made in relation to CB161 and/or CB182. Further they asserted in the alternative that whatever the terms of the original agreement about CB161, the parties subsequently agreed the sum to be paid to the Claimant in respect of that portfolio.

21. In his skeleton argument for trial Mr Maddison, Counsel for the Second and Third Defendants, conceded these two points, albeit the first was conceded for the purposes of these proceedings only.

22. The Defence of the Second and Third Defendants is therefore the same as that of the First Defendant.

Procedural Points

23. This is a claim where there has been much heat, but little light, brought to the case by the parties' conduct. Section B of the trial bundle shows the number of hearings which have been required prior to this case arriving at its trial date.

24. Unfortunately, due to a failure to comply with court orders, rules and practice directions much of the first day of trial was wasted in dealing with procedural matters which the Court should not have needed to deal with, for example, putting the bundle in proper order, ensuring documents before the Court were legible. Procedural issues and disputes continued to arise throughout the trial and the case required almost constant case management. It was a case conducted, at least from the viewpoint of the Court, with bad feeling between the parties and their legal advisors, and with constant references by Counsel to matters already resolved by the Court. This is not helpful to the conduct of the proceedings generally, to the trial or to the production of a judgment in good time, focused on the issues in the case.

25. I make clear that where parties have sought in their written submissions to re-raise matters which are already the subject of decisions of the Court whether by way of direct order, or sanction by costs I have in producing this judgment simply followed the relevant order. For example, in his submissions (both opening and closing) Mr Hubbard sought to raise issues regarding redaction of a document. That matter was however resolved by HHJ Klein on 8 November 2023 when he ordered the production of an unredacted completion statement by the Defendants and ordered the First Defendant to pay the Claimant's costs of the application for such an order. Whilst Ms Stewart in her closing submission put before the Court her skeleton argument for the hearing before HHJ Klein I have not reheard those arguments or referred to those authorities in this judgment, as the matter was settled by HHJ Klein's Order which is clear on its face. This is not to say however that the decision of HHJ Klein is authority for what Ms Stewart says it is, as first I do not have a copy of the judgment of HHJ Klein and I do not therefore know whether he accepted Ms Stewart's argument on that occasion in full or in part, and second that Order must itself be read in the light of the

Order of Mr Justice Foxton referred to in paragraph 10 above. For the avoidance of doubt however it is clear when those two Orders are taken together that there was no prohibition on the Claimant from serving evidence referring to the amount of money generated by the onward sale of CB161 and CB182 by the First Defendant and Mr Cox.

26. Unfortunately, a further procedural point arose whilst I was writing this judgment. An unsolicited email was received by the Court on 1 July 2024 from a Benice Taylor who sought in her email, marked Private and Confidential, to make submissions to the Court following Ms Taylor's review of the transcripts of the trial. Given the point at which this email arrived and following an email discussion with Counsel I determined not to read it and to give the email no weight in this judgment. Ms Taylor was informed accordingly and that is the course I have adopted in producing this judgment. It may be that there are consequences arising from that email. I told Counsel I did not want to deal with that at that time. Despite that clear indication both the Claimant, through his solicitor, and the First Defendant, through Counsel, took the opportunity to seek to put further "facts" before the Court and Mr Hubbard took the opportunity to, in my judgment, point score. Neither of those actions assisted me. As I indicated to Counsel at the time I do not however consider that further in this judgment.

The Issues

27. The parties had agreed a list of issues before trial. Given the amendments to the parties' positions at trial the issues required refining. This was done by agreement at the start of the trial. As to CB161 the parties agree that the issues are:

i) What were the terms of the contract entered into between the First Defendant (acting on behalf of himself and Mr Cox) and the Claimant and Mr Daniel at the meeting on 10 January 2020?

ii) What were the terms of the contract entered into between the Claimant and the First Defendant (acting on behalf of himself and Mr Cox) in relation to CB161?

iii) What was the reason for the reduction in price in CB161 from £8,484,000 to £8,250,000?

iv) What, if any, retention was held back by the Investor, and was part of any such sum subsequently paid to the First Defendant and/or Mr Cox?

v) What sum(s) did the First Defendant and/or Mr Cox pay to BHP in connection with CB161?

vi) To the extent that the sum payable by the First Defendant and Mr Cox to the Claimant was to be net of a proportionate part of any contribution to BHP, to what extent were any sums paid by the First Defendant and/or Mr Cox to BHP referable to such a contribution and if so for what purpose?

28. In his closing submissions Mr Maddison sought to expand the list of issues for CB161 beyond that which was agreed (whether the Claimant provided the services in relation to CB161 for which the fee was payable). Given that this dispute was pleaded between the parties it was a surprise that this was not in the agreed list of issues. No explanation was given for its omission or its sudden inclusion in Mr Maddison's submissions.

29. This was of concern to me as I had made clear to the parties at the conclusion of the trial that I would be most assisted if they focused their skeleton arguments on credibility of the witnesses, the list of issues and two specific points I had identified from the evidence. This expansion of the list of issues fell outside that. Having however read the closing submissions of Ms Stewart and Mr Hubbard their positions on Mr Maddison's new issue are discernible so as to enable me to fairly deal with the points Mr Maddison now raises. Therefore, whilst it is not an agreed issue in the trial I have, briefly, set out my findings in this regard at the end of the third issue above, which overlaps in part with Mr Maddison's new issue.

30. As to CB182 the parties agree that the issues are:

    i) Did the Claimant enter into a contract with the First Defendant (acting on behalf of himself and Mr Cox) in relation to CB182 and, if so, what were its terms?

    ii) What services, if any, did the Claimant perform for the First Defendant and/or Mr Cox in relation to CB182?

    iii) Again, in relation to this matter Mr Maddison sought in his skeleton argument to expand the issues beyond the agreed list of issues. On this occasion Mr Maddison sought to contend that it was an issue in the case as to whether the agreement in respect of CB182 was supported by consideration. Given that this dispute was pleaded between the parties it was a surprise that this was also not in the agreed list of issues. Again, no explanation was given for its omission or its sudden inclusion in Mr Maddison's submissions.

iv) On this occasion Ms Stewart did not address this point in her written closing submissions. This is not surprising given it was not an issue in the Agreed List of Issues. In my judgment it would be wholly unfair for this Court to entertain as an issue in a case a point not raised as an issue in a list agreed by Counsel at the trial, even if the point is pleaded. I have not therefore considered this as an issue in the case.

The Law

31. This is a civil claim. The parties agree that in relation to the first three agreed issues on CB161 and all the issues on CB182 the burden of proof lies on the Claimant to prove his claim to the appropriate standard, being the balance of probabilities. On the remaining agreed issues (CB161 iv, v and vi) the parties agree that the burden of proof rests on the Defendants to the same civil standard. On Mr Maddison's new issue on CB161 I have not heard from the parties as to whether they agree where the burden of proof lies however, in my judgment, it lies on the Claimant to the same civil standard.

32. From the list of issues, it is apparent that this is a case about whether oral contracts were formed in relation to the two purchases, and, if so, establishing their terms. No party takes a point as to whether a valid agreement as to the purchase of CB161 could have arisen on 6 March 2020 given the agreement already entered into in January 2020. Rather the Agreed Case Memorandum/Summary and the Common Grounds as set out in the Updated List of Issues (i.e. the List which was agreed at trial and after all amendments had been made to the pleadings) accepts that in March 2020 an oral agreement arose and that it is the terms of that agreement which are in dispute. This is the basis on which I have dealt with the case.

33. As a result I have not considered the validity of the March agreement in the light of the January agreement as this has not been raised as an issue in the case, nor have I considered whether the change from the January to the March agreement acted as a matter of law by way of a new contract superseding the January contract (as the Defendants say in their pleadings) or by way of variation of the January agreement (as the Claimant says in his pleadings). In any event no party has placed any relevant authorities before me on these points.

34. I should however note that in the Amended Particulars of Claim at paragraph 24D(b) and as referred to in Ms Stewart's closing submissions the Claimant claims in the alternative that if the March agreement was not a valid agreement/variation as for example it is void for lack of certainty then the Claimant claims a fee for his services under the January agreement. No party made submissions of any substance in this regard.

35. The case is therefore broadly a factual dispute. Unsurprisingly therefore the law relied upon by the parties was limited. Ms Stewart and Mr Maddison referred to no law in their opening statements. Mr Hubbard referred to two principles of law:

    i) From Arnold v Britton [2015] UKSC 36:. "Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a contractual provision, to take into account a fact or circumstance known only to one of the parties."

    ii) From Chitty on Contracts, 35th edition, paragraph 25-025 on the difference between independent and dependent promises with two cases dealing with the same issue also provided.

36. In the housekeeping phase of the trial Mr Maddison agreed with those principles of law. Ms Stewart disagreed with the first principle relied upon by Mr Hubbard, and with the application of both principles to the case. I gave the parties the opportunity to explain any disagreements and to produce other principles of law on which they sought to rely in the parties' closing submissions. Mr Maddison and Ms Stewart both used this opportunity to put authorities before the Court, however no disputes were raised over the correctness of the principles of law referred to by Mr Hubbard.

37. Ms Stewart relied on three broad principles of law (leaving to one side authorities on redacted documents which I have already addressed at paragraph 25 above):

    i) *Blue v Ashley* [2017] EWHC 1928 (Comm): That in a commercial case, the Court should prefer contemporaneous documentary evidence to oral evidence;

    ii) *Foxtons Ltd v Bicknell & Anr* [2008] EWCA Civ 419, *Glentree Estates Ltd v Holbeton Ltd* [2011] EWCA Civ 755, and Chitty, 35th Ed on the principles regarding estate agent fees which Ms Stewart submits are analogous to the case before the Court. The extract from Chitty also refers to the Commercial Agents Regulations however these have not been relied upon by any party to the proceedings.

    iii) Extracts from Bowstead & Reynolds on Agency, 23rd Ed (paragraphs 1-001(1), (2), (4) and 1-020) on principles regarding agents.

38. These principles of law were referred to Mr Hubbard and Mr Maddison in advance of the exchange of closing submissions. Neither filed authorities in reply nor disagreed with the principles of law, save Mr Hubbard disagreed as to the application of one principle on the facts of this case. On the papers before me therefore both Ms Stewart

and Mr Hubbard's principles of law are accepted as correct statements of law. It is of course for me to determine if they apply to this case and to this end, I have read all the authorities placed before me (save the authorities on redaction as already discussed).

39. In preparing this judgment I have found the decision in *Blue* to be of assistance given that this is a commercial case and, as will become clear, I have concerns over the evidence of both the Claimant and the First Defendant. I also have concerns over many of the witnesses in this case with it being clear in my judgment that evidence in this case from those who are not party to the proceedings has frequently not been given on the basis of what is true but rather based on partisan affiliation with, or hatred of, one party or another. I have therefore generally preferred the documents in the case to the evidence of witnesses. I set out in detail below why this is the case in relation to specific witnesses and which documents I have taken into account.

40. I have been less helped by the remaining authorities given that:

i) This is a case about establishing the terms of oral contracts as opposed to interpreting a written contract;

ii) Cases where the Court is required to determine if there is an oral contract and if so, what its terms are generally fact specific;

iii) There is no suggestion by the Claimant that he was entitled to payments simply due to the agreements. He accepts he had to provide services to be entitled to the payments.

iv) The Claimant has been at pains throughout the litigation to state that he is not an estate agent but rather was a person who introduced properties and then facilitated the sales to the First Defendant and Mr Cox. Thus, his fee and his

terms and conditions were those he negotiated as opposed to estate agent standards. Further in relation to both alleged contracts the Claimant does not assert that his role was to introduce a purchaser. The case is therefore not analogous to estate agents with no party contending that the Claimant was acting in law as an estate agent or that the Estate Agents (Provision of Information) Regulations 1991, SI 1991/859 applies to the contracts before me. Instead, this is a case about the express terms agreed between the parties, if they were agreed. I do note however that the Court of Appeal confirmed in *Glentree* that there is nothing to stop multiple agents agreeing to share a commission.

41. Mr Maddison relied on one principle of law:

i) If a party wishes to submit that the evidence of a witness should not be accepted on a particular point, that party is required to challenge that evidence in cross-examination (see Phipson on Evidence, 20th Ed. at paragraph 12-12). Mr Maddison also relied on *Rahme v Smith & Williamson Trust Corporation Ltd* [2009] EWHC 911 (Ch) in this regard.

42. It is not clear to me whether Ms Stewart was referred to these authorities before closing submissions were exchanged. Having read the authorities, they are uncontroversial as they set out general principles rather than a fixed rule. I accept given that the witnesses at trial were subject to cross-examination that the principles must be considered in this case. Again, it is for me to determine how the general principle applies in this case based on the parties' cases, the evidence of the witnesses and any constraints that applied to the examination of a witness.

The Witnesses

43. As the heading to this judgment makes clear there was a break in the evidence stage of this trial due to the trial overrunning. What the headnote cannot make clear is that during this time the Business and Property Courts at Leeds moved from its former home within the Leeds Combined Court Centre to new accommodation. This meant that the witnesses at trial gave evidence in different locations and with different facilities available to them. I have in this judgment taken the differing facilities into account when assessing the witnesses and my conclusions as to their credibility have not been affected by the conditions in which they gave evidence. I note that as regards the First Defendant no submissions were made to me that taking his evidence in two parts and/or in two locations would affect his health or his ability to give his evidence to the best of his abilities.

44. Counsel filed detailed closing submissions in which they each made submissions on the credibility of the witnesses who appeared before the Court at trial. If I was to address each and every point they make in their submissions this already lengthy judgment would become unwieldy. Whilst credibility is crucial in this case, I do not therefore set out Counsel's submissions on each witness and then address them. Nor do I address each and every submission they made about each witness. Rather having read their submissions and given them due weight, in this section of the judgment I set out my observations and findings on the witnesses and the reasons for them.

45. I have taken into account in my assessments not just the submissions of Counsel and the written and oral evidence of witnesses but also their demeanour and behaviour whilst giving evidence in Court. In relation to four witnesses who gave evidence at the trial regarding the contractual formations in January and/or March (the Claimant, the First Defendant, Ms Few and Mr Daniel) my findings have been significantly

influenced by their demeanour, presentation and behaviour whilst they gave evidence.

46. I will deal with the four main witnesses in turn.

The Claimant

47. During the case management phase of this case the Claimant has been the subject of orders for breaches of rules, practice directions and orders. There have also been an inordinate number of interim hearings where the Court has had to intervene in the case to keep the proceedings on track. Redaction of witness statements, not just of the Claimant, was required as part of the Court's case management. Mr Hubbard, in his submissions, suggests that the breaches of orders and procedure by the Claimant should be taken into account in relation to his credibility. I do not agree.

48. There is a fundamental difference between the Court case managing a case and the assessment of a witness at trial. The Claimant must be assessed on the evidence he was permitted to present at trial not on the preparation of his case as whilst I could see and hear the Claimant and establish myself his integrity, I cannot with any certainty establish if the breaches of rules and procedures were due to the Claimant or his legal advisers. In my assessment of the Claimant, I have therefore not taken into account the conduct of his case.

49. By the end of the first hour of his evidence it was clear to me that the Claimant could talk, and distract, for England. This was in part as he did not listen to the questions and in part due to his obfuscation. During the remainder of his evidence, he displayed a lack of certainty, questionable recall of events, together with prevarication and verbosity.

50. The Claimant himself conceded that he does not have a "*great memory*". This was amply demonstrated during both the course of the proceedings and at trial and is evident from the Claimant's changes of position regarding the date of the alleged agreement in relation to CB182.

51. The Claimant made additions or changes to his case during his evidence, much of it necessary due to the contemporaneous documents. For example, in his pleaded case he avers that he agreed the price of £8,464,000 for CB161, by way of reduction from the marketing price, on behalf of the First Defendant and Mr Cox. From his witness statements and his oral evidence, it was apparent that that was simply not true and that he had already agreed that price with the vendor in 2019.

52. Some of his changes were not caused by contemporaneous documents but by the implausibility of his written evidence, such as his evidence in relation to a person named Toby. The Claimant's written evidence was that the First Defendant was aware that Mr Daniel had been trying to sell part of the portfolio to Toby and this caused a breakdown in relations. This cannot, however, be correct given that the Claimant, and not Mr Daniel, had the exclusive right to sell the portfolio. In his oral evidence this changed to Toby wanting to adopt the business model of the First Defendant and Mr Cox. This however did not make sense as a reason for the removal of Mr Daniel from the deal in March 2020.

53. Other changes by him, such as the suggestion that he understood following the meeting in March 2020 that Mr Daniel was to receive the balance of 50% of the January figure referred to at trial as the "delta" after the deduction of the Claimant's fee, did not hold up to analysis as against the contemporaneous words and actions of the Claimant. In this regard I note that I do not accept that it was agreed at the

meeting on 6 March that Mr Daniel would receive the balance of 50% of the "*delta*". This may have been the position the Claimant wanted, and perhaps even planned, as a potential outcome for Mr Daniel when they met on 7 March 2020, but it was not agreed. Rather the parties left matters in a nebulous state with the Claimant expecting negotiations between the First Defendant and Mr Daniel as to his fee entitlement, a view the Claimant continued to hold throughout March 2020. It was not therefore agreed between the parties that the Claimant would pay Mr Daniel's fee as he would have no reason to do so: Mr Daniel had provided him no service, and it would not make financial sense for him to do so. I do not believe that it was the intention of the First Defendant from 6 March 2020 to ever pay any sums to Mr Daniel.

54. Returning to the Claimant, I was left with the firm impression that the Claimant was a fast improviser but that when he does so he does not think through the consequences of his statements and that when backed into a corner his improvisations are not generally truthful.

55. The Claimant was also prone to exaggeration. This was best demonstrated by his evidence regarding his role in the inspections of CB161, an area in which the Claimant admitted, twice, he had exaggerated in his witness statements. The Claimant stated in his witness statements that he was "*arranging the inspections of each of the properties*" and was "*travelling to the Northeast most days between January and March 2020*". However, in cross-examination, he conceded that most, 90%, of the work was done by Ms Yule and Arcadis (the surveyors), with the Claimant becoming involved if Arcadis could not get into a property and that he was up there a lot at the end of February and in March 2020.

56. On several occasions I also noted that the Claimant sought to want to entertain with his evidence rather than engage with the straightforward questions he was asked. This taken together with his clear lack of details means that even in areas where the Claimant gave emotional evidence as to his actions and reactions, for example on 3 July 2020 and 4 July 2020, his evidence must be treated with care.

57. Yet despite all of these matters which are obvious concerns when assessing credibility, the Claimant did accept when he did not know something, he refused to speculate as to the thoughts of other people and he was prepared, at times, to concede points. However, concessions did not occur on all occasions such as during his evidence on how introducer's fees were generally calculated.

58. His case has been broadly consistent since 10 July 2020, although the nuances of evidence have changed. The Claimant has therefore since July 2020 stated that his fee was not subject to deductions, although he has changed his case as to whether he understood the business model operated by the First Defendant and Mr Cox.

59. My overall judgment of the Claimant was that he is a consummate salesman who is likely extremely effective. He is affable and he appears to have answers to questions immediately they are asked of him. However, when his answers are forensically analysed they are not always accurate, particularly on points of detail. When he gave evidence the broad patterns of his evidence were discernible and supported by the contemporaneous documents but the details of his evidence were often wrong, retracted when questioned, overblown or lacked credibility. He is clearly someone driven by money and success, and this has led him to take decisions whereby he has abandoned friends along the wayside (such as Mr Daniel) and in my judgment during his evidence he was willing at times to abandon the truth in support of his case. I do

not therefore find that he was a credible witness whose evidence can be accepted at face value particularly on details such as dates, times and places. Instead, his evidence must be checked against contemporaneous documents and credible witnesses. In accordance with the decision in Blue I prefer contemporaneous documents to the Claimant's evidence.

The First Defendant

60. I note for this judgment that the First Defendant is ill, and I have taken this into account in my assessment of him as a witness. I have also taken into account that the First Defendant may have autism. In his cross-examination the First Defendant stated "*Oh by the way I also said that I had autism*". I understood from his demeanour and the context of his evidence at that time that he was criticising Ms Yule who had earlier in the trial stated that the First Defendant had told her he had autism or Aspergers. I did not understand from his tenor, or tone or demeanour that the First Defendant was saying he did in fact have autism and no further questions were asked of him in this regard in cross-examination or re-examination. Mr Hubbard does not raise this as an issue in his submissions. Mr Maddison does raise this as an issue relevant to credibility assessment on the basis that he understood the First Defendant to be stating in the above answer that he did have autism.

61. I therefore address this matter should my understanding of that portion of the evidence be incorrect. If the First Defendant was indeed telling me he has autism, then I was not aware of this matter prior to that time. No special measures or accommodations were sought by the First Defendant, or on his behalf, either prior to or at trial in relation to either his illness or his neurodiversity.

62. I have reminded myself of the contents of the Equal Treatment Bench Book in preparing this judgment. I note that a key point made is that "*within any condition there are varying levels of impairment, so a general knowledge of the condition and its effects, while a good start, may be inadequate to deal with the particular individual appropriately.*" It is only right that I therefore note in this judgment that whilst I have a general knowledge of autism and its potential effects on a party and on a witness in that it can affect how a person communicates with others and how a person senses the world around them, no details were provided to me at trial by either the First Defendant or his lawyers as to how neurodiversity could or would affect him as a witness. Nor have submissions been made by Mr Hubbard in this regard in his closing submissions. Mr Maddison made generalised submissions in this regard.

63. I was not told whether, for example, the Court would need to consider the First Defendant's ability to concentrate, his ability to follow and process linear information or whether as a result of any medical condition he would or could, when under pressure, appear argumentative or obsessive.

64. It is not right for a Judge when dealing with a case to make assumptions about a witness simply because they are neuro-diverse: Autism is a spectrum condition. Judges must act on the basis of the information provided to them and the evidence which is before them. Whilst therefore noting that the First Defendant may have, on the evidence before me, autism, and that to have this diagnosis the First Defendant would have shown that he has difficulties with social communication and integration, and will have demonstrated restricted, repetitive patterns of behaviour, interests, or activities, I have no details as to how autism (if the First Defendant has this) presents in the actions, language or behaviour of the First Defendant. In particular I have no

evidence that it could or did affect his ability to give evidence in the trial (whether as to restricting his use of language or his ability to process and answer questions), or the manner in which he gave his evidence. I have however fully taken into account the information I have as to the First Defendant's physical and mental health.

65. I have further taken into account that the First Defendant's cross-examination was time restricted, broken between the May and June sittings in the case, at times bad tempered (on both sides) and was throughout replete with interruptions by Counsel. Even allowing for all these factors in my judgment the First Defendant wholly lacks credibility.

66. The evidence of the First Defendant as to Decent Home Standards and how these apply in the property industry can objectively be shown to be wrong. He claimed they were a benchmark for all rented properties in the United Kingdom. This is simply wrong as it does not apply to properties rented by private landlords. The First Defendant was also wrong as a matter of law on his explanation to the Court of how the standards apply to damp in a property. Remarkably on this issue, which the First Defendant said was fundamental, he had not mentioned this in his witness statement and the only mention of such standard in his case, until his evidence, was as to a representation said to have been made by the Claimant. Yet there is no counterclaim before the Court in that regard despite the First Defendant claiming that the standard was not achieved for properties within CB161. However, this is unsurprising given the First Defendant's admission that he relied in purchasing the portfolio on surveyor's reports for every property.

67. The First Defendant has failed to produce documents which would be expected from him especially his bank statements showing payments to Big Help entities or the

ledgers of DLA Piper showing payments to BHP: Whilst the First Defendant sought to give answers for this during his cross-examination, they were answers lacking credibility.

68. Even allowing for the medical conditions the First Defendant has or may have, he was unduly evasive during cross-examination: On some occasions refusing to answer questions and on others either answering what he wanted or avoiding answering the question by veering on to another topic. For example, there was, what I judged to be, a remarkably petty section of the First Defendant's evidence where he refused to agree that at the outset of discussions it was understood that the purchase of CB161 would be by way of staggered units. Ms Stewart had to ask five questions to get an answer in that regard when it was not a point of dispute on the evidence before the Court. I tried on each occasion when he gave evidence to establish with the First Defendant that he needed to answer the questions asked of him, but he continued to give evidence in the same manner.

69. His evidence was replete with whataboutism, avoiding answering for his decisions or actions by turning to what he thought were issues with the Claimant's case. He was, again allowing for the potential effects of autism to the extent I am able on the evidence before me, continually argumentative, repeatedly ignoring questions, going off at tangents or trying to get into debates with Counsel despite being told not to do this by the Court. For example, when asked as to whether if the Claimant negotiated a price of £2.7 million in relation to CB182 this would be a favourable price he was deliberately argumentative and uncooperative.

70. He did however concede points where it did not assist his case to do so. Examples of this were his concessions that in so far as not paid to Big Help, a proportionate part of

the retention should have been paid to the Claimant, and that the reduction in the price of CB161 to £8.25m resulted from the Claimant's efforts.

71. The First Defendant also tried to be controlling in the witness box asking questions of Ms Stewart throughout his evidence, despite being told not to do so. He also sought to tell Ms Stewart and myself what was and was not relevant in the proceedings (for example "*I fail to see the relevance ... Its relevance in this case it seems to be moot... I do not need to answer that question*"). He was in his manner, tenor and tone condescending to the Court, to Counsel ("*Forgive me but could you please make your point*") and to other witnesses. His own evidence as to Ms Few, his supporting witness, was disrespectful, at times demeaning and flew in the face of his written reliance on her job title of Vice President. By way of example, I refer to the First Defendant's description of Ms Few as a "*23 year old girl*". Ms Few is not a girl, she is a woman.

72. He would also pick semantic battles when they were not necessary and sought to impose on the case language that he wanted to use, even where this language had not formed any part of the case before hand (e.g. "*synthetic discount*"). Whilst I accept that fixating on certain terms can be a characteristic of autism what undermined the First Defendant's evidence in this regard was that having fixed on a term, he was then himself inconsistent with the use of the language. This was not explicable given the First Defendant's evidence as to how he used phrases. For example, the First Defendant was unable to articulate credibly, coherently or consistently what he meant by "*delta*", as opposed to an '*economic interest*' or '*total pot*':

> '*By the way, delta and "economic interest" are not exactly interchangeable but I think that the spirit of what "delta" means and what the spirit of "economic*

interest" means is the same; it is not a profit share and it is not a fee';

'*Well, "total pot" is - whether you want to use "total pot", "delta", "economic interest", they mean the same thing*'.

73. It was obvious to me that the First Defendant did not respect the Court or the trial process. I was left with the firm view at the conclusion of his evidence having had the opportunity to study the demeanour, behaviour and words of the First Defendant that he had determined in advance what he wanted to say to the Court and on what terms and that he only partook in the cross-examination to deliver what he considered was his magnum opus on this property portfolio irrespective of its relationship with the truth. To that end he was willing to put words into the mouths of other witnesses and to tell me what the internal thought processes of other people and companies were, including DLA Piper when they wrote an email dated 9 July 2020 and on the final day of trial, he even sought to tell Ms Stewart what she believed.

74. Further he was willing to state alleged facts for which he had no basis. For example, he stated "*I think that Lynne Yule might have worked for Tim at some stage. I do not know*". When challenged on that he stated, "*It is conjecture but I was just saying. I do not know.*" It was clear to me from these, among other exchanges, that the First Defendant would just say what he wanted when he wanted irrespective of whether he even thought it was true.

75. Finally, regarding the First Defendant's credibility there was the change of position regarding CB182. It was common ground based on the pleaded cases of the parties that the First Defendant and Mr Cox acquired CB182 and sold it to a third party. This was noted in the Common Ground section of the List of Issues. Yet in evidence the

First Defendant denied this. No proper explanation was given for this change of position.

76. I must at this juncture deal with what became known at trial as the Economic Interest Document (herein "EID"). This is a copy of a document, produced by the First Defendant, and which the First Defendant asserts he created before the 6 March 2020 meeting, which he took to that meeting, corrected at the meeting and which so far as his copy is concerned (which the document before the Court was said to be a copy of) was either signed or initialled or purportedly initialled by the Claimant.

77. I note that there was an issue at trial as to why the First Defendant was unable to provide to the Court the original of the EID or the metadata for its production. The First Defendant stated that the original copy was held in storage and that the storage room was at some point broken into and its contents taken. Determining whether and, if so, when the theft took place and who committed the theft is well beyond the bounds of this trial with the individuals suspected by the First Defendant not being parties to the claim or witnesses at the trial and a dispute being evident between the parties as to when and how this matter was reported to the police on which I refused to allow even more evidence to be produced on, and after, the final day of trial. The consideration of this did not help me in my decision making. Although I should note in so far as there was evidence before the Court in this regard the First Defendant's evidence changed as to when the theft was discovered when obvious chronological difficulties were pointed out in his original account.

78. It is regarding this document, and one other addressed in relation to Ms Few below, that Mr Maddison made his legal submission that Ms Stewart had not properly challenged the document in cross-examination. Mr Maddison submitted that in asking

the Court to reject the document and the First Defendant's evidence on it the Claimant is asking the Court to find that the EID was created after the event and that Ms Stewart had not put this in cross-examination.

79. The first point to note in this regard is that this is not the Claimant's case on the EID. The Claimant's case is set out clearly at paragraph 11 of the Amended Reply. It is that it is denied that the document was produced at the meeting or that a copy was given to the Claimant. The Claimant then takes issue with the contents of the document in so far as it is said to record the terms of the agreement reached at the meeting and whether it was signed or initialled. The Claimant makes no point or case as to when the document was created.

80. Nor in my judgment does it follow that the Court must find that the document was created after the event by the First Defendant in order for the Court to reject the EID as it is presented to the Court – which is as a document showing contractual terms agreed to by the Claimant and signed or initialled by him at the meeting. If I find that the document is not signed or initialled by the Claimant the document could have been created before, immediately after or in July 2020 as it is undated and I do not have its metadata. Therefore, in my judgment the EID could still be rejected as evidence of what occurred at the meeting for the reasons pleaded by the Claimant, even if it was produced before 6 March 2020.

81. Therefore, in so far as Mr Maddison says that Ms Stewart needed to put to the First Defendant in cross-examination that he had created the EID after the event I do not accept that is correct. Rather Ms Stewart had to put her case on the EID (i.e. that a copy was not given to the Claimant, it was not signed or initialled at the meeting and that it did not record an agreement reached on that date) to the First Defendant and

allow him to answer that. She did this to the requisite degree as the Court transcript shows.

82. In any event whilst I accept that in general a party is required to challenge in cross-examination the evidence of any witness for the opposing party if it is to be submitted that their evidence should not be accepted on a point, that is a general rule which is not inflexible (see Phipson on Evidence para 12-12). I must therefore take into account that where there are time limitations on a cross-examination that it may not be practicable to cross-examine on every point, and that provided a party makes their position clear to a witness in relation to a particular point (whether it be a broad credibility point or on a specific issue in a case) so that the Court understands what the witnesses evidence would be on the point, even if not expressly sought, then the Court is entitled to make its finding on the issue raised provided that it is fair to the witness and to the parties.

83. I have reviewed the transcript regarding this document with care and, whilst I accept that Ms Stewart did not put to the witness that the document was created at a date after 6 March 2020, in my judgment in the section of the transcript dealing with the document she put her case clearly for me to understand the First Defendant's position on the EID and for him to answer it. Further it is clear from the transcript that if any part of the case was not put then the First Defendant would have given evidence that he produced the note before the meeting, that he deployed it at the meeting, that it showed the terms of the agreement reached at the meeting and that the Claimant agreed this and made a mark on it to show that.

84. The section of the transcript starts at page 556 and ends at 569. It was a cross-examination undertaken under time pressure and therefore Ms Stewart did not have

the luxury of time to put every minor point in her case to the First Defendant. Nevertheless, throughout this part of the transcript Ms Stewart challenged the evidence given by the First Defendant as to the document. She challenged how it was produced, whether its language is language the First Defendant would have used in relation to this agreement, why the document is in the state it is in and the assertion that the Claimant either signed or initialled the document.

85. Ms Stewart obtained a key concession from the Defendant early in the cross-examination which, in my judgment, undermines the document entirely:

> *"Q. Also in your Economic Interest Document, you use the word, Total Pot. That was never used by you. Delta was the term that you used.*
>
> *A. Yes."*

86. Having obtained that concession by the First Defendant that the document contains language he did not use in relation to CB161, Ms Stewart had established that the EID does not relate to the agreement regarding CB161. In my judgment in doing so Ms Stewart had done enough to show that the note was not contemporaneous evidence of an agreement in the terms the First Defendant contends for. I accept she did not go on to challenge specifically whether the note was presented to the meeting on 6 March. I do not find that she needed to given the EID could not on the First Defendant's evidence relate to the agreement made on 6 March 2020.

87. In any event Ms Stewart clearly, and repeatedly, put to the First Defendant that he was not telling the truth about the EID and its alleged role on 6 March 2020 (note that this distinguishes the case from ***Rahme*** where the witness was not so challenged).

Q. But the point is it, again, you're making it up as you go along. Here you've told your solicitors soon afterwards that it was you who signed ---

A. No.

...

Q. What I'm saying is that your story has changed.

A. Well I'm saying ---

Q. It's wholly implausible ---

A. Well, again from the moment that we're talking about the condition of the properties, to the Delta, to the Delta to everything, to the email that – of the 9th of July onwards there seems to be an understanding that there was going to be a deduction and the deduction was based on the condition of the properties.

...

Q. It is absurd to suggest that Tim would – so what you're suggesting as your barrister put to my client as I understand it is that Tim deliberately made a squiggle or ---

A. I don't think he made, look, when I ---

...

Q. Is that your case?

A. That's my case.

Q. But that's ridiculous. Why would he do that?

A. Well why are we here when it was agreed that everything was going to be less costs.

…

Q. That you made millions on.

A. Well by the way if he would – if he wanted to put up 500,000 he could have made millions with us.

Q. It's just wholly improbable.

A. Well it's also highly improbable that at no time during this whole episode has there been an agreement sent by Tim's lawyers at the time before the event to us setting out the terms that we – he says were agreed. Would it not have been simple for Tim's lawyers to send an agreement to our lawyers that says Dear Mr Downing, dear Mr Cox, for professional services for whatever services there is a set fee of 700 ---

88. In my judgment there is no doubt that Ms Stewart during her cross-examination challenged whether the document evidenced the contractual discussion on 6 March which was the basis on which the document was used by the First Defendant (see paragraph 19 of the Re-Re- Amended Defence) and whether it was agreed to, signed or initialled by the Claimant at the meeting. She robustly challenged the First Defendant's evidence, asserting it was deliberately untrue and, as already noted, obtained a key concession which undermines the document as contemporaneous evidence of an agreement.

89. Turning therefore to my conclusions on the EID, in my judgment it is not a contemporaneous document which records the essential terms of the March

Agreement, given the First Defendant's concession, and it is not signed or initialled by the Claimant. On this later point the First Defendant's case was hopelessly contradictory with the First Defendant and his own Counsel unable to even agree where the document was said to be signed or initialled. As to the alleged signature or initialling when the document is reviewed it is clear it has no signature or initial on the copy before the Court.

90. As to the First Defendant's case at trial that the Claimant had made a mark on the EID purporting to sign or initial it but in fact making a squiggle so he could deny the markings at a later date, the problem with that case is it is wholly unclear where the squiggle is said to be, how it is said to be attributable to the Claimant given there are other manuscript amendments on the EID or why the Claimant would have had a motivation to do so. By March 2020 the Claimant had seen the First Defendant in action: He had seen how easily he fell out with people and how when that happened, he abandons people who were working for him both in relation to Mr Daniel and as shown by the contemporaneous documents. Here he was allegedly being presented with a document he could rely on to recover his fee should CB161 complete, but the First Defendant refused to pay him. He (unlike the First Defendant and Mr Cox) had at the time no reason to suspect that there would be a donation or contribution. It would therefore have been in his benefit to sign the document with a legible signature or initial it with his initials if it was produced at the meeting.

91. The inability of the First Defendant to show where on the face of the document it was allegedly signed or initialled by the Claimant or even squiggled on by him in my judgment further undermines both the EID as a document agreed by the Claimant at the meeting and the credibility of the First Defendant.

92. I do not therefore accept that the First Defendant is a credible witness. Again, I prefer contemporaneous documents to his evidence. Further if I am required to choose between the Claimant and the First Defendant on a matter of evidence then given I consider that the Claimant was a slightly more credible witness as the broad brushes of his evidence were supported by documents I prefer the Claimant's evidence (but again I consider that this should not be accepted without question).

Ms Few

93. In his written opening submissions Mr Hubbard criticised the Claimant for "*claiming perfect recall of a meeting which happened over four years ago*". Yet Ms Few also claimed perfect recall of this meeting in her two witness statements. At trial Ms Few was shown to have a rather different recall of the meeting than was suggested in her witness statements and many of her criticisms of the Claimant's evidence in her second witness statement were shown to be without merit.

94. First in her witness statement, Ms Few countered the Claimant's evidence that he took a lift to the meeting room used on 6 March 2020. In her criticism Ms Few stated that that the location of the conference room in which the meeting was held was down the stairs from the reception of DLA in its office building in Birmingham. In her evidence at trial however Ms Few accepted that to get to DLA's reception area you have to go in a lift from the ground floor and from there you then go to meeting rooms. It was therefore entirely correct for the Claimant to have said he used a lift on 6 March 2020.

95. Ms Few's description of the room was implausible given she described it as so small it had no space for Ms Lloyd and a Ms Farah to be in the room with the door closed when the Claimant, the First Defendant and Ms Few were in it. Yet she also said that the room had a table with room round it for 8 people. If there was room round the

table for eight with the door closed, then there would have been space in the room for Ms Lloyd and Ms Farah given five seats at the table were unoccupied.

96. Further in her second witness statement, Ms Few took issue with the Claimant's recollection of where the refreshments in the room were positioned. The Claimant remembered that the refreshments were at the rear of the room. Ms Few stated that this was incorrect and the refreshments were at the front of the room to the left of the door. At trial Ms Few's evidence regarding refreshments was different. At trial Ms Few stated that the refreshments were placed on the right-hand wall running perpendicular to the door through which people entered the room and that they were set away from the table so that they would have been at the rear of people sitting at the table.

97. Ms Few's evidence as to what happened at the meeting also noticeably changed throughout her evidence. In her first witness statement she stated that Ms Lloyd did not attend the meeting. In her second witness statement she said Ms Lloyd did not attend the meeting apart from briefly popping in with a junior lawyer to see if refreshments were required. At trial it became patently clear that Ms Lloyd had entered the meeting room and spoke to the participants. Ms Few did not explain these changes.

98. Further Ms Few gave evidence which was either wrong or shown to lack any semblance of credibility in relation to her laptop and her denial of its use at the meeting. In her first and second witness statements Ms Few stated that that the laptop was within her bag for most of the day because "*it was my first real new laptop and I had only had it for just over a month*". At trial Ms Few was forced to concede that she

had previously had a new laptop which she used at university. She gave no proper explanation as to how that was not a real new laptop.

99. Further in her second witness statement Ms Few said that she did not have her laptop on the table as it was new and expensive (costing over £1,000) so that she was "*nervous that somebody could spill coffee or food on my laptop*". At trial Ms Few gave a detailed description of how she said the meeting room was laid out including where the refreshments were situated. Taking into account that evidence it was wholly incredible to suggest that there was a risk of food or drink being spilled on the laptop. In my judgment having read the documents which are before the Court and having heard the evidence it is clear that Ms Few would have been able to use her laptop at the meeting and during the rest of the day without risk. Indeed, Ms Few did accept in her witness statement and at trial that she had used the laptop during the day, although no mention is used of using the laptop at the specific meeting with the Claimant, to send one or two emails including as her email to Ms Lloyd of 6 March 2020 (discussed below).

100. A final concern I have regarding Ms Few's evidence at trial as to the meeting on 6 March 2020 (leaving to one side the handwritten notes said to have been produced at the meeting and to which I will turn shortly) is in regard to her evidence about the EID. Despite telling the Court that she had not had access to the transcripts of the trial she gave remarkably similar evidence on the issue of the alleged signature/initialling of the EID to that previously used at trial by the First Defendant. She even, without prompting used wording, of the First Defendant and Ms Stewart during his cross-examination which was not wording that had previously been used in any documents in the case ("*squiggle*"). This was a remarkable coincidence if Ms Few

had not seen the evidence previously given or had not discussed the evidence with the First Defendant. I have already addressed in this judgment why the evidence given by the First Defendant, and now adopted by Ms Few in her evidence, was wrong.

101. In my judgment, the criticism by Mr Hubbard of the Claimant regarding the March meeting, must apply to Ms Few and her credibility was firmly questionable given her less than perfect recall of the meeting and her unwarranted criticism of the Claimant.

102. Turning therefore to Ms Few's evidence in general, I find that initially, Ms Few came across as a careful, considered and helpful witness. However, this impression gave way over the course of her evidence particularly when she was questioned about her working relationship with the First Defendant and the moneys she had received from him. At that time, she became argumentative and unhelpful saying she could not understand simple questions. Those simple questions went to a key point regarding Ms Few's credibility. Given Ms Few's repeated unwillingness to answer, instead saying she could not understand what was being asked when a person of her obvious intelligence could simply have answered, in my judgment Ms Few, raised concerns as to whether her evidence was true or whether it was evidence given in support of the person she worked for, the First Defendant. Lunch was then taken. After lunch Ms Few's countenance had changed, she was now sullen, and her evidence was given shortly with an argumentative tone but with remarkably similar evidence and language use akin to that of the First Defendant.

103. Her evidence was frequently confusing, and confused, and showed in my judgment a lack of understanding of employment, agency relations, and more generally business and property transactions. For example, Ms Few was at pains to state that she was not an employee of the First Defendant and Mr Cox, yet within a matter of minutes she

then volunteered that she received a salary from them. Payment of a salary of course means that there is an employment relationship (see Jowitt's Dictionary of English Law).

104. Under questioning as to the sums she received from them in 2020 as shown by the exhibits to her third statement, which was a statement Ms Few had chosen to make as opposed to being ordered to make, Ms Few did not explain with any clarity why she had only provided statements for one of the bank accounts she used during the relevant period. The failure to provide the statements for another account meant that the Court has been unable to form a firm view as to the financial relationship between Ms Few and the First Defendant and Mr Cox during this crucial period, although it is apparent that at the time this dispute arose (and therefore around the time the handwritten notes can first be shown to have existed) that the First Defendant had paid at least one monetary gift to Ms Few.

105. On key points (such as 6 March 2020) her evidence, including the words she used, was so remarkably close to the First Defendant as to be suspect. Indeed, at the conclusion of her evidence I was left with the firm view that her evidence was obviously and overly rehearsed, implausible in key respects and little but a blind adoption of the First Defendant's case and evidence. As a result, her evidence must be treated with the utmost caution. Indeed, toward the end of her evidence Ms Few in a verbal slip made it abundantly clear to the Court that her evidence was clearly based on the alignment of her interests with the First Defendant and his various business dealings:

A. I don't know if Home Holdings passed ---

Q. OK.

A. --- on the money or not but ---

Q. Right. Now ---

A. --- in pursuance with the settlement agreement we paid out the monies, if they went to Home Holdings 1 who were going to administer them to the relevant social renters, the ---

Q. You say we, who's we? You say we paid out. What do you mean by we? Who's we?

A. I thought I said were, sorry, I don't know what ---

Q. You said we paid out.

A. I thought I said were paid out.

Q. I thought you said ---

A. I don't know ---

Q. --- we paid out. No? OK. ...

106. Overall, I was left with the firm impression that Ms Few is a loyal but naive individual who is motivated by material things. In exchange for what she has received from the First Defendant, whether moneys, gifts or opportunities, she is now in thrall to the First Defendant and sees their interests as aligned such that her evidence was fuelled entirely by her loyalty to him. She was not therefore an independent witness. Her evidence was wrong in significant areas and in my judgment, she was not a credible witness. Her evidence must be treated with the utmost care.

107. As with the EID Mr Maddison challenges whether Ms Stewart put her case to the witness sufficiently so that the Court can reject the handwritten notes. The Claimant's case on the notes is at paragraph 12 of the Re-Amended Reply: "*it is averred that Ms Few did not make any handwritten notes and that she was using a laptop computer during the meeting*". Unlike the EID in my judgment this does amount to a challenge as to whether the notes were produced at the meeting or at a later date. In relation to

this document, it was therefore necessary in my judgment for Ms Stewart in cross-examination to ensure that she tested whether the notes were genuine notes produced at the meeting. Whether Ms Stewart had to go further than that depended on the answers from Ms Few.

108. Again, it is right that I note that there was a time restriction on the cross-examination. The day on which Ms Few was called to give evidence was the final date on which evidence was taken and was therefore the additional day added to the trial timetable. At the time Ms Few gave her evidence I understood Counsel had other matters they needed to deal with that week and therefore this was the sole day of extension. Ms Stewart therefore needed to cut her cloth accordingly so as to enable cross-examination and re-examination to take place, together with housekeeping at the end of the day.

109. Having re-read Ms Few's written and oral evidence in full I am satisfied that she was given a fair opportunity at the trial to answer the Claimant's case that the notes were not produced at the meeting given the time limits placed on the cross-examination. As the extracts below show not only did Ms Few have the opportunity to answer the questions asked of her, she, from her own evidence, knew exactly the Claimant's case and she attempted to rebut the suggestion that the notes were not made at the meeting:

Q. He saw you on your laptop.

A. No he didn't because my laptop was in my bag. I would not have any reason to be using my laptop in the meeting.

Q. What he did not see you doing and what you were not doing was writing notes in that meeting.

A. I was, hence the, my folder that I have.

...

110. Ms Stewart therefore expressly put that the notes were not made at the meeting. The cross-examination continued at a later juncture:

Q. Now you say that you made some handwritten notes during the 6th of March meeting - --

A. Yeah.

Q. --- and let's actually go to the file with your handwritten notes.

...

Q. Now this appeared first in this meeting note so either it was recording something that Mr Downing had spoken to you about, it was something that you thought presumably was important.

A. What my notes?

Q. Mmm.

A. I was writing down notes of what was being said in the meeting....

111. Ms Few had now on two occasions stated that she made the notes at the meeting. Again, the cross-examination continued:

Q. So you did not take meeting notes for meetings 3 and 4?

A. If the notes are not in here, then no, but I do not think that we had much available at the time to be taking notes down.

Q. Well is that not convenient for Mr Downing?

A. Why?

Q. That there are only notes for meetings 1, and then some notes for meeting number 2.

A. There is also notes for meeting number 2.

Q. Yes.

A. Which is a completely different – two agents who were different to Tim.

Q. Yes.

A. Sorry, if I was trying to make false notes, or if I had made false notes and I was giving them up to somebody, do you not think that I would have thought about that?

Q. No, you just forgot about – you forgot to actually add the other two leases.

A. I did not forget about it, at all, because I knew how many meetings ---

112. Ms Few had therefore not only said she made the notes at the meeting she also disputed that they were false notes. She volunteered this latter part of her evidence and gave her clear answer.

113. Given the test to be applied under the principle relied on by Mr Maddison is fairness and justice I am satisfied that Ms Stewart did put her case to the witness sufficiently for the witness to make her evidence clear to the Court. To expect Ms Stewart to put again a proposition which the witness had already, of her own accord, rejected (that

the notes were false notes and not made at the meeting) in a time pressured cross-examination would in my judgment be unjust.

114. As part of my consideration of the credibility of Ms Few it is therefore necessary for me to consider whether I accept her evidence that the handwritten notes were made at the meeting on 6 March 2020 and are an accurate record of what was discussed on that occasion. I have already made my observations on Ms Few as a witness.

115. The handwritten notes are originally contained in a Filofax owned by Ms Few. I have a bundle containing the full contents of the Filofax which has been available to me when writing this judgment and I was also able to inspect the original Filofax and notes at trial. From this I note that the Filofax was a small ring binder containing A5 lined and hole punched pages. Some of the pages were loose. Pages could theoretically be removed and rearranged in the bundle. Each page was not used after the preceding page. There were therefore gaps between the pages and blank sheets between notes. Some notes were notes of meetings, others aide memoirs for Ms Few and some were lists. The notes were not always dated. Many of the pages were as Ms Few stated covered in doodles. Others were covered in crossing out.

116. Finally, as regards evidence relevant to this issue I note that in her cross-examination Ms Few did accept that other documents were created after the event to present a particular picture:

> *Q. ... Paragraph 34, that same, you refer to a spreadsheet. But it's true, isn't it, that that spreadsheet was created well after the settlement deed was actually entered.*
>
> *A. That spreadsheet was, yes.*

Q. Yeah. And it was only created for the purposes of finding yet further sums to knock of ---

A. It was created for the purpose of showing what it needed to show. The original one, it was on bits of paper, and it was in Christopher's briefcase which was stolen from the office.

117. Taking into account my findings on the credibility of Ms Few and the documents before me I do not accept that the handwritten notes are contemporaneous notes made at the meeting on 6 March 2020. First Ms Few has given inconsistent evidence about that meeting as set out above. Second there is no record or mention of the notes until this dispute had arisen. Third the notes are riddled with errors which I am satisfied would not have occurred at the meeting. Fourth the notes are incomplete as it is clear that matters were discussed at the meeting which are not included in the notes. There was no proper explanation for this. Finally, the notes stand in complete contrast to the document which is known to have been produced contemporaneously – the email of 6 March 2020 addressed below.

118. Ms Few's explanation in that regard, that everyone knew what was agreed at the meeting and hence it was not necessary for her to record fully what was agreed in the email to Ms Lloyd, does not make sense given Ms Lloyd did not attend the whole meeting and therefore she did not know what was agreed. The very point of the email was to tell her what had been agreed.

119. I accept Mr Hubbard's submission that my rejection of the notes as a contemporaneous document amounts to the Court making a finding of serious wrongdoing against Ms Few, but I am satisfied it is the correct decision on the evidence before me. Whether the notes were produced by Ms Few of her own

initiative or at the request of the First Defendant is irrelevant. I simply find that I do not accept the notes to be contemporaneous. Given my findings on the witnesses I have placed no weight on them in preparing this judgment.

Mr Daniel

120. Mr Daniel did not attend the 6 March 2020 meeting and readily accepted that he could not comment on what occurred at that meeting. However, Mr Daniel was in attendance at the January meeting and was a party to the contract entered into on that occasion. Mr Daniel was therefore able to give evidence of what took place and was agreed at that meeting and hence Mr Daniel was able directly and with firsthand knowledge able to give evidence on issue 1.

121. Mr Daniel gave his evidence in a calm controlled manner. He was clearly not comfortable being a witness at a trial, but he was not smug, glib, condescending or bad tempered about giving evidence. He was not partisan in his evidence with some of his answers suggesting the Claimant misrepresented the price of the CB161 to the First Defendant and Mr Cox during their negotiations.

122. When giving evidence he stood without a great deal of fidgeting, listened respectfully to questions and then gave his answers with a clear degree of thought. When he did not know something, he accepted this as he had in his written evidence. He tried to answer all questions asked of him even when they were hypothetical. In this regard I note that a line of questions used in cross-examination against Mr Daniel regarding whether he was a director of Oxford Pacific Limited between January to April 2020 was based on incorrect facts provided to Mr Daniel by Counsel and his confusion in that regards was entirely understandable. When the correct facts were presented to him by Ms Stewart he was able to deal with the point.

123. Mr Daniel did make concessions. His answers when given were consistent with his previous statements and with contemporaneous documentation. In particular his evidence as to what was agreed in January 2020 was consistent with the First Defendant's email to Ms Lloyd, i.e. the fee was not subject to reductions, and the condition of the portfolio was not a term of the agreement. His evidence that the First Defendant was aggressive in his emails to Mr Daniel at the point at which their business relationship broke down is entirely accurate from the emails before the Court: The First Defendant suggested that Mr Daniel maybe a spy or a Quisling, which are hardly terms of endearment. There were no significant departures in his evidence from his statements.

124. Overall, I found Mr Daniel to be a credible witness. Where therefore Mr Daniel has first-hand knowledge of a matter, such as what was agreed on 10 January 2020, I accept his evidence, save where it is clearly contradicted by a contemporaneous document which I have accepted as valid. Where Mr Daniel does not have first-hand knowledge of a matter his evidence is of little weight.

The Remaining Witnesses

125. Three individuals concerned with BHP, and its related entities, gave evidence at trial. I note in this regard that I am aware that BHP is subject to a Charity Commission investigation. I have not concerned myself with that investigation as that is a matter for the Charity Commission. It is however background to this case. Of the three witnesses I heard from the most important was Peter Mitchell.

126. Mr Mitchell is ill, and I have taken this into account in my assessment of him as a witness. Mr Mitchell is relied on, to an extent, by both the Claimant and the First Defendant, although both criticise him as a witness. The difference in their

approaches is the pieces of his evidence they wish to rely on. The First Defendant wishes to rely on emails sent to him by Mr Mitchell when the dispute initially arose with the Claimant through to 2022. In contrast the Claimant wishes to rely on evidence given in 2024 in witness statements by Mr Mitchell and which therefore, unlike the emails, contain statements of truth. I have considered Mr Mitchell's statements and evidence in all its forms.

127. In the witness box Mr Mitchell was a slippery character with an obvious and callous disregard for the truth. Whilst he painted himself in almost evangelical terms his clear disregard for the truth and for taking sides was evident to the Court. Mr Mitchell had perfect memory recall when it suited him but memory lapses at times which were convenient, e.g. regarding emails and alleged payments to entities in the Big Help group. He was happy to blame others and did not accept responsibility for his words or his actions.

128. This was most obvious when he was asked questions as to why he and BHP had disclosed no documents pursuant to a third-party disclosure Order made by the Court. It took little probing to discover that the reason given was highly suspect and of itself showed a complete failure to comply with the Court's Order in that even if Mr Mitchell was telling the truth all he had sought to do was look for electronic documents and not hard copy documents. Yet in one of his very first answers in examination-in-chief Mr Mitchell accepted he had been looking at documents for the case, bank statements. Those were not disclosed by any of the Big Help witnesses or BHP.

129. Mr Mitchell was also a witness who changed his demeanour. He was through his examination-in-chief and re-examination a calm, polite witness who mainly looked

down and sought limited engagement with the Court and with Ms Stewart. However during cross-examination, he changed personality as though seeking a verbal fight with Mr Hubbard. Mr Hubbard had not started the cross-examination in an aggressive manner and the change in demeanour was therefore wholly unwarranted. Even when Mr Hubbard asked polite questions Mr Mitchell was deliberately antagonistic and argumentative. Mr Mitchell was therefore plainly partisan in his appearance before this Court.

130. In my judgment Mr Mitchell in the witness box said what he wanted not caring whether it was accurate or not. Having studied Mr Mitchell in the witness box it was clear however that this was not a facade he had adopted for the Court: This is Peter Mitchell. A man who will say and do as he thinks fit to achieve whatever his ambition is at the relevant time (before me it was to punish the First Defendant) and who will side with and speak effusively for his friends even if that requires the telling of untruths, until they are his enemies when he will turn on them with whole-hearted venom. As a result, he had no credibility whatsoever as a witness before the Court, but further than that none of his statements made at any time have any credibility to them unless they are independently corroborated by documentation.

131. For the avoidance of any doubt therefore I do not accept that emails sent by Mr Mitchell to the First Defendant, or to the Claimant, at any time during this dispute can be accepted at face value. When the emails relied on by the First Defendant were sent by Mr Mitchell, Mr Mitchell was clearly siding with the First Defendant from whom he was receiving or expecting to receive vast sums of money either for himself or for his companies or charities. Given Mr Mitchell's preponderance to make statements

supporting his own personal interests or to fight his own battles, those emails are not in my judgment credible.

132. Therefore, if Mr Mitchell says a payment was made on a certain date that is not credible evidence of the fact of the payment or the date of the payment, or the payee or the payor. To prove the payments contemporaneous documentation is in my judgment needed. I have considered whether the breach of my disclosure Order by Mr Mitchell has made this impossible to be produced before the Court. However, such documentation would not solely have been in the hands of BHP as there would also have been evidence in the hands of the payor of the sums, whether the First Defendant directly as alleged for the sum of £525,000 and the Settlement Sum, or through DLA's ledgers for the retention sum.

133. Of the Big Help witnesses Andrew Moorhead was the most credible witness. His evidence must still be treated with some care however as he also failed to comply with my disclosure order and again had no proper answer for this.

134. So far as Mr Moorhead gave evidence to the Court his demeanour and manner were compelling. He was willing to make concessions and he accepted that he could not remember everything, which is unsurprising given four years have passed since most of the events on which Mr Moorhead gave evidence occurred. I was also left with the impression that Mr Moorhead is not necessarily a detail orientated individual, but rather he has a big picture focus and memory. However, there were events and dealings which he could remember and on which his evidence was in my judgment honest.

135. For example, he could remember the 18 June 2020 meeting in Sunderland. I accept that prior to the meeting he had not inspected CB161 and that he had not had a

telephone call with the First Defendant to discuss the properties. He remembered that the First Defendant tried to use him in a discussion with the Claimant over CB161. I accept Mr Moorhead's evidence of that encounter in preference to that of the Claimant and the First Defendant. I therefore find that during the meeting there was a moment when the Claimant, the First Defendant and Mr Moorhead stepped outside. During that time there was a discussion about the condition of CB161. Mr Moorhead was an observer to this and not an active participant. Nothing was however agreed in relation to payments of moneys or contributions at that meeting.

136. Further Mr Moorhead remembered visiting some properties comprised in CB161 on 26 June 2020. The reason he gave for remembering that was Liverpool FC won the Premier League title the day before, being a Thursday, and he had sat in a hotel and watched the relevant fixture. He inspected the properties the next day. It goes without saying any Liverpool fan would remember those days given they ended a 30 year wait for a topflight title. He accepted though that the details were not known to him and so whilst he knew he had visited properties he did not remember which ones or what he had done at them. I accept therefore that he inspected properties on 26 June but that the details of which properties and how extensive those inspections were, are better taken from Ms Yule's evidence who confirmed three properties were visited representing the good, the bad and the ugly of the portfolio.

137. As a result, I therefore accept his evidence of his dealings with the parties and with the properties as generally accurate, but I bear in mind his failure to provide disclosure.

138. I derived little assistance from the evidence of Michael Black in writing or at trial. Mr Black was an argumentative witness who gave confused and contradictory

evidence. Mr Black's evidence was often out on a limb or irrelevant. He insisted he had attended a meeting with Lynne Yule, the First Defendant and Mr Mitchell that none of those witnesses referred to. Whether he did or did not it is not contended by anyone anything of any relevance was agreed at that meeting.

139. When his evidence is analysed it amounted in my judgment to him building up his role in relation to CB161 to boost his own and Big Help's reputation but without any real substance or detail to it. The best that can be said of his involvement in the project is that he read the Arcadis reports. Having read them he does not appear to have fed back to Mr Mitchell, as the man who held the purse strings. Nor does he appear to have sought more information from Ms Yule or liaised with his head of refurbishment, Mr Moorhead.

140. Mr Black's evidence did nothing to convince me that the Big Help group had functioning management or governance systems in place. However, this is more properly a matter for the Charity Commission. His evidence, including on the disclosure issue already referred to seemed to me to amount to passing the buck.

141. Finally on Big Help, I am wholly unsatisfied that BHP tried to comply with my disclosure Order, let alone did so.

142. Turning to other witnesses who gave evidence in the case, Lynne Yule was a very comfortable and confident witness. She was plain-speaking and straightforward, with a no-nonsense approach. Ms Yule gave helpful evidence about the way in which Arcadis' inspections of CB161 were coordinated and about Mr Moorhead's inspection, before completion, of a sample of those properties. This evidence did not assist the Claimant or accord with all of his other witnesses and therefore she showed in my judgment that she was not a partisan witness.

143. Ms Yule's denial that she had said, at the 18 June 2020 meeting, that the CB161 properties "*all hadn't been touched for fifteen years*", was convincing given it is clear from documents produced at a later date that she was correct. In any event I do not accept that someone as plain spoken as she was would have made the false statement attributed to her to her potential new employers on the first time she met them. Therefore, I accept her denial that she said it.

144. Having said this there were specific aspects of Ms Yule's evidence that suggests her recollection is not wholly accurate. For example, she gave the wrong date for the meeting in Sunderland. Further Ms Yule sought to paint the picture of the condition of the whole portfolio as good. This is obviously not correct given the Arcadis reports. Her evidence on the condition of the properties therefore needs to be checked against the documentary evidence.

145. I accept that Ms Yule did speak forthrightly about others in the case and she would say what she thought of them but in the context of her evidence and her presentation at trial I am satisfied that is part of her character. She speaks as she sees matters with little filtering. I am also satisfied that when she speaks it is to say her truth as she sees it and not for effect.

146. I therefore accept that she has only met the First Defendant once yet she had been left with a very clear impression of him which she was happy to share with the Court. When giving that evidence to the Court Ms Yule was sharing her emotional reaction to the First Defendant. She gave her evidence in that regard in an entirely convincing manner with the revulsion she spoke of reflected entirely in her facial expression, her tone of voice and her body language. I fully accept therefore that Ms Yule's strongly held view of the First Defendant is that he is a racist who is vile. That is, however,

her view of the First Defendant. It is not for this Court to decide if the First Defendant is a racist or if he is vile but rather as I have done above whether he is honest and credible. Just as Ms Yule formed a firm view of the First Defendant on one meeting with him, I have formed a firm view as to his credibility and honesty after his appearance in the witness box and I have already set that out above.

147. Generally, therefore I consider that Ms Yule was an honest and credible witness. The broad brushes of her evidence I find to be true and her recollection of her emotional reaction to situations I accept as correct. I find there was no comment by her at the meeting on 18 June 2020 that all the properties had not been touched for 15 years. I accept she accurately recounted her dealings with Andrew Moorhead. My findings are subject to the caveat as to the condition of the properties set out above.

148. John Wooley was a very nervous witness as shown by his hand gestures. Despite this he was straightforward, considered and credible. He did not give evidence in relation to either CB161 or CB182 but gave evidence showing the way in which the First Defendant (but not Mr Cox) operated a company in relation to other property acquisitions: That on one property purchase the First Defendant paid a 1% fee but on another he agreed to pay 50% of the difference in the purchase price of a property as a fee to an intermediary. His evidence which I accept as I am satisfied that Mr Woolley was an honest witness is therefore that the First Defendant agrees terms with introducers and intermediaries on a deal-by-deal basis. There is no standard term.

149. Michael Roach provided a witness statement but was unable to attend the relevant days of the trial for the purpose of cross-examination. Whilst I have therefore read his witness statement I have placed no weight on it.

150. Finally, I should note that the Defendant did not wish to cross-examine Tony Aldam and the Claimant did not wish to cross examine Raheel Khan. I have re-read their statements in preparing this judgment.

Findings on the Issues

CB161

What were the terms of the contract entered into between the First Defendant (acting on behalf of himself and Mr Cox) and the Claimant and Mr Daniel at the meeting on 10 January 2020?

151. The parties agree that a contract was entered into on 10 January 2020 between the First Defendant and Mr Cox on one part and the Claimant and Mr Daniel on the other. They disagree as to the terms of the contract save that it related only to the acquisition of CB161 and not to its onward sale to the Investor.

152. The Claimant asserts that the terms agreed provided for him to receive jointly with Mr Daniel half the difference between £10,580,000 and the purchase price of CB161. (The Claimant and Mr Daniel further contend that they agreed that they would divide the share they were to receive between themselves in equal shares). The Defendants assert that the terms were that the First Defendant and Mr Cox would pay the Claimant and Mr Daniel half of the difference between £10,580,000 and the ultimate purchase price of CB161, less half of any expenditure necessary to bring the portfolio "*up to an acceptable condition*". That phrase is not defined.

153. It is agreed by the parties that no written agreement was entered into on 10 January 2020. Determining the terms of the contract is therefore a matter of analysing the evidence before the Court. Given that this is a commercial case the starting point is to

look at the contemporaneous documents which are before the Court and which refer to what was agreed at the meeting.

154. The most important of these is an email written by the First Defendant on 10 January 2020 (i.e. the day the contract was agreed) to Ms Lloyd to inform her of the terms of the agreement. This was therefore an email in which the First Defendant was setting out for his solicitor the terms of the agreement reached so as to ensure it would be acted upon at all relevant times.

155. Given the importance of this email in the case I set out its contents in full. It reads:

> '*Dear Emma*
>
> *As you are aware, we are purchasing the enlarged portfolio labelled CB161.*
>
> *This being a portfolio of 161 units.*
>
> *The original purchase price for the portfolio of 161 units was £10,580,000, this has now been negotiated down to £8,464,000 by Paul and Tim (Emails enclosed)*
>
> *It has now been agreed that the discount 20% will be considered as a delta and that 50% of the delta, namely £ 1,058,000 will be a service payment "for the supply of intermediary service disbursements for the purpose of property acquisition"*
>
> *This payment to be made out of completion monies of CB 161 on a pro-rata basis, a schedule of which will be provided by separate email supplied by Paul Daniel, with original and discounted prices noted on the aforementioned document.*

It should also be noted that if in the case of any further discounts beyond the current 20%, 50% of that additional delta shall also be divided on a moiety basis.

We therefore confirm instructions that 50% of the delta, such delta being the difference between £10,580,000 and initially a purchase price for the portfolio of £8,464,000 shall be paid out on a sub tranche by sub tranche basis, within the total portfolio notation CB161.

Can you please confirm receipt of this communication

Regards

Christopher JI Downing'

156. Confirmation of receipt of the email was sent by Ms Lloyd the same day at 8:03 pm.

157. In communications to his solicitor made on the same day as the contract was agreed and by which he provided instructions on behalf of himself and Mr Cox the First Defendant therefore stated what the terms of the agreement were. These did not include terms as to:

i) the conditions of the properties to be purchased (i.e. that they must be an adequate condition, a good condition or in compliance with Decent Home Standards);

ii) deductions from the sum payable to the Claimant and Mr Daniel either in relation to the conditions of the property, or by way of contribution toward retentions, donations or contributions, and;

iii) any requirement on Ms Lloyd to check with either the First Defendant or Mr Cox before paying the sum which had been agreed.

158. In my judgment it defies all probability that any agreed term as to a standard for the property or as regards a potential deduction would not have been recorded in the email. The First Defendant is an intelligent, successful businessman. He values loyalty highly and expects those he employs to follow his instructions to the letter (see for example pages 76-77 of the Core Bundle). It is therefore inconceivable in my judgment that if there was a standard as to condition of the portfolio, or any conditionality as to the sum agreed, that he would not have put it in his email to Ms Lloyd, who he considered to be loyal to him. This is especially so given the First Defendant and Mr Cox's knowledge of the likelihood of a retention/donation/contribution in relation to CB161 (which I address below) at the time of this email. The contemporaneous documents therefore support the Claimant's case.

159. Turning to the other credible evidence, that again in my judgment supports the Claimant's case as there is no convincing evidence of any kind that deductions from the sum payable to the Claimant and Mr Daniel were discussed at the meeting on 10 January 2020. Indeed, as Mr Hubbard's opening submissions make clear at footnote 8 the First Defendant accepts that there was no discussion of retentions or contributions at the 10 January meeting despite Mr Cox having noted in an email dated 19 December 2019 that "*There will need to be a retention on the ones to be refurbished*".

160. A retention is again noted in the context of the acquisition of CB161 prior to the date of the agreement by Mr Cox in an email dated 19 December 2019 to, amongst others Ms Lloyd, but to which the Claimant and Mr Daniel were not parties. In the same

email Mr Cox discussed that at that time the proposal was that the relevant Social Renter would be Noble Tree, although Big Help is mentioned in the email. Mr Cox goes on to state that there will be a donation to Noble Tree in relation to the purchase. The donation will be in three parts: A straightforward donation; A ring-fenced donation to support any lease voids or payment shortfalls, and; A donation to support any lease voids or payment shortfalls returnable if not used in five years. The total value of the donation at that time was said to be £812,000. The First Defendant stated that this email related to the purchase of part only of the portfolio, but this is not an answer to the very simple point that in December 2019 the need for retentions and contributions/donations in relation to this acquisition was known for some of the properties in the portfolio.

161. That a retention and a donation would be incurred in this acquisition was therefore known to the First Defendant and Mr Cox at the date of the January 2020 meeting, and I reject any contention to the contrary. In particular the First Defendant's attempts to explain away these emails in cross-examination were wholly unconvincing given his admission that he knew a donation would happen. Yet such were not discussed at the January meeting.

162. Instead, the First Defendant contends that his (alleged) use of a quote from the film 'Lock, Stock and Two Smoking Barrels' – '*If the milk turns out to be sour, we all have to drink it*' - conveyed that if a property needed money spending on it, it would be reflected in a reduction to the Claimant and Mr Daniel's economic interest in the deal.

163. The First Defendant's evidence in this regard is not however clear. In his witness statement he is clear that the statement was used at the meeting and that everyone

knew what it meant. However, in his cross-examination, he stated, '*I cannot remember when it was said*". The Claimant denies that this statement was said at the meeting, Mr Daniel did not recall it. Given my findings on the witnesses I find that the statement was not used at the meeting in January 2020.

164. Therefore given that this is the only basis on which it is said that a deduction from the sum payable to the Claimant and Mr Daniel was discussed, and agreed, at the meeting I reject the First Defendant's case that there was an agreement at the meeting on 10 January that the sum payable to the Claimant and Mr Daniel would be the subject of any reduction for retentions or donations or contributions. I do not need therefore to consider whether the use of the quote could result in a legally enforceable term being incorporated into a contract. I note, however, that if this had been necessary, I would have rejected such an argument due to a lack of certainty as to what the phrase was supposed to mean.

165. Further the First Defendant asserted that his use of the above phrase meant the properties which were to be bought must meet a particular standard. I again do not accept that this arises from the quote, if it was said, and I therefore again reject that the phrase could have resulted in the contract containing any conditions as to the standard of the properties to be included in CB161.

166. It is to be noted that the Defendants' pleaded case is that the agreement reached at the meeting was that the relevant condition was "*an acceptable condition*". This is not defined or explained anywhere in the pleadings. Rather in his evidence the First Defendant sought to say that this meant that the portfolio must be in a good condition (again not defined) and must conform to Decent Home Standards. I note that these two conditions are referred to in the Defence of the First Defendant but only as

representations made by the Claimant before the meeting. They are not pleaded to be terms or conditions of the January agreement.

167. I do not accept the First Defendant's evidence that the phrases "good condition" or "Decent Home Standards" were agreed as relevant conditions at the meeting. First if this was correct it would have been part of his case. I would then have expected the point to be put to the Claimant in cross-examination. The phrase "Decent Home Standards" was never put to the Claimant despite his cross-examination not being as time pressured as those undertaken by Ms Stewart. I do not therefore know what the Claimant's answer would have been if this phrase had been put to him. Second the First Defendant's evidence on the conditions lacked credibility given he clearly did not understand how Decent Home Standards applies. Third Mr Daniel was very clear that "Decent Home Standards" were not familiar to him. Mr Daniel was not a stupid man. If he was agreeing a contract and there was a term that properties he was to supply were to meet a standard, then he would in my judgment have ensured he fully understood the standard before agreeing to the term. Given my findings on the witnesses and their credibility I therefore find that the condition now contended for in his evidence by the First Defendant was not agreed.

168. As a result, therefore and relying on the contemporaneous documents and the credible evidence of Mr Daniel I find that under the agreement dated 10 January 2020 it was agreed that the Claimant would receive 25% of the *'delta'*, being the original price, i.e. £10,580,000 less the final price, £8,250,000. The only variable was the final price – as soon as that price was finalised, the fee was fixed. The fee was not subject to any reduction for a 'retention', 'contribution' or 'donation' (or anything else). The

agreement did not contain a term as to the condition of the properties. The Claimant's fee would be paid out of 'completion monies'.

What were the terms of the contract entered into between the Claimant and the First Defendant (acting on behalf of himself and Mr Cox) in relation to CB161?

169. Again, the parties agree that an oral agreement was reached on this occasion (March 2020). Again, they disagree as to its terms. The Claimant asserts that he is entitled to a fixed fee of £700,000. The Defendants assert that it was agreed that the Claimant would receive £700,000 less one third of any retention retained by the Investor and/or any contribution paid to BHP. No party contends in their pleaded cases that this agreement contained a term as to the condition of the portfolio.

170. Both sides therefore contend that the structure of the deal was, in essence, a continuation of the 10 January 2020 contractual position they assert but with Mr Daniel removed from the agreement and with new figures. Both sides therefore say the January agreement is relevant background and makes their position more likely. Given my conclusion above the position of the Defendants would amount not only to a change of amount and parties to the agreement but also to a change in the structure of the deal. This does not however mean that this was not agreed as it is to be noted that at the time of this meeting the Arcadis inspections and report production were well under way. For example, on 5 March 2020 the report on 85 Westminster Close, Eston, Middlesbrough, was produced. All admissible facts must be reviewed in determining the terms of the contract.

171. Given this is a commercial case I again start with a review of the contemporaneous documents. The full correspondence from the relevant period shows by the time of the meeting at DLA's offices on 6 March 2020, the First Defendant was already

becoming frustrated with Mr Daniel and had made it clear that he did not want Mr Daniel to be involved in CB161. He had also started to cut Mr Daniel out of communications. The First Defendant's denial of this in his evidence is hopeless when the contemporaneous correspondence is reviewed. It is to be noted that Mr Daniel was not the first introducer/intermediary/agent that the First Defendant had fallen out with on the papers before the Court e.g. the email dated 21 December 2019. On that occasion the First Defendant had stated that he would look after individuals who had previously been offered a fee but left the negotiations open.

172. Likewise, however the Claimant's contention that he did not abandon his friend Mr Daniel and sell him out on 6 March 2020 is also hopeless. It is clear that from what occurred on 6 March that the Claimant put his own interests first and was willing to entirely ignore the 10 January 2020 agreement and Mr Daniel's right to a payment thereunder.

173. Both sides were therefore on their own case willing to enter into the agreement without regard to Mr Daniel and without establishing what, if any, sum he would receive for his work to date: This despite both sides saying that the other was to be responsible for Mr Daniel's fee. As regards this point I refer back to my conclusion at paragraph 55 above.

174. Neither the Claimant nor the First Defendant reduced what was said that day to writing, although the First Defendant relies on the EID and Ms Few's notes which I have addressed, and rejected, earlier in this judgment. Ms Few did however author a contemporaneous email to the meeting.

175. This is an email sent by Ms Few at 1.41 pm on 6 March 2020 to Ms Lloyd and entitled "*Tim - fees*". It was sent by Ms Few to the Claimant, the First Defendant and

Ms Lloyd to advise Ms Lloyd what was agreed in the meeting on 6 March, given that Ms Lloyd was not an active participant in the meeting, even if she attended briefly. The e-mail was therefore sent with the express purpose of providing instructions to Ms Lloyd to enable her when dealing with the purchase and sale of the properties and portfolios mentioned in the email to know what sums were due to the Claimant and on what terms. The email is therefore in my judgment of vital importance in this case as it shows that the First Defendant's contention that every email mentioned "delta" not fees as regards the sum payable to the Claimant in relation to CB161 is simply wrong. It is also a clear contemporaneous document sent by Ms Few, on the instructions of the First Defendant, specifically to record what was agreed at the meeting on the 6th of March.

176. Given its importance in the case I set out its contents in full:

> *"Hi Emma,*
>
> *As per the conversation with Chris and Tim, the following portfolio fees for Tim have been agreed:*
>
> *CB161 North East- £700k*
>
> *CB170 Middlesbrough - £100k*
>
> *CB174 Belle Vue Court- £500k (£450k and £50k retention)*
>
> *CB167 Nether Hall, Doncaster - £150k" (underlining added)*

177. Therefore, in this email, sent contemporaneously with the meeting to inform Ms Lloyd as to the fee agreement reached with the Claimant, the Claimant's fee was stated to be £700,000. No deductions, or terms of any kind, are mentioned in the

email regarding CB161, unlike CB174. Given Ms Lloyd was to pay fees based on what had been agreed, this was a critical document for the parties. This document is therefore, in my judgment, crucial to the decision of this Court, especially given the Claimant and the First Defendant did not question the title or contents of the email at the time.

178. The email therefore supports the Claimant's case as it is an email from a person who attended the meeting on 6 March 2020 showing that a fixed fee was payable to the Claimant, sent to a loyal agent of the First Defendant who the First Defendant knew would act on its contents.

179. Ms Few stated that she did not mention retentions or deductions in the email as it was not known at that time what they would be. In my judgment this is simply nonsense. Whether the exact sum was not known or not, according to all the evidence before the Court the First Defendant, Mr Cox and Ms Few knew at the time of the meeting that the application of retentions and deductions/contributions would arise in relation to CB161. This was part of the business model, and even though Ms Few was relatively new to the business she accepted that she knew of the role of contributions since at least January 2020. In any event by March 2020 the likely level of contributions was known given that a retention of approximately £800,000 had already been raised by Mr Cox as noted at paragraphs 161-2 above.

180. The documents contemporaneous to the meeting therefore support the Claimant's case and given my findings on credibility I prefer the contemporaneous documents to the witness evidence.

181. This is not the end of the relevant and admissible documentation however as there are emails referring to the Claimant's fees sent by Ms Few and Ms Lloyd in the period

pending completion of the sale. These documents are admissible in a case where the Court is seeking to determine the terms of an oral contract as they show the post agreement behaviour of the parties, or their employees and agents, and how they understood the contract terms to be prior to the dispute between them arising.

182. First there is an email from Ms Few to the First Defendant being an email dated 20 April 2020 sent at 17.54. The email referred the recipient, the First Defendant, to a spreadsheet with the instruction that "*the files in yellow are "TBC" fields. I have sent a list of Tim's portfolios over to him to confirm what fees he believes he is getting. I will confirm with you after and add to the spreadsheet*".

183. The spreadsheet attached to the email showed property purchases that were in progress at that time, the agent dealing with the purchase and the "*Fees*" due to the agent. I note again that the word fee is used in this spreadsheet not the word delta. The fee shown for CB161 was £700,000 payable to the Claimant. Unlike other fees shown in that spreadsheet the fee was not TBC or highlighted in yellow.

184. The April email and spreadsheet are important in my judgment as they show that six weeks on from the 6 March 2020 meeting the Claimant's fee was still simply noted as £700,000. Further no conditionality was shown in relation to this fee, despite the conditionality shown to other fees. The only rational analysis of this email and spreadsheet was that the fee for CB161 was a fixed fee. This email and spreadsheet therefore wholly accord with the email of 6 March 2020.

185. The figure of £700,000 remained in the tracker spreadsheet in May and most of June 2020 (unlike the fee for CB182). Again, the fee is shown as a fixed fee. The spreadsheet also shows a donation of £805,000. This addition to the tracker spreadsheet is important in my judgment as the reason given by the First Defendant

and Ms Few for not saying in emails or spreadsheets that the fee was subject to reductions was that they were not known at the time the documents were produced. Yet in this document a donation is known and quantified yet the fee remains a fixed fee of £700,000.

186. On 9 June 2020 difficulties began to emerge in the relationship between the Claimant and the First Defendant as a result of an email sent to the First Defendant and Mr Cox from Irfan Liaquat.

187. On 19 June 2020 Ms Lloyd emailed the Claimant seeking an invoice for this portfolio for the completion statement. There was a lot of focus on this email during the trial despite Ms Lloyd not providing any evidence to the Court regarding the email. The Claimant asserts that the fact he was asked for an invoice at that time shows that Ms Lloyd must have understood his fee was to be a fixed fee and that he was to be paid out of moneys at completion. The Defendants dispute this. In my judgment Ms Lloyd's request for an invoice at this time is clear and plain support for the Claimant's contention that his fee was fixed as if there was any doubt in that regard in the mind of Ms Lloyd, she would not have wasted her time asking for an invoice when she knew it could not be produced. Indeed, it is to be noted that DLA Piper have confirmed in writing that at the time Ms Lloyd asked for an invoice, pursuant to their instructions, the Claimant's expected fee was £700,000.

188. In the next week there were dealings between the Claimant and Ms Few regarding the Claimant's invoice:

189. The Claimant sought wording from Ms Few to ensure that the fee to be paid to him would be VAT exempt. Ms Few provided that wording at 8:23 am on 20 June 2020;

190. On 23 June 2020 at 12:43 pm the Claimant provided the details for the production of an invoice for him to Ms Few. This included the portfolio for which the commission related, the amount of the fee, his name and address and his bank details, and;

191. On 25 June 2020 Ms Few provided a draft invoice to the Claimant under cover of an email reading "*Please see invoice attached, let me know if this is okay?*" The invoice attached to the email showed the fee of £700,000.

192. Whilst the first email is explicable given that the Claimant says he did not know the wording needed for his supply of services to be VAT exempt the remaining emails at this time are in my judgment remarkable. Having heard the evidence at trial I still cannot fathom why the Claimant, an experienced property intermediary, needed help to produce an invoice. It is in my judgment wholly improbable that the Claimant did not know how to do so and therefore asked Ms Few for help. However, it is even more remarkable that if Ms Few knew, as she says she did at this time, that the fee was subject to deductions, figures for which had at that time been agreed, that she would produce an invoice she knew to be wrong without comment. That did not accord with Ms Few's personality at trial. In my judgment the correspondence is therefore supportive that Ms Few knew that the fee was a fixed fee as she did not question the sum provided to her by the Claimant, but that the Claimant was already starting to compile evidence he hoped would support him in the event of a dispute with the First Defendant.

193. The Claimant reformatted the invoice and emailed his final copy to Ms Lloyd, copying in Ms Few, on 26 June 2020. The invoice again shows the fee of £700,000. This was not questioned at the time of its submission by either Ms Few or Ms Lloyd. So far as Ms Few is concerned this is remarkable if as she now contends the fee was

to be subject of reductions. Again, Ms Few is not shy in raising issues or complaining when she considers something is wrong as is evidentially shown in the correspondence regarding CB182 which had already taken place.

194. Ms Few then produced a further spreadsheet of deals in which the Claimant was concerned. The email sending the spreadsheet stated that it contained gaps and the Claimant was asked to fill them in and send back. Ms Few expressly refers to CB161 in the covering email saying "*The ones in yellow still need to be confirmed but I think lets get CB161 out of the way tomorrow and then we will concentrate on getting the go ahead for those deals.*" The spreadsheet notes CB161 as a portfolio but has the incorrect purchase price for it (saying £9,000,000) and the fee column is blank.

195. Ms Few says she had removed the fee from the spreadsheet as she knew by then that there would be a reduction to the fee. However, this explanation cannot be correct given the history of the tracker spreadsheet referred to above, and, on the figures before Ms Few, at this time a fee would still have been payable to the Claimant. A fee should still therefore have been shown in the spreadsheet albeit if the Defendants' case is correct a reduced fee from £700,000. An absence of any fee combined with the incorrect purchase price and the request to the Claimant to fill in the blanks is, in my judgment, evidence that this was a document prepared at haste, at a time when the completion of CB161 was imminent and that as a result the document contains inaccuracies and no weight can be placed on it by the Court.

196. Ms Lloyd had clearly been working on the completion statement during this time and a draft dated June 2020 is before the Court. This shows that there was a retention of £468,000 in relation to one part of the transaction and a retention of £10,000 in relation to another, and that a donation was due to Big Help for £1.3 million less rent

arrears of £15,523.46. The completion statement does not show any fee due to the Claimant, nor any space for this to be included in the document. The reason for this is unknown given no-one from DLA Piper gave evidence in the case. A second completion statement, in the Core Bundle, is in the same terms.

197. Finally in terms of documents proceeding or around completion on 3 July the Claimant sent a text message to the First Defendant asking "*do you know if Emma will be releasing our monies today or do you think it will be Monday now?*". The First Defendant replied "*Monday*". I do not accept that when using the words "*our monies*" the Claimant was referring solely to his fee or that an ordinary person receiving the message would have interpreted it in that way. The text message exchange does not therefore amount to an admission or acknowledgment by the First Defendant that the sum of £700,000 would be paid to the Claimant.

198. The acquisition completed late on 3 July 2020 and if the Claimant is correct his fee then became due and payable. As analysed above at this time all the post-agreement contemporaneous documents therefore pointed clearly toward the fee of £700,000 being payable to the Claimant on completion as a fixed fee.

199. The next day the relationship between the Claimant and the First Defendant and Mr Cox broke down with the sending of an email by the First Defendant. The email states that the properties in CB161 had not been touched for 15 years, they required redecoration and 30% of them new bathrooms and kitchens, that the First Defendant was not aware of this from Arcadis, and that as result a large retention had now been implemented. The email continued that Big Help had now "*requested a donation of £1.6 million to take on this portfolio*" and (in bold type) "*this payment will have to*

come out of our pockets on a one third each basis". The First Defendant stated that he was going to negotiate down the donation.

200. In my judgment the key part of this email is the words in bold type and the use of such words. If the First Defendant is correct as to what was agreed on 6 March 2020, then there would have been no reason for him to write those words, let alone to emphasise them through the use of bold type. Having watched the First Defendant give evidence and having read volumes of his correspondence in the lengthy trial bundles, in my judgment, the inclusion of those words in the email and in bold type was an attempt to impose on the Claimant and Mr Cox a position which the First Defendant had decided should be the position. It was not an attempt by him to set out what had already been agreed. If that is what he was doing in the email the words would not have been in bold type and he would have referred directly to there already being an agreement that the moneys would be borne by the parties at a rate of one third each.

201. Within 2 hours the Claimant replied by email expressing his concern and seeking a conference call. He also forwarded details of moneys spent on the portfolio thereby rebutting the suggestion that the properties had not been touched for 15 years which was the basis of the First Defendant's email. The Claimant did not therefore agree expressly or implicitly with the First Defendant's suggestion in bold type.

202. Later that day the First Defendant asserted that "*we have agreed to divide the economic interest on a third each basis*". The Claimant replied within the hour noting that there had been a conversation and asserting that he was due a fee of £700,000 and contesting the First Defendant's instructions to Ms Lloyd not to pay his invoice. He stated that the suggestion that payments should come from his share were "*moving*

the goal posts". He stated he was getting everything together to prepare for negotiations. The First Defendant replied half an hour later stating "*in this regards it is not your payment, it is all our payments*".

203. On 7 July 2020 Ms Lloyd confirmed in writing her instructions not to pay the invoice as it was disputed.

204. On 9 July 2020 the Claimant again sought a meeting to discuss the position. This was rejected and the lines of the dispute were firmly drawn.

205. In my judgment therefore the contemporaneous correspondence from the 6 March 2020 onwards all points in one direction, being that there was a fixed fee of £700,000 agreed on that day and payable on completion to the Claimant. Such was consistent with Ms Few's email to Ms Lloyd of 6 March 2020 and with Ms Lloyd's request for an invoice in June 2020. On the documents the Claimant's case is therefore the more probable.

206. I note that I do not accept that the Claimant attempted to or did contact Mr Mitchell in July 2020 to enter into negotiations given my conclusions on the credibility of the witnesses. Further given the Claimant had not met Mr Mitchell at that time and had no business dealings with him it is wholly implausible that such negotiations took place.

207. In support of their cases all Counsel referred to commercial sense and said that this supported their positions. Commercial sense is a tool available to the Court when establishing and interpreting contractual terms. It is however something which can change based on the eyes of the person through whom a contract is being analysed and therefore it is something that must be analysed with care. Unsurprisingly in this

case the case of both sides makes commercial sense to them. The more helpful analysis is analysing the commercial sense of the agreement asserted by the other side.

208. In my judgment it would have made no commercial sense for the Claimant to forgo the fixed fee he was entitled to under the January agreement for a fee subject to conditions over which he had limited knowledge and no control given it is also asserted by the First Defendant that the Claimant agreed to take care of Mr Daniel. Mr Daniel was entitled to the same fee as the Claimant under the January agreement and therefore if the Claimant agreed to what the Defendants suggest, even if there were no retentions or contributions or donations, unless Mr Daniel agreed a lesser fee the Claimant had agreed to receive under £150,000 when he was entitled under a valid enforceable contract to in excess of £500,000. In my judgment no sane businessperson would agree to this given the amount of downside to the deal and the limited room the Claimant had to negotiate with Mr Daniel.

209. Turning to the position of the Defendants they had agreed to pay over £1 million in fees to the Claimant and Mr Daniel. Entering into the agreement in March with the Claimant, on the terms the Claimant contends for, the Defendants maintained their liability for retentions and contributions. This did not change from the January agreement. What changed was the sum payable to the Claimant which increased. Against this the Defendants still owed Mr Daniel his fee under the January agreement unless they could negotiate a reduction in this regard which the Claimant asserts that the First Defendant was intending to do. In entering into the agreement in the terms the Claimant contends for, the Defendant's commercial position depended on the negotiations with Mr Daniel. If they failed then the Defendants would suffer a

downside from their January position, which given the forward sale would be small in the context of the whole deal, but if they succeeded they would benefit from a larger upside. Some businesspeople would agree to this.

210. Commercial sense therefore does not provide a definitive answer in this case but is supportive of the Claimant's case.

211. In his written opening submissions Mr Hubbard suggests that the Claimant is "*motivated by a general sense of injustice that other people have profited from a property which he introduced*" and to that extent the claim has focused on the profit that the Claimant believes that the Defendants made from CB161. Mr Hubbard however goes on to state that any such injustice/profit was irrelevant. Given that the agreements reached in both January and March 2020 relate solely to the acquisition of CB161 I agree with Mr Hubbard that the profit made by the Defendant from the onward sale to the Investor is irrelevant. I do not however agree with his submissions on the Claimant's motivation given the Claimant has only sought the fee he says was agreed for the acquisition of CB161.

212. Finally, there is the issue of the inconsistency of behaviour by the First Defendant and Mr Cox if the contractual provisions were agreed as they say. It is the Defendants' case that a deduction was to be made from the Claimant's fee if a contribution was paid to a Social Renter and that a contribution would be paid for the cost of bringing a property up to standard and/or for rental voids within the first year of a tenancy. It is said that this was a term which applied not just to this contract but to the other contracts agreed on 6 March 2020. Yet in relation to a further property, CB170, the full fee was paid to the Claimant despite a contribution being paid to the Social Renter due to either the need to install fire doors to bring the property to an acceptable

standard or as the property was empty. Such a contribution therefore would fall within the definition for which reductions from the Claimant's fee were to be made. Given that no reduction was made to the Claimant's fee in relation to CB170, this is supportive evidence that the term contended for by the Defendants was not agreed at the meeting on 6 March 2020.

213. In conclusion on this issue, given that I consider that the credible evidence before this Court as to what was agreed on 6 March 2020 is the contemporaneous documentation then it necessarily follows from my analysis above that I accept the Claimant's case on CB161. That case is further supported by the commercial sense of the case, the comparator dealings with CB170 and the evidence of the Claimant, albeit accepting the limited credibility of the later. In my judgment therefore on the completion of the acquisition of CB161 by the First Defendant and Mr Cox in July 2020 the sum of £700,000 became payable to the Claimant. That sum has not been paid to the Claimant and the Claimant is, therefore, entitled to judgment for that sum. It is therefore not strictly necessary for me to answer the remaining issues on CB161, but I do so by way of completeness.

<u>What was the reason for the reduction in price in CB161 from £8,484,000 to £8,250,000?</u>

214. The Claimant asserts that the reduction resulted from his efforts. In his closing submissions Mr Hubbard conceded that the First Defendant is not in a position positively to deny the Claimant's case that the reduction resulted from his efforts. The Second and Third Defendant's position in their Defence was that the reduction occurred due to a change to the composition of the portfolio.

215. Mr Hubbard's concession was a sensible one to make in light of the emails in the Core Bundle at pages 38-39. The first email which was written by Mr Daniel, and upon which this Court therefore places weight, sets out that the discount took place as a result of a meeting between the Claimant and Mr Murray on 11 January 2020 and asks the First Defendant and Mr Cox to inform Ms Lloyd of the new purchase price. The First Defendant did this five minutes later by email.

216. Having read the papers in the case and heard the evidence at trial I therefore find that the reduction in price occurred as having reached the agreement on 10 January 2020 that the fee payable to him would increase if the acquisition price of CB161 was reduced the Claimant contacted Mr Murray and negotiated a further reduction in price to £8,250,000. The Claimant was therefore instrumental in achieving the final purchase price for CB161 and he did this at a time when he was acting for the First Defendant and Mr Cox such that the reduction in price was obtained on their behalf. I reject categorically that the reduction in price was due to a change in the composition of the portfolio.

217. I accept that on the evidence at trial that the Claimant was wrong in asserting both in his pleaded case and his evidence that the first reduction in price of the portfolio from £10,580,000 to £8,464,000 was undertaken on behalf of the First Defendant and Mr Cox. That reduction in price had occurred prior to the Claimant acting on their behalf (see the email from Glyn Smith to the Claimant dated 6 December 2019).

218. Turning to the new issue sought to be raised by Mr Maddison, given my conclusion above and given that the Claimant's case is that the services he was to provide was to act as an intermediary to set up and facilitate the purchase of portfolio CB161 and to negotiate a favourable sale price it is clear that the Claimant did provide the service he

contracted to supply in that he negotiated on behalf of the First Defendant and Mr Cox a further reduction in the sale price. This sale price was beneath the asking price and beneath the first price they agreed for the portfolio. In negotiating the price he therefore negotiated a favourable sale price on their behalf.

219. I do not accept Mr Maddison's submission that it was only the first reduction that was relevant due to the Claimant's evidence at page 97 of the transcript of the trial as in that section of the transcript the Claimant was answering questions on the January agreement, not the March agreement. In considering what the service was agreed to be and what was delivered I am considering the March agreement.

220. As to the first reduction in price there is no counterclaim for misrepresentation in relation to it. It is not therefore in my judgment within the power of this Court to reopen the amount of the fee payable under the March agreement, as Mr Maddison seeks in paragraph 48 of his closing submissions.

221. I do accept that the sale price was negotiated in January 2020 however the Claimant clearly continued to act in the sale for the First Defendant and Mr Cox after 6 March 2020. The Claimant says that in doing so he acted as "an intermediary to set up and facilitate the purchase" Mr Maddison complains that this is insufficiently pleaded. I disagree.

222. By 6 March 2020 the parties to the agreement reached on that day knew that the Claimant had exclusive rights to negotiate a sale and purchase of the portfolio on behalf of its owner. Further, they knew that the majority of properties comprised in the portfolio were tenanted and that Mr Murray would not allow the First Defendant, Mr Cox or their solicitors to deal with tenants or with the then managing agents (see the emails dated 7 January 2020 and 21 January 2020). He was however willing to

allow the Claimant to deal with the managing agent. Such dealings were crucial to the deal succeeding. In the light of this shared knowledge as at the date of the March agreement it is clear and obvious without the need for further elucidation what the Claimant was expected to do as the intermediary: He was expected to act as a go between ensuring that the deal progressed and completed at the favourable price he had already negotiated. The Defendants, from their conduct of the case, have fully understood this in defending the claim.

223. Further given the clear documentation before the Court showing that the Claimant was the link to Mr Murray and to CB161's managing agents it is clear that he acted as an intermediary in the sale and purchase. Indeed, having considered all the evidence in the case it is clear to me that without the involvement of the Claimant acting as a liaison between Mr Murray, Ms Yule and the purchasers this sale would not have happened. To the extent that the Second and Third Defendants now seek to add to the list of issues for trial whether the Claimant provided the service he contracted to provide the Claimant has shown that he did so based on the contemporaneous documents before the Court.

What, if any, retention was held back by the Investor, and was part of any such sum subsequently paid to the First Defendant and/or Mr Cox?

224. Given the concession made by the First Defendant through his Counsel already noted at paragraph 17 of this judgment what appeared to be an issue between the First Defendant and the Second and Third Defendants in this regard was resolved by agreement.

225. I am satisfied having considered the evidence before me that a retention was held by the Investor of £468,000. In this regard I rely on the completion statement prepared

by DLA Piper. This retention was released by the Investor in November 2020 and paid to DLA Piper on behalf of the First Defendant and Mr Cox. When the moneys were received, they were divided into two equal parts of £234,000. One of those parts was paid to Mr Cox.

What sum(s) did the First Defendant and/or Mr Cox pay to BHP in connection with CB161?

226. On this issue I am solely dealing with who payments were made to, and whether they related to CB161. I am not dealing with whether the payment was a relevant payment in accordance with the counter factual contract terms.

227. The Defendants contend that moneys were paid to BHP in the sums of:

i) £1,350,000 paid by Mr Cox on 6 June 2020;

ii) £234,000 paid by the First Defendant through DLA Piper on 23 November 2020;

iii) £525,000 paid by the First Defendant in September 2020, and;

iv) £366,314 paid by the First Defendant on 25 February 2022.

228. The Claimant does not accept that this is correct.

229. On 6 July 2020 Mr Cox made two payments which the Defendants say are relevant deductions. First Mr Cox paid £850,000 to BHP. Second, he paid £500,000 to Big Help Green. Three days later the First Defendant wrote that "*we have managed to reduce down the contribution required to close this transaction to £1,350,000 now paid over and released as part of the completion process and therefore as it has been*

agreed that the economic interest of this transaction would be divided three ways, with agreement that the costs of such economic interest also being divided three ways, it is time to reconcile". The First Defendant also stated that £94,000 would be paid to the Claimant in settlement of his entitlement. This sum was not paid.

230. As to the first payment as already noted it was the intention of the Defendant and Mr Cox that a donation would be made to the Social Renter at the time the property transactions completed. This was originally in the region of £800,000. By 9 June 2020 it was agreed that £1.3 million would be paid to "*Big Help*". The draft completion statements in the core bundle show that it was intended that Mr Cox would make a donation of £1.3 million to "*Big Help*" (tab 4 of the completion statements). He was to be refunded this money from the proceeds of the onward sale of the portfolio to the Investor as a cost of the transaction. The payment for which a deduction is sought was made the next working day after completion. In my judgment this provides a sufficient evidential trail to show that the payment on that date related to CB161. This £850,000 was paid to BHP as is clear from Mr Cox's bank statement.

231. No credible explanation has however been provided to the Court as to why the second payment on this date was made to Big Help Green, or as to how such a payment would be deductible under the contract terms contended for by the Defendants (and as noted in the wording of this issue) which is for deductions for payments made to BHP. BHP is the only charity in Big Help Group (as is clear from the Charity Commission listing of charities). Other entities in the Big Help Group referred to before me were either companies, Big Help Green Limited, or Big Help Homes CIC. They were and are separate legal entities to the charity. It is the First Defendant's

pleaded case that it was a charity with the name Big Help which was the social renter for this portfolio (see paragraphs 17 and 29 of the Re-Re-Amended Defence). The Social Renter for this portfolio must therefore have been BHP. Given deductible contributions were on both Defendants' cases payments paid to a social renter for taking on the lease (see paragraph 16 of the Re-Re-Amended Defence of the First Defendant and paragraph 12 (a) of the Amended Defence of the Second and Third Defendants) only payments paid to BHP could therefore have been deductible contributions/donations on the First Defendant's pleaded case .

232. It was clear from the evidence of the First Defendant that he did not distinguish between Mr Mitchell and his various companies and charities. Indeed, in his evidence he stated that moneys were paid to Peter Mitchell in relation to CB161. However, on the Defendants' counterfactual case contributions or donations had to be paid to BHP to be deductible.

233. As a result of the lack of any explanation as to why the sum of £500,000 was paid to Big Help Green, I find that the payment was not made to BHP and there is no credible evidence to link the payment to BHP. Hence it would not have been relevant to the calculation of the fee for the Claimant.

234. As to the sum of £234,000 this was the part of the retention sum released by the Investor and not paid to Mr Cox (see paragraph 224 above). This followed an email from Mr Mitchell on 18 November 2020:

> "*With reference to the retention monies held for the North East portfolio. Big Help has now completed the refurbishment of units and has an additional expenditure over and above what had been originally agreed of £484,000 can you advise on how Big Help can be reimbursed*"

235. The email address from which this was sent is not known. However, the signature in the email address referred to Mr Mitchell as "*CEO Big Help Project*". Mr Mitchell denies that he ever held this position.

236. Prior to dealing with the First Defendant's half of the retention moneys, Ms Lloyd sought instructions from the First Defendant. He agreed that his share was to be paid to "*Big Help*". On 23 November 2020 Ms Lloyd confirmed that £234,000 was being sent "*by chaps to Big Help today as requested*".

237. Mr Mitchell reacted to this the same day in an email with a signature again referring to him as "*CEO, Big Help Project*" "*Fantastic news, many thanks*".

238. These emails are in my judgment sufficient to show that a payment of £234,000 was made to part of the Big Help group from the retention sum. However, there is no credible evidence before me that the sum was paid to BHP (being the only relevant entity for this issue) or that it was paid in relation to CB161. As to the recipient of the payment no evidence was placed before the Court other than the bold assertions of the First Defendant and the emails and then denials of Mr Mitchell. Given these are not credible, the evidence is insufficient to establish that the payment went to BHP as opposed to any other Big Help entity.

239. The only evidence at the time of the transaction which shows why the payment was made is the email of Mr Mitchell but this simply refers to refurbishment of units. It does not say which units or even which portfolio as the North-East portfolio is referred to in one sentence but the units in another. The sums said to have been spent on refurbishment following agreement (£484,000) does not accord with any of the documentation regarding CB161 including the retention which was in the sum of £468,000. Therefore, there is no credible evidence linking this payment to CB161.

240. Turning next to the payment of £525,000, there is no credible evidence that this sum was paid, let alone that it was paid to BHP or paid in connection with CB161. The only evidence relied on by the Defendants in this regard is an email from Mr Mitchell. As already noted, I place no reliance on emails provided by Mr Mitchell given his complete lack of credibility. If there was any doubt in this regard, then given that the email relied upon is riddled with errors (e.g. it suggests that £1.45 million was sent to Big Help on 6 July 2020) no reliance can be placed on it.

241. That leaves the final sum. This is said to have been paid pursuant to a Settlement Deed and Release between Karla Homes Limited, Karla Asset Management Limited and the First Defendant on one part and BHP, CG Community Council and Dovecot and Princess Drive Community Association on the other. The Deed is before me. CB161 is not expressly referred to in the Deed. In particular it does not appear in Appendix 1 to the Deed. Nevertheless, the Deed provides for a sum of money to be paid by the First Defendant and the companies to the three Social Renters.

242. Again, however there is no credible evidence before me that the sum was paid by the First Defendant or Mr Cox to or on behalf of BHP. The evidence of payment amounts to a bank statement. The account holder details are entirely missing from the account. Further it records a payment of €2,091,050.49 on 25 February 2022 to LB Re Home Holdings. This is not the sum shown in the Deed.

243. There is therefore no credible evidence before me that the sum paid is the sum shown in the Deed (especially given that the Deed provided for three payments but the bank statement refers to one payment). The payment was further not on the evidence before me paid to BHP. There is no evidence that the moneys having been paid to LB Re was credited to any account or in any way benefitted BHP.

244. The Defendants have therefore failed to show that any of the settlement sum was paid to BHP (or for its benefit). I do not therefore need to consider whether the Defendants have shown that the portion of the settlement sum for which they seek credit relates to CB161. I do however note that the evidence before me in this regard is akin to a "back of a fag packet" calculation produced entirely to support the Defendants' case and for which no proper figures are before the Court.

245. Looking at the credible evidence before the Court the only sum which the Defendants have shown on the balance of probabilities was paid to BHP Project relating to CB161 is the initial sum paid of £850,000.

To the extent that the sum payable by the First Defendant and Mr Cox to the Claimant was to be net of a proportionate part of any contribution to BHP, to what extent were any sums paid by the First Defendant and/or Mr Cox to BHP referable to such a contribution and if so for what purpose?

246. In this issue I deal only with the payment that I have found was paid to BHP in connection with CB161.

247. The Defendants contend that that sum was paid to BHP for the purpose of or with reference to remedial work or for lease voids in relation to CB161 and were therefore contributions within the meaning of the agreement of 6 March 2020 as they allege. The Claimant does not accept this.

248. In my judgment the payment would plainly have been a contribution (as defined in the Re-Re-Amended Defence) to BHP.

249. As already noted, it was paid around the time of the purchase, and it is clear from the contemporaneous correspondence that a donation/contribution had been discussed for

a significant period during the acquisition process.

250. A donation was first mentioned by Mr Cox in December 2019. They continued to be a feature of discussions between the First Defendant, Mr Cox, Ms Lloyd and Ms Few throughout the acquisition process, e.g. the donation noted in the tracker spreadsheet. The email sending that spreadsheet was sent to Mr Cox, Ms Lloyd, Ms Few, Mr Mitchell and a Ms Clarke. It was not sent to the Claimant. The email was linked to the Arcadis survey process and proposed a donation of £5,000 per property. Whilst therefore calculated on a different basis to the donation discussed by Mr Cox in December 2019 it was a similar figure, was a donation and was linked to the properties in the portfolio and their condition.

251. By 9 June 2020 the figure had been revisited following calculations by Ms Few to £1.3 million. The spreadsheet in which this figure appears, does not show how the figure of £1.3 million was arrived at. It does not represent the cost of works as calculated by Ms Few in the spreadsheet. Nor does it represent the costs of the works added to the £5,000 per property donation suggested earlier. The cumulative figure of the cost of works and the £5,000 per property was circa £1.17 million. The payment I am dealing with was £850,000 which was therefore well within the calculation for the works needed at the property from the Arcadis reports and Ms Few's work. There were also admitted rental voids in the portfolio.

252. I am concerned by the First Defendant's assertion that the contribution was agreed at the last minute and that he had to negotiate down from £1.6 million to £1.35 million as this simply does not reflect the intentions of the parties throughout the acquisition process, the negotiations during the acquisition process or the business model of the First Defendant and Mr Cox. Nevertheless, I am satisfied on all the evidence before

me that the moneys paid to BHP in relation to CB161 were paid as a contribution in that they related to works which were to be done to the portfolio to bring them to an acceptable standard or for rental voids. If therefore I am wrong on the terms of the 6 March 2020 agreement and the terms were as contended for by the Defendants then the reduction from the £700,000 otherwise payable to the Claimant would be £283,333.33 (being £850,000 / 3).

CB182

Did the Claimant enter into a contract with the First Defendant (acting on behalf of himself and Mr Cox) in relation to CB182 and, if so, what were its terms?

253. The Claimant's case is that a fee is payable to him of £200,000 for his acting as an intermediary to set up and facilitate the purchase of portfolio CB182 and negotiating a favourable sale price. Again, there is no written contract. The claim is therefore a claim that an oral contract was entered into whereby an express amount was payable on terms. There is no alternate claim of an implied agreement to pay remuneration either in accordance with custom or usage or on a reasonable basis. Nor is there a quantum meruit claim. Either therefore the Claimant proves his claim to a fee of £200,000 or this claim fails. The Defendants' position is that no contract was agreed between the parties for a fee to be paid to the Claimant in relation to CB182.

254. The Claimant says that the agreement arose as a result of a telephone conversation with the First Defendant on 9 April 2020. As with CB161 I begin with the contemporaneous documents from this time. Unlike CB161 there are no documents recording an agreement between the Claimant, the First Defendant or any of their advisers. The Claimant's claim is based wholly on an undocumented position.

255. The highest the documents get in this regard is an email from Ms Few whereby the Claimant's name appears in relation to an entry '*CB182 - Elswick Court, Newcastle (£200k?)*' The entry is therefore stated as a question not as a fact. This is further highlighted by the concluding words to the email: "*Will confirm with Chris too*".

256. It was put to the Claimant in cross-examination that, if the Claimant had already agreed a fee with the First Defendant, then the Claimant would have requested that Ms Few remove the question mark. The Claimant did not provide any convincing explanation as to why that was not done:

> *It was done over the phone. It was in line with a lot of other deals at the time.*

257. Unlike CB161 there is therefore no clear documentary evidence at the time of the alleged contract or in the following months that a contract was agreed which included the payment of the fee of £200,000. Given my concerns over the credibility of the Claimant, on whom the burden of proof rests in this regard, this is a significant difficulty in his case.

258. Turning therefore to the Claimant's evidence there are no other details given to provide the Court with confidence that this recollection of the Claimant, who has criticised his own memory, is correct. His witness statement on the alleged conversation is short:

> *The fee of £200k had already been agreed with Chris before Jessica had sent this email [on 20 April 2020]. I had agreed the fee of £200k for CB182 with Chris in a telephone call around the same time. My calls with Chris were very short conversations and reflected the usual way in which Chris did business.*

259. The Claimant then moves on to a different property purchase, CB170, and gives details of the conversation had on that occasion when his fee was agreed and simply says at the end of the passage "*With CB182 the same conversation took place*". So, the Court is not given details as to the time of the call, where the call happened, what was specifically said on this occasion, how it was said, what else was said or why the call was memorable. Given the Claimant has been able to give some of these details for CB161 and CB170 this lack of detail is concerning.

260. This lacuna in the evidence was not resolved in the Claimant's second witness statement. In that statement the Claimant simply says "*by 9 April 2020 (the date I emailed Emma on CB182) I had reached the oral agreement as to my £200,000 fee with Chris.*" This is not the level of detail that a Court would expect to see in relation to a contract. Essentially the evidence as to the alleged contractual formation is a bold, bald assertion that there was an agreement reached by telephone but that is all.

261. Fatally for the Claimant's case regarding CB182, in my judgment, even on the bare details he has given it is clear that his case on CB182 (in direct contrast with CB161) has continually changed:

    i) The Claimant stated in a letter dated 21 September 2021 that a fee in respect of CB182 was allegedly agreed during a telephone conversation on 20 April 2020;

    ii) In his claim form the Claimant stated that the date was "*on 19 April 2020*". No application has been made to amend the Claim Form;

    iii) In his original Particulars of Claim, the Claimant pleaded the date "*on or about 19 April 2020*";

iv) In his first statement in the extract set out above, the agreement was alleged to have been made "*around the same time*" as the email dated 20 April 2020;

v) By his Amended Particulars of Claim, without explanation, the Claimant changed the date to on or about 9 April 2020. (This of course amounts to a breach of CPR Practice Direction 16, paragraph 9.2 given the contents of the Claim Form):

vi) 9 April 2020 is also the date given in his second witness statement.

262. The Claimant has therefore signed documents with conflicting dates despite most of the documents containing statements of truth.

263. In cross-examination, the Claimant maintained that there was "*surely some room for error or a day or two*". However, the Claimant's contention as to the date of the alleged agreement has changed by a matter of 10 or 11 days (not merely a day or two).

264. Of more surprise was the reason the Claimant gave for the change of date which was that when he started reading through the documents it might have changed by a day or two. In other words, the Claimant does not know when the agreement was reached and he is selecting dates to fit the documents that are before him.

265. This became even more clear later in his cross-examination when the Claimant when asked as to the change of date between his two witness statements said "*I was thinking that with the calls this it was going to Emma, I would have had the fee agreed before the contract has gone out*." In my judgment, the Claimant is guessing the date, but he is presenting his guesses to the Court as facts in documents signed with statements of truth.

266. On the one specific detail in relation to this alleged contract formation the Claimant gives details on (the date of the conversation) he has continually changed his evidence and he lacks any credibility in this regard.

267. Evidence of other agents or intermediaries who dealt with Mr Cox and the First Defendant regarding other properties and whether they charged a 1% agency fee does not assist in this regard as what the Court is concerned about is whether a contract was formed and there is no credible evidence in this case that it was.

268. Finally, there is no evidence of post-contract behaviour to assist the Court in its deliberations as to whether a contract was concluded and if so its terms. The Claimant's written evidence was that he spoke to Ms Few, who confirmed that the fee of £200k had been agreed. When it was put to the Claimant in cross-examination that Ms Few denies such conversation took place, the Claimant changed his evidence (again, without explanation) and said: "*I think, no it was with Chris*".

269. On 20 April 2020, Ms Few emailed her "tracker spreadsheet" to the First Defendant, stating: "*The fields in yellow are 'TBC' fields. I have sent a list of Tim's portfolios over to him to confirm what fees he believes he is getting. I will confirm with you after and add to the spreadsheet*". On the tracker spreadsheet, the fee of £200,000 for CB182 was highlighted yellow and followed by "TBC". When the tracker spreadsheet was updated on 6 May 2020, Ms Few removed the fee for CB182.

270. The evidence regarding CB182 shows that in the weeks following the property's initial introduction, and to an extent following 9 April, the Claimant was contacted regarding CB182 and undertook some enquiries in that regard. I also accept that the parties did not expect the Claimant to work for free when introducing and working on the purchase of properties. However, that is not enough to show that on this particular

occasion a contract was concluded with a fee of £200,000 payable on completion to the Claimant which is the only ground of the claim before me.

271. Taking all of those matters into account, but especially the evidence of the Claimant, he has not proven his claim on the balance of probabilities. This head of claim is accordingly dismissed.

What services, if any, did the Claimant perform for the First Defendant and/or Mr Cox in relation to CB182?

272. It is not therefore necessary for me to deal with this issue. However, I note, briefly, my findings in this regard. The Claimant asserts that the services he was required to provide in relation to CB182 were that he was to act "*as an intermediary to set up and facilitate the purchase of portfolio CB182 and negotiating a favourable sale price*".

273. It is clear from the contemporaneous documents that the Claimant introduced the property to the First Defendant and Mr Cox. This occurred in February 2020 and is evidenced by an email dated 20 February 2020 when the Claimant emailed to the First Defendant a brochure for the property.

274. Turning to the purchase of the property the Claimant does appear to have introduced the First Defendant and Mr Cox to the purchase. This occurred between February 2020 and April 2020 during which period the Claimant introduced the property to the First Defendant and Mr Cox, introduced the vendors solicitors to Ms Lloyd and a price of £2.7 million was agreed. (I leave to one side in this analysis the point raised by Mr Maddison in his list of issues, whether the consideration given by the Claimant for the contract was past consideration, for the reasons set out at paragraph 32 above).

275. The difficulty for the Claimant is that he does not assert in his evidence that he negotiated or agreed the price at which the property was purchased. His evidence on the price is that "*On or around 9 April 2020 the purchase price of £2.7mn had been agreed for CB182*". However, this was not sufficient to amount to a provision of the services the Claimant says he was required to provide under the contract as he was to negotiate a favourable price. In his oral evidence the Claimant was given the opportunity by Mr Hubbard to give details of the process of the negotiation. His answers were vague.

276. Mr Aldam in his witness statement said that "*As far as I am aware after this meeting Tim negotiated a fee with Irfan the agent of the seller and a purchase price was agreed*." However, this is not sufficient to show that the negotiation of the final purchase price was done by the Claimant as the Claimant proposed three separate sale prices as agreed in relation to this property.

277. As to his facilitation of the sale the involvement of the Claimant with the sale was limited. He introduced the property and reported each time a sale price was agreed during negotiations. He gave the sellers Ms Lloyd's details but that was it. All of this took place before the agreement was allegedly reached. Whilst he was asked to assist in the purchase by Ms Few and Ms Lloyd there is no evidence before me that he did so. Certainly, in relation to the issue on which Ms Few sought his assistance on a number of occasions, obtaining the vendor's name and address, the Claimant provided no assistance at all. Indeed, in his evidence the Claimant was unable to point to a single thing he did in relation to the purchase other than introduce the vendor's solicitors to Ms Lloyd. In my judgment this is insufficient to amount to provision of the contractual services contended for by the Claimant.

278. The Claimant has not therefore shown that if there was a contract that he provided the services thereunder to entitle him to a fee in relation to CB182.

Conclusion

279. For the reasons set out above and having considered all the evidence before the Court, I therefore find for the Claimant on the claim in relation to CB161 and enter judgment for the sum of £700,000. I dismiss the claim in relation to CB182.

280. The Claimant also claims interest on the sum due to him. Whilst the parties disagree in the pleadings as to the correct interest rate which should be applied in this regard the principle of interest on the sum due is not disputed. I therefore find that the Claimant is entitled to interest on the sum due to him. I invite the parties to agree the rate and period for which interest is payable. If they are not able to do so, then I will determine those matters at the hearing referred to below

281. Attendance is not required when this judgment is handed down. I invite Counsel, or the solicitors for the parties in the absence of Counsel, to endeavour to agree the terms of an order, including costs. Should this not be possible then the claim is listed for a hearing on 29 November 2024 to address the form of order and costs. I will extend the time for filing any Appellant's notice until 21 days after the date of approval of any order agreed without the need for a hearing, or that further hearing.