Neutral Citation Number: [2023] EWHC 265 (Ch)

Case No: HC-2016-002106

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

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

10/02/2023

Before :

MR JUSTICE MILES

- -

Between :

(1) LIBYAN INVESTMENT AUTHORITY
(2) LIA ADVISORY SERVICES (UK) LIMITED
(3) MAPLECROSS HOLDINGS INVESTMENT COMPANY LIMITED

Claimants

- and -

(1) ROGER MILNER KING
(2) INTERNATIONAL GROUP LIMITED
(3) BEESON PROPERTY INVESTMENTS LIMITED
(4) STOKE PARK ESTATES
(5) CHARLES MONTGOMERY MERRY
(6) CONRAD STRATEGIC PARTNERS LIMITED

Defendants

- -

Andrew Onslow KC, Kate Holderness and Gretel Scott (instructed by **Hogan Lovells International LLP**) for the **Claimants**
Patrick Green KC, Henry Warwick KC and Rachel Tandy (instructed by **Croft Solicitors Limited**) for the **Defendants**

Hearing dates: 8, 9, 14 – 17, 21- 25, 28 November 2022, 5, 6 December 2022

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.00 am on 10 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Miles:

Introduction

1. This case concerns a joint venture to develop two sites close to the M25 in the area of Maple Cross in Hertfordshire. On one of the sites the purpose of the venture was to build and own a four star hotel to be operated under the Crowne Plaza brand. The plan was that the other site would be turned into a retail village development also covering a much larger area of land hoped to be bought from a neighbouring owner.

2. Before being put into the joint venture, these two sites were owned by one of the parties to the venture, being companies associated with the defendants (**the International Group** or **the IG**). The founder of the IG was Mr Roger King, the first defendant.

3. The potential hotel site was held via one of the IG companies, and secured a bank loan of £10m which had been used in its acquisition. The site was valued in 2007 by Strutt & Parker (**S&P**) at £17 to 20m (depending on varying assumptions). The potential retail site had been bought by other IG companies some years earlier.

4. The IG had been looking for potential joint venture partners for the sites for some time. In late 2009 they were introduced to representatives of the Libyan Investment Authority (**the LIA**) and its UK subsidiary (**LIA UK**, then known as Dalia Advisory Limited). The introduction was made by a long standing contact of Roger King's, Mr Mahmoud Al-Agori. There were meetings and other communications about the proposed joint venture in late 2009 and early 2010. The main representative on the LIA side was Mr Rajab Layas, the Executive Director of LIA UK. Mr Al-Agori was an old friend of Mr Layas. The IG representatives included Roger King, Mr Charles Merry (the fifth defendant), and Mr Hertford King, one of Roger King's sons.

5. The defendants provided a large volume of information to Mr Layas and the LIA about the two sites and the business of the IG. They explained that they had planning permission for the hotel site and had undertaken a tender process to appoint builders and provided details of the expected construction and other costs. They explained that they were close to agreeing terms with the world's biggest hotel group, InterContinental Hotels, to manage and operate the hotel once built and had the relevant documents, including a copy of a draft operating contract. They also gave Mr Layas projections of revenues and costs (i.e. cashflows) they had prepared with the assistance of S&P for the two sites as developed. The LIA were assisted by professional property advisers and told the defendants that they had passed the details to their specialist property subsidiary.

6. In May 2010 the parties reached agreement in principle. The LIA would invest £10.5m for 50% of the shares in a joint venture company which would own and develop the two plots.

7. The parties then instructed City lawyers to act for them in finalising the terms of the joint venture.

8. The LIA's legal team noticed that the LIA did not have current valuations of the sites. This led to Mr Layas instructing the well-known firm Savills to carry out a current market valuation of the two sites. A few days later Savills told Mr Layas that their preliminary view was that the hotel site was worth around £3-4m. Mr Layas immediately told Savills

to cease work. Mr Layas then communicated with Roger King and/or Mr Merry, who also spoke to Savills about their preliminary views. There were also communications between Savills and Mr Al-Agori and between Mr Al-Agori and Roger King.

9. There is a dispute between the parties about the sequence of events and what was said during those discussions. But it is common ground that Mr Layas asked Roger King and Mr Merry to assist in finding another firm of surveyors to provide the LIA with advice about the proposed investments. Roger King and Mr Merry approached King Sturge (**KS**) and instructed them to appraise the proposed joint venture investment and the various assumptions underlying the cashflow projections. Roger King instructed KS to address a first version of their report to one of the IG companies and then, once it was approved, to readdress it to LIA UK. KS provided drafts of their advice to Mr Merry, who proposed amendments and additions, some of which were accepted by KS. Once it was finalised, on 23 June 2010, KS addressed their advice to Mr Layas at LIA UK (**the KS letter**).

10. The investment in the joint venture was approved at a meeting of the board of the LIA on 27 June 2010.

11. The formal agreements constituting the joint venture, including a subscription and shareholders' agreement (**the JV agreement**) were entered on 19 July 2010. The LIA, through the third claimant, invested £10.5m into the venture.

12. In 2011 civil war broke out in Libya. Sanctions were imposed against Libyan assets including those of the LIA. These events led to delays in the progress of the joint venture.

13. There were also changes in personnel at the LIA. In 2013 the LIA commissioned a formal Red Book valuation from Savills which (in June 2013) put the value of the hotel site at £2.5m and the retail site at £350,000.

14. There were other valuations in November 2012 and June 2014 by S&P which in turn put the value of the hotel site at £18.5m and £18.6m.

15. The relationship between the parties broke down and the joint venture did not proceed.

16. In June 2017 the joint venture company was put into members' voluntary liquidation. The hotel site was sold in March 2018 (without the benefit of any agreement with a hotel operator) for £8.3m.

17. The claimants started the proceedings by claim form issued in July 2016. They originally alleged that KS had been guilty of fraud in the KS letter. The claimants contended that the KS letter contained a current valuation of the two sites at £21m and that KS had no belief in that valuation or was reckless as to it.

18. In 2018 that case was struck out by HH Judge Barker QC (**Judge Barker**), sitting as a deputy High Court judge. The case was reformulated and the amendments were allowed by Judge Barker in 2020. KS ceased to be a party to the proceedings.

19. The claimants accept that they are bound by the findings of Judge Barker that the KS letter could not realistically be construed as a property valuation and that the KS letter represented KS's genuinely held view about the subject matter of the letter.

20. The case now advanced and the defendants' responses to it may be summarised, in broad terms, under the following heads. A more detailed account is given below.

21. First, the claimants allege that there were fraudulent misrepresentations about the value of the joint venture and the hotel site. They say that these are to be found in a combination of the KS letter and a letter dated 11 December 2009 from S&P to the IG (**the S&P 2009 letter**) which was expressly referred to in the KS letter (a copy of which was provided to the LIA in 2010). The claimants say that the defendants procured or were responsible for these representations, that the defendants intended that the LIA would rely on them, that the defendants knew the representations to be untrue, and that the claimants relied on them.

22. The defendants deny that they made any relevant representations but say that if the KS letter or S&P 2009 letter contained any representations the defendants believed them to be true. They also contend that the claimants have failed to establish reliance on any relevant representations.

23. Second, the claimants allege that in assisting Mr Layas in liaising with KS and obtaining the KS letter, Roger King and Mr Merry became agents of the claimants and owed the claimants duties of honesty. The claimants allege that Roger King and Mr Merry breached that duty. The claimants allege that had the LIA become aware of the views of Savills they would not have entered the JV agreement, at least not on the terms they actually agreed. They say that Mr Layas' knowledge of Savills' views is not to be attributed to the claimants as he was acting dishonestly.

24. The defendants deny that they became the claimants' agents. They also say that if they did become agents their obligation was one of honesty and that they acted honestly in instructing KS. They say that Mr Layas knew about Savills' views, that he was representing the LIA, and that they had no reason for thinking that he would conceal material information from the LIA.

25. Third, the claimants allege that Mr Layas acted in breach of his fiduciary duties by acting against the interests of the LIA (including by concealing the views of Savills) and that the defendants dishonestly assisted him by obtaining the KS letter, knowing that Mr Layas was doing this in order to conceal the views of Savills. They also allege that the terms and manner in which the defendants instructed KS were dishonest. The claimants do not plead a motive for Mr Layas acting against the interests of the LIA. They suggested at the trial that there may have been an arrangement between Mr Layas and Mr Al-Agori, who had been promised an introducer's fee of £500,000 by Roger King if the deal completed. The claimants suggested that Mr Al-Agori may have agreed to pay Mr Layas part of that fee. The claimants allege that if Mr Layas had acted properly he would have revealed the preliminary views of Savills to the LIA and that the LIA would not have proceeded to enter the joint venture on the terms it did. The claimants also allege that each of Roger King and Mr Merry dishonestly assisted the other in their breach of the duty of honesty owed to the claimants.

26. The defendants deny that Mr Layas breached his fiduciary duties. They further say that even if he did, they did nothing dishonest. They accept that they assisted him in obtaining the letter from KS but they did not know that he was going to conceal Savills' views from others within the LIA. The defendants deny that they became agents of the claimants, but deny, if they did, that they acted dishonestly in instructing KS.

27. Fourth, the claimants allege that there was an unlawful means conspiracy between Mr Layas and Roger King and Mr Merry to conceal the views of Savills from the LIA and that this was carried into effect by the defendants procuring the KS letter, knowing that Mr Layas (in breach of his fiduciary duties) would use this as the means of suppressing Savills' views. This claim covers much of the same factual ground as the dishonest assistance claim. The defendants' answer to this claim is substantially the same as that already outlined in response to the dishonest assistance claims.

28. The claimants allege that they have lost the £10.5m they invested in July 2010 and a further £1.76m they paid into the joint venture pursuant to further funding requests in August and November 2010.

29. There were differences between the parties as to the measure of any damages or compensation. The claimants allege that they should have the difference between the £12.26m they paid into the joint venture and the market value of what they obtained (50% of the shares in the joint venture company) at the date of their investment.

30. The defendants say that the measure of relief should be £12.26m minus the distributions paid by the liquidator of the joint venture company, with adjustments for interest.

31. As explained below the parties relied on expert valuation evidence but I concluded there may be real difficulties using that evidence to seek to determine a value for the shares in the joint venture company in July 2010. I was also concerned that the parties had given very little thought to the legal principles concerning the measure of loss. Their written and oral closing speeches devoted very little attention to this issue. The parties agreed in their closing speeches that I should determine all questions of liability and causation in this judgment, and that any questions of quantum would be addressed at a further hearing, if needed.

Parties, people and entities

32. The LIA is the sovereign wealth fund of Libya. It was set up for the benefit of the present and future citizens of Libya.

33. LIA UK was and is a wholly owned English subsidiary of the LIA based in London.

34. Mr Rajab Layas was the executive director of LIA UK from 15 July 2009 to 9 September 2011.

35. Mr Sami Al-Rais was the CEO of the LIA between October 2009 and November 2010. He was a director of LIA UK from 18 February to 1 December 2010.

36. The Chairman of the LIA was Mr Mohamed Layas. (Where I refer below to plain Mr Layas it is to Rajab Layas rather than Mohamed Layas.)

37. The other members of the board of directors of the LIA at the time of the approval of the joint venture included Dr Khaled Kawan.

38. The secretary to the board was Mr Ibrahim Khalifa.

39. The head of the LIA's legal department in Tripoli was Mr Albudery Shariha. He was also a director of LIA UK from 15 July 2009 to 19 October 2012.

40. Others working in the legal department included Mr Kamal Rhazali, who was on secondment from Allen & Overy at the time of the investment; and Mr Sufian Alhaj and Ms Balkis Ghagha, both legal assistants.

41. The third claimant (**MHICL**) is a Guernsey-incorporated SPV through which the LIA participated in the joint venture. It is held on trust for the LIA.

42. International Group Limited (**IGL**) was established by Roger King as a family property development business in the late 1970s. It was and is the parent company of the IG.

43. At the material times Roger King owned and operated IGL with his three sons, Hertford, Witney and Chester.

44. At the time of the joint venture with the LIA in 2010, Roger King was the Chairman of IGL, and Hertford King was the chief executive officer.

45. The third and fourth defendants (**BPIL** and **Beeson Investments**) are subsidiaries of IGL. Between 2015 and 2021 the fourth defendant was known as Stoke Park Estates. Roger King, Hertford King and Witney King were the directors of BPIL and Beeson Investments at the relevant times.

46. The Group Finance Director of the IG was and is Mr Milind Pradhan.

47. Mr Merry, the fifth defendant, is a surveyor. He is the director of and shareholder in the sixth defendant (**CSPL**). Mr Merry is the brother-in-law of the King brothers. Mr Merry assisted the IG in their search for an investor in 2009 and 2010 and was involved in the negotiations with the LIA.

48. The joint venture entity was Maplecross Properties Limited (**MPL**), a Guernsey company (now in liquidation) owned 50/50 by MHICL (on the LIA side) and BPIL (on the IG side). MPL owned two other Guernsey companies, Maplecross Hotel Limited (**MHL**) which owned the hotel site and Maplecross Retail Limited (**MRL**) which owned the retail site.

49. A number of other people and entities were involved in the relevant events.

50. Mr Al-Agori had worked with Roger King and IGL for many years as an introducer of opportunities. He was also a long-standing friend of Mr Layas. He introduced the defendants to Mr Layas in late 2009. He also had a business relationship with Mr Tim Whitmey of Savills.

51. Clifford Chance acted for the LIA in relation to the joint venture. The lead partner was Mr Mark Payne; Mr Nick Redman was one of the associates.

52. The LIA also instructed Ernst & Young to assist with financial due diligence and tax.

53. Stephenson Harwood acted for the IG in relation to the joint venture. The lead partner was Mr Richard Light, a real estate finance partner.

54. S&P were well known surveyors and property consultants. S&P valued the hotel site for lending purposes in 2007.

55. Mr David Leppard, a partner in S&P (though not a property valuer), had advised Roger King and his companies for many years. He signed the S&P 2009 letter addressed to Beeson Investments.

56. S&P also carried out further valuations of the hotel site in November 2012 and June 2014.

57. Savills were a major international firm of property advisers.

58. Mr Iain Lock, a director of Hotels and Healthcare at Savills, advised IGL in September 2007 about the marketing strategy for a possible sale of the hotel site. He was also involved in the work carried out by Savills in 2010.

59. Mr Giles Furze, a director at Savills, assisted in valuing the hotel site in 2010.

60. Mr Oliver Bamber, another director, assisted in valuing the retail land site. Mr Whitmey was another director at Savills. He had a previous business connection with Mr Al-Agori.

61. Knight Frank were an international real estate consultancy. They were approached by Mr Merry in November 2009 to conduct an assessment of the joint venture. Mr Ian Elliott was a partner in the hotels team. Mr James Leaver was a partner, in strategic consultancy and the public sector.

62. KS were an international property consultancy. Mr Peter Gee was a partner in the hotel and leisure sectors. He signed the KS letter of 23 June 2010. Mr Peter Haigh was a partner in the same sectors. Mr Matt Lederer was a consultant.

63. Mr Jeremy Gray was a property adviser at James Andrew International, a firm of property advisers. He advised the LIA about the proposed venture in early 2010.

64. Mr Kevin Eakin was a mortgage broker at Eakin MacDonald & Associates. He assisted the first to fourth defendants in securing funding for the joint venture.

65. Mr Derek Rorrison was the relationship manager at the Bank of Scotland (**BoS**). BoS were lenders to the IG companies, including a £10m loan which had been used to acquire the hotel site.

66. InterContinental Hotels Group (**IHG**) operates hotels internationally under various brands including the Crowne Plaza chain. At the relevant times it was the world's largest hotel group.

Witnesses and approach to evidence

67. I shall set out my findings of fact below. Some general comments may be made about the fact finding exercise.

68. First, it is common ground that the court must make findings on the balance of probabilities. This is the burden applicable in all civil claims. The burden of proof is on the claimants.

69. Second, the claimants have pleaded fraud and invite the court to draw inferences of fraud from the primary facts. It was common ground that where the facts are consistent with innocence, it is not open to the court to find or infer fraud: *Three Rivers DC v The*

Governor and Company of the Bank of England (No 3) [2003] 2 AC 1 at [55] and [186]; rather there must be some fact which tilts the balance and justifies an inference of dishonesty: *ibid*. at [186]; the test is whether, on the basis of the primary facts, an inference of dishonesty is more likely than one of innocence: *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20].

70. Third, the events took place more than twelve years ago. On well known principles, the testimony of the witnesses has to be tested against the objective facts, the documents, the motives of the participants and the inherent probabilities.

71. Fourth, the documentary record is incomplete. There are, for instance, very few documents showing what use (if any) the LIA made of the KS letter or the S&P 2009 letter or more generally about its decision making at the board meeting on 27 June 2010. The telephone records of Mr Layas are limited to a single Blackberry account and there are no records of calls being made to other accounts. The LIA does not have access to at least one of the email accounts Mr Layas is known to have used at the time. The LIA has not sued Mr Layas (though it has accused him of being party to a dishonest conspiracy) so he has not been required to give disclosure. Nor have Mr Al-Agori's documents been obtained or sought. The court is therefore required to do its best with an admittedly incomplete documentary record.

72. Fifth, a number of the key players in the events did not give evidence. Roger King did not appear as a witness or give a witness statement. I shall address the question whether any adverse inferences should be drawn from his absence in a moment. Mr Layas has not been involved in the proceedings. The LIA chose not to sue him (though it appears he may have been living in England when the proceedings were started). Each side says that the other should have called him as a witness or sued him. Mr Al-Agori has not been sued or involved in the case, though the claimants invite the court to infer that he gave a share of the introduction fee he received from IGL to Mr Layas as an inducement for procuring the LIA to enter the joint venture. The court is therefore required to find facts without evidence from some of the main participants.

73. Sixth, this is a case in which the witnesses' memories have been stretched to breaking point, and possibly beyond. The courts have recognised (in well-known authorities, as echoed in the rules of court) that our memories are fluid and malleable and are overwritten whenever they are retrieved. Memories about earlier states of knowledge or belief are especially unreliable. The process of civil litigation subjects memory to powerful biases. People tend to recall the past in a way which shows them in a favourable light and which advances their own interests. They are not necessarily dishonest in this; it is just the way memory works. If accused of wrongdoing there is a natural pressure on a party to advance an innocent version of events, which is later recalled as a memory.

74. These proceedings were started nearly six years after the material events. The case has been through various versions. As just explained, there is an incomplete documentary record. There is no evidence from Mr Layas or Mr Al-Agori and the claimants accept that their case is based largely on inference. The witnesses who gave evidence were busy people who have been involved in many business transactions or professional engagements in the years since 2010. It was entirely natural that most of the witnesses who gave evidence before me did not have any real recollection of events independently of the documents and that they acknowledged they were heavily reliant on the documents.

This does not mean that the witnesses' testimony was of no assistance but I concluded that the witnesses often could not recall much beyond the documents.

75. Seventh, I remind myself that the fact that a witness may be found to have lied on a particular matter does not mean that the court should reject his or her evidence generally. Nor should a finding that a witness has given false evidence necessarily amount to a finding of guilty knowledge on the part of the witness. The court must consider whether there are other explanations for any untrue testimony. It should make its findings on the contested issues by reference to the totality of the evidence.

76. With these general considerations in mind I turn to comment on the witnesses. I repeat that I have approached their evidence in light of the totality of the objective facts, the documentary record, the participants' motivations and the inherent probabilities. I shall make detailed findings about the evidence below and at this stage I shall limit myself to some brief comments.

77. The claimants called Mr Lock, Mr Furze, Mr Elliott, Mr Rais, and Ms Ghagha.

78. Mr Lock was a careful and considered witness. He said candidly that his evidence was largely derived from the documents. On one point, in relation to Savills' calculation of returns on equity and internal rates of return, there was some confusion about whether the work was carried out by Mr Lock or Mr Furze, but little ultimately turned on that. I am satisfied that Mr Lock did his best to assist the court.

79. Mr Furze was another good witness. His evidence was largely derived from documents, chiefly an email summary he wrote in May 2012, about two years after the relevant events. He accepted that he had little independent recollection and most of what he said depended on the documents. Mr Furze did his best to assist the court.

80. Mr Elliott again largely relied on documents when giving his witness statement. He corrected his witness statement on a significant point at the outset of his oral evidence. Knight Frank had been asked by Mr Merry in late 2009 to evaluate the potential joint venture. Mr Elliott said in his evidence that he remembered a meeting with Roger King and possibly Mr Merry. He said the meeting was a difficult one. He corrected this in his oral evidence to say that it had been a call rather than a meeting. He said that his memory had been at fault. I shall return to the details of his evidence below. I concluded that Mr Elliott was doing his best to assist the court.

81. Mr Rais gave evidence remotely from Libya. He was an extremely poor witness. He was argumentative and often did not answer the questions at all. He was defensive and suspicious. He claimed to have had a recent conversation with the claimants' solicitors in which they explained to him that the LIA had been defrauded. This seems to have led him to think that his task was to make speeches denouncing the defendants. Some of his evidence was totally unrealistic. He also appeared in some of his answers to be suggesting that he thought that the joint venture proposal had been for a built hotel rather than undeveloped land. That was never suggested at the time and the documents show that he understood that the site was undeveloped. He also claimed that he had not given authority to approve a letter of 12 May 2010 in which the LIA agreed in principle to proceed or to have authorised the instruction of Clifford Chance by the LIA, even though the request for authority had been addressed to him.

82. I gained the clear impression that Mr Rais wanted to distance himself as far as he could from his involvement in the transaction. This also led to him changing his evidence from his witness statement where he had accepted that the minutes of the board meeting of 27 June 2010 recorded him as presenting the joint venture to the LIA board of directors. He told me that the minutes in fact recorded Mr Mohamed Layas as presenting the venture. I concluded that this evidence was invented on the hoof.

83. Overall I concluded that I could place very little weight at all on the evidence of Mr Rais unless it was corroborated by other evidence.

84. Ms Ghagha was a careful and considered witness. She gave evidence by a remote link from Libya. She did not attempt to go beyond her very limited recollection. She explained that she had had an essentially administrative role regarding a memo for the board of the LIA and she did not attempt to overstate her recollection.

85. The claimants also relied on hearsay notices for Mr Khalifa (the former secretary of the board of directors of the LIA) and Dr Kawan (a former director of the LIA). Both are in Libya. The claimants were unable to explain convincingly why they could not give evidence by a remote link. Mr Rais and Mr Ghagha both did so without any hitches. It appears that both had declined to make themselves available for cross-examination. I shall take this into account when weighing their evidence.

86. The defendants called Mr Merry, Hertford King, Mr Leppard, Mr Eakin, Mr Rorrison and Mr Milind Pradhan.

87. I shall have to address the role and evidence of Mr Merry concerning the events in detail, and I shall comment on it when reaching findings of fact below. At this stage I make the following comments about his evidence. First, there are a number of statements in the contemporaneous documents which were not true and which he must have known at the time were untrue. I shall refer to these below. The claimants say that these episodes show that Mr Merry is not to be believed. I have concluded that they are certainly a powerful reason for approaching his evidence with some caution. The claimants submitted that they show that Mr Merry realised that the events were of questionable propriety. They involved misleading or evasive assertions. I have considered these episodes carefully and shall comment on them below.

88. Second, there were various parts of Mr Merry's recollection of events which I am unable to accept. Again I shall refer to these below. I have carefully considered whether they justify the conclusion that Mr Merry deliberately sought to mislead the court in these respects, and whether I should infer he has done this because he knows that the claimants are right. I shall again set out my conclusions below. At some points I concluded that his memory had been moulded and remoulded over the years. At others I concluded his evidence was evasive. My general conclusion is that I should approach the evidence of Mr Merry with caution but I do not reject it altogether. I shall comment on the proper inferences to draw when dealing with specific items of evidence.

89. I shall also address the evidence of Hertford King when considering the details of the history. I restrict myself here to some brief comments. I concluded that Hertford King did his best to assist the court. He showed strong feelings about the allegations of dishonesty made against his father and the other defendants and was occasionally unfairly derogatory about the claimants and their witnesses, including Mr Lock and Mr Furze. He

properly recognised the limitations of his memory of the events. I did not consider that his evidence was reliable in every respect, but was satisfied that he was an honest witness.

90. Mr Leppard was a careful and reliable witness. He gave clear answers to the questions. He again properly acknowledged the limits of his recall. He was seeking to do his best to assist the court.

91. Mr Eakin was another careful witness who gave clear answers. I concluded that he was attempting to assist the court to the best of his ability.

92. Mr Rorrison was another careful and conscientious witness who did his best to assist the court.

93. Roger King did not serve a witness statement for the trial and did not give evidence. The claimants submitted that I should draw adverse inferences against Mr King, including on the following grounds. He played a central role in the events, particularly from 17 to 23 June 2010. He has been accused of fraud. He would therefore have been expected to come to court to provide an account of his conduct.

94. Moreover, he signed accounts for BPIL in December 2021 and for IGL in March 2022. He signed a statement of truth on the Amended Defence in 2020. That pleading contains several positive assertions that could only have been made on his instructions. He also signed a witness statement in 2020 for the purposes of asserting a possessory title to an area of unregistered land adjacent to the retail site. There is no medical evidence to suggest that he is incapable of giving evidence. While the defendants' solicitors have said in correspondence that he has little recollection of the details of events in 2010, they do not go as far as to say that he has no memory of the events at all and allowances could have been made for Roger King's age and cognitive condition in the way cross-examination was conducted.

95. The defendants contended that I should not draw adverse inferences, including for the following reasons. Roger King is now 86. At the time of the events he was 74. The events took place more than twelve years ago, which makes it hard if not impossible for any witness to recall any details. This was shown by the evidence of the witnesses who were called to give evidence. As the defendants' solicitors, who worked closely with the defendants throughout this long case, have explained in correspondence, Roger King now has little recall of the detail of the events and his memory has worsened since 2020. They have said that he would find it hard to provide a witness statement which provided any real assistance in relation to the relevant events. Hertford King gave evidence at the trial that while Roger King is physically fit, he is a changed man and that he now misremembers things. He also explained that while Roger King continues to have an office and a PA and thinks that he is still charge of running the business of the IG, the business is actually being run by others. Hertford King also said that his father was not the man he used to be.

96. The explanation given by the defendants for Roger King's non-attendance is not wholly persuasive. It has not been said that Roger King has absolutely no recollection and there is no medical evidence to suggest that he is incapable of giving evidence. Rather the solicitors have said that he has very little recall and would find it hard to give a useful statement. I also agree with the claimants that the court is able to make allowances for a witness's age and cognitive abilities.

97. Nevertheless, there is some explanation for his decision not to give evidence. It seems to me realistic and understandable that, with the passage of twelve years, Roger King is unable to comment usefully on the relevant events in any detail and that his evidence would very probably consist of a string of apologies for his lack of memory or speculation. I base this conclusion on the experience of hearing from the (far younger) witnesses, who struggled to go much beyond the documents.

98. I also accept Hertford King's evidence that his father had suffered a cognitive decline over recent years; and that his father thought that he was running the business but was not really doing so. That was telling.

99. As to the various documents more recently signed by Roger King, there is a difference between signing company accounts and a short witness statement for the purposes of the land registration claim, and being subjected to cross-examination in court about the details of events more than twelve years ago.

100. For these various reasons I have concluded that I should not draw adverse inferences against Roger King (or the other defendants) from his non-attendance at the trial.

101. I have already explained that neither Mr Layas nor Mr Al-Agori was sued or called as a witness. I do not think that it would be appropriate to draw an inference against either party for not calling them as witnesses. However I do note that the LIA has accused Mr Layas of a dishonest conspiracy and has invited the court to infer that Mr Al-Agori shared his introduction fees with Mr Layas to induce him to act against the LIA's interests – an (unpleaded) allegation of conspiracy. The LIA decided not to sue Mr Layas (and potentially Mr Al-Agori) and may have had good reasons for doing so. Likewise the defendants have not pursued their documents and may have had good reasons for that decision. But the practical result is that Mr Layas and Mr Al-Agori have not provided disclosure of documents or given evidence. While I do not formally draw adverse inferences, I do note that the court is required to make findings with limited information and documentation about some of the crucial episodes in the case.

102. The claimants did not call Mr Rhazali or Mr Shariha. They would potentially have been able to give important evidence about their dealings with Mr Layas and evidence going to reliance and causation. I am satisfied that they were unwilling to assist and no adverse inferences are appropriate.

103. The claimants did not call Mr Alhaj. He was involved in the production of the board memo for the LIA's board of directors and the accompanying pack of documents. It appears that he still works for the LIA. No persuasive explanation was given for his absence. However I have concluded that it is unlikely that he would have had any real recollection of the events of 12 years ago and do not think it right to draw any specific adverse inferences.

104. The claimants did not call Mr Gray. He was not involved in the key events. I also consider that with the passage of time he is unlikely to have much recollection of events going beyond the references to him in the documentary record, and I do not draw any adverse inferences.

105. The claimants did not call Mr Payne or others from Clifford Chance. However the claimants have disclosed Clifford Chance's files (and have waived privilege in doing so).

Again I consider that with the passage of time they are unlikely to have much recollection of events going beyond the documentary record, and I do not draw adverse inferences.

106. I also heard expert valuation evidence which I shall address later.

Facts

107. This part of the judgment contains findings of fact and also identifies some especially contentious issues, where further findings are reserved for later parts of the judgment. I have absorbed and weighed all the evidence relied on by the parties, even where not specifically noted or cited below.

Acquisition of the land

108. Maple Cross is located northwest of London, near Junction 17 of the M25. Roger King and his companies have been purchasing and developing land in Maple Cross since the 1960s.

109. No. 1 Denham Way (**the Retail Site**), c.0.75 acres of land adjacent to the nearest roundabout to Junction 17 of the M25, was acquired by Beeson Investments in 2000 for £289,000. It provided access to a much larger adjacent plot of land owned by Thames Water in 2010 (**the Thames Water Land**), across a strip of unregistered land. It was proposed in the negotiations for the joint venture that the Thames Water Land would be acquired from Thames Water and that the Retail Site and Thames Water Land would be developed (and eventually sold) as an outlet or other retail development (**the Retail Opportunity**). There had been earlier negotiations between the IG and Thames Water in relation to the acquisition of the Thames Water Land, in which Thames Water had granted the IG an option to purchase the Thames Water Land in the early 2000s. The option had expired when the required planning permission for an office development could not be obtained. As explained below, the IG made further approaches to Thames Water in the lead up to the joint venture.

110. Witney Place (**the Hotel Site**) is an area (of between c.3.2 and c.4 acres) close to the Retail Site. It was assembled from multiple land holdings acquired by IGL in the 1990s. It was originally intended for use as an office development.

111. In 2006 the various parcels of land and access rights which had been acquired by IGL were consolidated into the Hotel Site and transferred to Beeson Investments at a value of £2 million.

112. In early 2007 Beeson Investments sold the Hotel Site to MPL (which at that time was owned by a third party) for about £8 million, subject to a call option agreement to repurchase the site for £9 million plus costs.

113. At about that time IGL entered into negotiations with IHG. IHG operates worldwide under a number of well-known brands including the Crowne Plaza chain of hotels. IGL was interested in the possibility of entering into a management agreement with IHG under which IHG would operate a Crowne Plaza hotel to be developed on the Hotel Site.

114. On 17 April 2007 IHG wrote to Mr Eakin, who was involved in the initial negotiations with IHG on IGL's behalf, stating that IHG shared his enthusiasm for "this prestigious

development in what is a prime location within the M25 corridor"; and that "IHG is committed to increasing Crowne Plaza distribution in key, strategic locations such as this". IHG also enclosed a 20-year profit & loss forecast, along with key terms for the proposed management contract. These included an incentivised fee structure whereby IHG's management fees were to be subordinated to an owner's priority payment for the first three years. Mr Eakin said in evidence (and I accept) that IHG were keen to be involved in the hotel project because it was close to IHG's global headquarters in Denham.

115. In July 2007 John Seifert Architects, acting on behalf of Beeson Investments, submitted a planning application to the Three Rivers District Council (the local planning authority) for a 207-bedroom hotel, with car parking, health club and spa, banqueting and conference facilities on the Hotel Site. Planning permission was granted in March 2008, subject to some conditions.

116. Shortly after the planning application had been submitted, BPIL sought to secure financing to re-acquire the Hotel Site, by exercising the option over the shares in MPL. Loan funding was given by BoS.

The S&P 2007 report

117. On 4 September 2007 S&P produced a report for BoS valuing the Hotel Site with the benefit of planning permission for the purposes of the proposed secured loan to BPIL of £10 million (**the S&P 2007 report**).

118. On 16 August 2007 Mr David Leppard of S&P had written to Roger King observing that "with the current liquidity crisis brought on by the sub-prime mortgage debacle in the US there is no doubt that…yields for prime property have been adversely affected" and that "at present even our own experts do not necessarily agree on where yields are - a sure sign of uncertainty across the market."

119. The "current liquidity crisis" was an early reference to the global financial crisis of 2007/8. Relevantly for present purposes this adversely affected demand for hotels and the property development markets. The impact was still being felt in 2010.

120. The S&P 2007 report advised that the market value of the Hotel Site was £17 million "in its current condition, with the benefit of Detailed Planning Consent for the development of a 207 bedroom hotel"; and £20 million "in its current condition, with the benefit of Detailed Planning Consent for the development of a 207 bedroom hotel, and assuming a management contract has been exchanged with a leading Hotel Group and also assuming that the completed hotel will trade in accordance with the forecasts provided by the Intercontinental Hotels Group (IHG)."

121. The S&P 2007 report adopted the definition of "market value" set out in the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards, Fifth edition, Practice Statement 3.2. Such a valuation, prepared in accordance with RICS standards, is generally known as a Red Book valuation. Market value was defined as "the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

122. To assess the value of the completed development (i.e. the value of the completed hotel on day one of trading operations) S&P adopted a discounted capital value methodology, using a net initial yield of 5.5% to arrive at a value of £48 million for the completed development. S&P then used the residual method of valuation to derive the value of the site. This works (in broad terms) by deriving the value of the site from the residual of the completed development value less the costs of development (construction costs, finance costs, professional fees, etc.).

123. IGL started to seek investors in the hotel project in 2007.

124. At that stage IGL was considering a sale of the site.

125. In April 2007 Roger King approached Mr Miles Auger, an associate in Hotels and Healthcare at Savills, for marketing advice, with a view to appointing Savills as brokers.

126. In an email dated 26 April 2007 to Roger King, Mr Auger said that, having reviewed the plans for the hotel project, projections by IHG and Hilton and offer letters from IHG, Savills would like to have the opportunity to work with IGL on the scheme and to source a purchaser for the Hotel Site. Mr Auger recorded that Roger King said he had been advised that "the hotel should achieve a value of £80m upon reaching a mature level of trade" but stated that Savills "would expect to achieve between £60-65m based on initial build up trade, however the market is extremely strong and we would certainly seek in excess of this level". The email concluded with a disclaimer that "this letter and any subsequent similar correspondence is provided as marketing advice prior to a possible sale. It does not constitute a formal valuation and should not be relied upon as such."

127. Mr Auger followed up this proposal in a letter of 2 May 2007 addressed to Roger King, in which he repeated Savills' willingness to market the proposed hotel project. Mr Auger also stated that "having reviewed the original information sent to us in relation to the proposals by IHG and Hilton we would expect to achieve a sale price at between £60-65m based on the operators [sic] trade build up and reflecting a yield between 5.75% and 6.25% of the mature trade expected return to owner from year 4." Mr Auger said that Savills "are aware of sales in the region of £35,000 per room for 4 star hotel sites. A residual valuation may well show an enhanced figure but this may not be achievable in the market. In our view the sale of the land with the benefit of planning permission would not be the best route to ensuring the maximum return on the asset." The figures given by Mr Auger equated to a land value for the Hotel Site of £7.245m.

128. On 21 August 2007 Roger King wrote to Mr Robert Shepherd of IHG, noting that "Savills have indicated that they could pre-sell this opportunity to a Fund at circa £70.0m on completion of the hotel and commencement of occupancy."

129. On 6 September 2007 Roger King wrote to Mr Auger and Mr Lock of Savills, following a meeting to discuss the sale of the shares in MPL as a completed investment on a forward funding basis. Roger King invited Savills' response "on the basis that you will, subject to contract, sell the shares for an end price of approximately £70.0m with an advance payment (to secure the freehold of the land) of say £25.0m-£30.0m with following payments against the production of monthly completion certificates with a final payment upon completion…of the outstanding balance to complete the payment of the said approximately £70.0m." Mr Lock understood the proposed forward-funding opportunity to include the benefit of a signed management contract with IHG. I accept Mr Lock's

evidence that the instalment amounts for the forward-funding structure proposed by Roger King were what Roger King would have liked, and were not those Mr Lock (or Savills) would have felt were necessarily achievable or were related to the site value (in the case of advance payment to secure the freehold of the Hotel Site).

130. On 10 September 2007 Mr Lock wrote to Roger King attaching a marketing letter for consideration before finalising any marketing agreement. In his covering email, Mr Lock said that "I have not been able to get to the £70m level for the investment subject to the management contract and indeed you will be aware that Strutt and Parker are at £48m for valuation purposes."

131. On 14 September 2007 Roger King wrote to Mr Lock suggesting amendments to Savills' proposed marketing letter. Roger King stressed the importance of including the following passage in the letter:

> "We are confident that we will achieve at least the asking price of £57.0m…We would expect that the value of the completed hotel after say three years of trading that this investment, particularly due to it's [sic] proposed direct management by Intercontinental Hotels Group (IHG), the largest in the world, under it's [sic] Crowne Plaza brand could probably be sold on thereafter at between £80.0m (as Strutt and Parker's recent related letter) to a £100.0m i.e. in say five years time."

132. The claimants contend that this shows Roger King's habit of seeking to put words in the mouths of professional advisers. I find that Roger King did indeed have a practice of drafting the wording of letters or emails which he hoped professional firms would endorse. The documents show that he was an energetic, impatient, businessman who thought he knew best and wanted to get things done at once.

133. Mr Lock responded later that day, saying (inter alia):

    i) "… our letter is provided as marketing advice and you have formal valuation advice from Strutt and Parker that we are in broad agreement with. I am prepared to say this in the letter. The asking or guide price agreed on is a figure between where you requested and our recommendation and is at a level that I believe will not affect the marketing";

    ii) "the Strutt and Parker valuation off a net initial yield of 5.5% with full costs may be a little conservative but is not, in my view, wholly unreasonable as a reflection of the market";

    iii) "to go as far as your paragraph asks is, I believe, beyond the scope of marketing advice"; and

    iv) "I note Strutt and Parker, in their letter of May, referred to a target price of £83m, but I have not seen a letter in which they express any opinion of year 3 value."

134. I accept Mr Lock's evidence that he was concerned that the changes Roger King was asking to be included in the letter might make it seem that Savills was giving an opinion on value, which he considered would have been inappropriate as Savills had not carried out any form of valuation of the Hotel Site or the hotel project. This finding is consistent with Mr Lock's understanding that Savills were instructed at that stage to advise on the

marketing of the completed hotel on a forward-funding basis (including a target asking price), and not on the marketing of the Hotel Site itself, or give valuation advice.

135. On 18 September 2007 Mr Lock sent Roger King the final version of the marketing letter regarding the hotel project. His letter recorded the intention of Roger King and IGL to identify an investor and potentially to engage in "some form of 50/50 joint venture." The letter recorded that IHG regarded it to be an exceptional hotel opportunity and further stated, inter alia, that:

    i) The IHG forecast provided to Savills was "reasonably consistent" with an earlier forecast produced by Hilton. The IHG figures were also consistent with figures in the S&P 2007 report including the EBITDA and owners' return;

    ii) IHG's proposed term included a high incentive fee which "usually indicates some confidence from the potential operator that they can achieve their forecast";

    iii) "We broadly agree with Strutt & Parker's conclusions although you will appreciate we have not undertaken a full valuation exercise";

    iv) Savills' recommended pre-sale guide price was £57 million, "on the basis of a pre payment of £25m, with monthly payments thereafter up to a total of £28m…with a £4m final payment on practical completion of the development." Savills' proposed fee structure included an incentive fee of 3.75% in respect of any consideration over £57 million; and

    v) Terms were offered on the basis of a four-month marketing period.

136. That proposal was accepted by Roger King and Savills were appointed as brokers for the Hotel Site.

137. Savills did not identify any suitable investors within the agreed four months, and the instructions ended.

138. In September 2007 the IG made a proposal to BoS for the bank to acquire a 50% stake in the hotel project. In a presentation to the bank, IG stated that the Hotel Site had a value of £57m, and that they were looking for an "initial buy-in price of project £12.5m for 50% equity."

139. That proposal did not come to anything and the IG decided to buy back the Hotel Site by using debt funding from BoS.

The BoS loan

140. In January 2008 BPIL completed the buyback of the Hotel Site by acquiring the share capital of MPL for £10.1 million (comprising the agreed option price of £9m, and the vendor's costs of circa £1.1 million). The acquisition was funded by a loan from BoS, (**the BoS Loan**) of £10 million, which was secured by, inter alia, a first-ranking legal charge over the Hotel Site.

141. The term of the BoS Loan was extended on three occasions: in around November 2008 the term was extended by 12 months; in January 2010, it was extended until 30 June

2010; and in mid-June 2010, pending the agreement of the joint venture with the LIA, the term was extended by a further month.

142. The claimants' pleaded case is that the IG had no hope of refinancing or further extending the BoS Loan other than by entering into the joint venture with the LIA. This was pleaded as part of the motivation for the alleged fraud.

143. I accept the evidence of Mr Rorrison, who had acted as the relationship manager at BoS for the IG until August 2010, that BoS's normal practice at that time was to extend the period of the loan and roll it over for a further 12 months as long as the bank was happy with the conduct of the account and the relationship. The bank was content to do so in this case, and in the case of the June 2010 extension, and benefited from improving margins as the loan was re-priced in line with the bank's directives to increase pricing wherever possible. The allegation that the defendants would not have been able to extend the BoS Loan if the joint venture had not been entered in July 2010 was not pursued by the claimants in closing.

Planning permission for the Hotel Site

144. On 19 March 2008 conditional planning permission was granted for the development of the Hotel Site. There were various conditions including for improved access routes into the site.

145. In April 2009 Beeson Investments and IHG agreed non-binding heads of terms upon which any agreement for the management of a future Crowne Plaza Hotel on the Hotel Site would be based.

Further efforts to find an investor

146. Neither Savills' nor Roger King's marketing efforts from 2007 succeeded and in early 2009 the first to fourth defendants engaged Mr Merry to help IGL find an investment partner. He communicated with a number of potential partners. One approach was made to an investor called Starwood Capital Europe on the basis of "circa £10 million for a two thirds share in the site". That would effectively have put a value of £15 million for the venture. Mr Merry's evidence (which I accept) was that the IG needed an investor in the hotel project who was prepared to provide £10 million to enable the BoS loan to be repaid and the charge over the Hotel Site to be removed in order to proceed with the development.

The negotiation of the joint venture

147. In October 2009 Mr Al-Agori introduced Roger King to Mr Layas. Mr Al-Agori was an old friend of Mr Layas.

148. Mr Al-Agori had also worked with Roger King and IGL for many years as an introducer (including for projects in Libya) and been paid for his services.

149. Roger King agreed to pay Mr Al-Agori an introduction fee of £500,000 if the deal was completed with the LIA.

150. On 20 October 2009 Roger King emailed Hertford King and Mr Merry, stating that they had a "MAJOR opportunity to have a 50/50 partnership with the Libyan Investment

Fund" and noting that they had an appointment that afternoon with Mr Layas, together with Mr Al-Agori who had arranged the meeting on their behalf.

151. An introductory meeting took place that day, attended by Hertford King and Mr Layas, with Mr Merry unable to attend.

152. The following day, 21 October 2009, Roger King emailed Mr Al-Agori to thank him for the introduction to Mr Layas, noting that he "thought the meeting was successful" and assuring Mr Al-Agori that,

> "our hotel development at Maple Cross is a truly outstanding long term blue chip investment opportunity. In addition there is the potential for substantial profits from the development of the circa 35 acres of Thames Water's land which we hope to purchase (in partnership with the Libyan Fund) … It looks as if our hard work and patience is soon to be rewarded, and I can assure you that given the opportunity my sons and I will work diligently and with integrity at all times in conjunction with our Libyan friends."

153. On 23 October 2009 Mr Merry emailed Mr Al-Agori, noting the "positive meeting on Tuesday" and proposing a further meeting on 28 October 2009 to discuss the hotel project in more detail.

154. On 26 October 2009 Mr Merry sent Roger King (via his secretary, Ms Sue Ramos) a draft letter to be sent by Roger King to Mr Layas (via Mr Al-Agori) to "set out the bases (sic) of our discussions with regards to this opportunity". As amended by Roger King and sent to Mr Al-Agori, the letter stated that:

    i) "We would agree a 50:50 Joint Venture on the freehold land that we currently own known as Witney Place".

    ii) "We would also sell a 50% share in our additional freehold residentially zoned property at 1 Denham Way which is the key to unlocking the development of Thames Water's adjoining land (approximately 35 acres)…this could lead to a further Joint Venture between us in respect of this land".

    iii) "We are seeking approximately £21 million for the Witney Place and 1 Denham Way sites, i.e. £10.5 million for a 50% share of both freehold sites."

155. In the event the meeting scheduled for 28 October 2009 did not go ahead.

156. I find (based on the evidence of Mr Merry) that another meeting took place in November 2009 involving Mr Layas and Mr Merry. However Mr Merry could not recall what happened at the meeting and there was no other evidence about it.

The S&P 2009 letter

157. In late 2009 the defendants sought professional support for the hotel project and the possible retail development. The S&P 2007 report was by then two years old and pre-dated the global financial crisis, which had had a seriously adverse impact on markets, including the property development market.

158. Mr Merry was given the task of preparing a draft valuation letter for the Hotel Site, supporting a site value of £18 million on the basis of "revised assumptions".

159. In October and November 2009 Mr Merry instructed S&P to conduct an appraisal of the Hotel Site. As part of this process Mr Merry and Mr Leppard worked together on a cash flow model for the hotel project.

160. On 6 November 2009 Mr Leppard of S&P emailed Mr Merry saying that "an investor is going to require a geared IRR in range 12-14%" and that "I just wonder if its possible for the joint venture partner to ask a different question – as in if I pay £x for the site what will be the financial returns. With no evidence to help us I think it is going to be incredibly difficult to come up with a Red Book Val to support this deal. We are just short of any development activity in any sector. I am also incredibly uncomfortable at a figure that is going to be north of £5/6m an acre, just my instincts on that one".

161. IRR means internal rate of return, a metric used in financial analysis to estimate the profitability of potential investments. The IRR is the discount rate which makes the net present value of all cash flows equal to zero in a discounted cash flow analysis.

162. Mr Leppard explained the context for these comments in his oral evidence. He explained that in the wake of the global financial crisis there was a lack of market activity and therefore few deals being done supported by valuations. S&P's clients collectively had started to evaluate property by reference to an IRR rather than by using market valuations. I accept this evidence as an explanation of the 6 November 2009 email. Mr Leppard said (and I find) that he discussed these issues with Mr Merry.

163. The email from Mr Leppard was also consistent with the evidence of Hertford King that while Red Book valuations were required by banks for the purposes of evaluating the quality of security for lending purposes, they had little relevance in the world of deal-making and that investors made their decisions based on expected profits. I find that he believed this to be the case.

164. The claimants argued that the email of 6 November 2009 must have shown the defendants that the value of the Hotel Site was much less than £18m. I do not accept this. It shows that it might be difficult, in the light of current market conditions (particularly the lack of comparable deals) to obtain a supportive Red Book valuation. Moreover, since the Hotel Site was somewhere between 3.2 and 4 acres the upper numbers used by Mr Leppard gave a range around £18m.

165. On 9 November 2009 Mr Leppard sent an email to Mr Merry referring to an earlier call and saying that:

> "A conventional residual valuation of development land is not going to work in my view.
>
> There is no development market; This will also present difficulties in assessing the long term value of 1 Denham Way.
>
> A 'simplistic' appraisal on an equity only basis shows an IRR of 7.8% based on the figures in your model.

> I suggest we build a more sophisticated model so that we can demonstrate how the returns can be enhanced with different levels of gearing, perhaps at different points in the project.
>
> If pushed to say can we produce a Red Book valuation at anything remotely close to numbers the client is looking for you would need to assume an exit yield on pc in 2011 of less 5% or less [sic]. There is just no evidence anywhere to support that.
>
> I really do think the key here is looking at the returns based on different scenarios."

166. Mr Leppard said in evidence that this email also reflected his view about the state of the market and that he was probably saying the same thing to most clients. He said that the market was not one in which a Red Book valuation could be relied upon for the purpose of supporting a deal, being fast moving and difficult to predict and that valuers had "an impossible task" at that time. This evidence was not challenged and I accept it.

167. I find that Mr Leppard discussed these matters with Mr Merry. I also find that from (at least) this time, Mr Merry understood that it would be difficult to produce a Red Book valuation for the Hotel Site because of the absence of development market activity (which was needed to provide comparable metrics); and that investors were using IRR calculations ("the returns") to assess potential investments in development property.

168. As explained below, Mr Merry later produced IRR calculations based of projected cashflows for the hotel project and there were references to IRRs in the information given to the LIA. Mr Merry calculated the IRRs using generic software.

169. On 1 December 2009 Mr Merry circulated internally the text of an "initial draft of a letter for either Knight Frank or Strutt & Parker … or another" to Roger King.

170. On 2 December 2009 Mr Merry sent an email to Mr Leppard referring to a conversation earlier that day and attaching a draft letter that he and Roger King had prepared. Mr Merry said,

> "You will note that the letter is drafted as being addressed to Roger but I suggest that you should review the contents based on the possibility that it may have to be addressed to a third party. Where possible we have attempted to base the contents on assumptions and considered possibilities rather than concrete statements that someone may attempt to rely on in the future."

171. The claimants rely on this as another example of Roger King and Mr Merry seeking to put words into the mouths of others. I shall return to the significance of this later, but (as already mentioned) it is clear that Roger King did indeed have a habit of suggesting the wording of letters to professionals in the hope that they would endorse what he was seeking. As already noted, Roger King was a proactive businessman who was impatient to see things being done immediately.

172. Mr Leppard was asked about this when giving evidence. He did not think that there was anything untoward in the practice. The S&P 2009 letter in fact adopted much of Mr Merry's text and it was not suggested to Mr Leppard that he had acted wrongly in using this wording or that the letter did not reflect his own views.

173. The claimants also submitted that Mr Merry's email of 2 December 2009 recognised that someone might be misled by the proposed letter and that he was aware of this. They argued that he must have understood the same was true of the final version of the S&P 2009 letter and that (in effect) he was putting into circulation a dangerous document. I do not accept these submissions. I find that his email was saying no more than that the letter was based on assumptions rather than making concrete statements and that S&P would therefore not be held responsible to third parties who later tried to say they had relied on the letter. He was not saying that they would have firm grounds for doing so, or that the draft letter was misleading. That would indeed have been a surprising thing to say to a professional like Mr Leppard. Mr Leppard also said in evidence (and I find) that he would not have been prepared to write anything to anybody that he could not fully support.

174. The draft attached to the email included the following passage,

> "Taking account of the current market for UK hotel investments of this nature we would anticipate an investment return of approximately 10% per annum (average annual return) over a 10 year period, after construction. Based on the various assumptions above and IHG's trading forecast this (10% per annum average) level of return equates to a site value as at today of circa £18,000,000."

175. Mr Leppard responded with his amendments to the proposed letter on 4 December 2009. Among other changes, Mr Leppard amended the reference to a "site value" of £18 million to an assumed "site price" of £18 million. That was consistent with an excel cash flow that was to be attached to the letter which included an assumed site cost of £18m, on the basis of which an IRR of c.10% was calculated.

176. On 11 December 2009 S&P sent the final version of the S&P 2009 letter. The letter

    i) recorded that S&P had been asked to "review the proposed development project" and to "comment on the investment profile of the hotel";

    ii) recorded S&P's "views and comments" and "opinion";

    iii) assumed a "site price" of £18 million for the purposes of reviewing the investment, but did not purport to value the undeveloped land of the Hotel Site, or indicate that S&P had been asked to;

    iv) relied upon financial model assumptions provided by IHG which were incorporated into the cash flow forecast enclosed with that letter (**the Cash Flow Document**);

    v) concluded that the hotel "should be capable of achieving a future capital value of circa £58.0m".

177. As already noted, the attached Cash Flow Document assumed a land acquisition cost of £18 million. It was common ground that the Cash Flow Document did not (i) describe or present that figure as a valuation of any kind (whether of developed land or undeveloped land or otherwise); or (ii) indicate that that figure was based on a valuation of any kind (whether of developed land or undeveloped land or otherwise).

178. Mr Merry explained (and I find) that the £18 million site cost was an input into the cash flow model, and was not the result of a valuation calculation.

179. Mr Leppard said in evidence (and I find) that S&P were not instructed to undertake a site valuation. Mr Leppard was not in fact a land valuer. He explained that this was not a market where Red Book valuations would support deals. I accept this evidence, which is consistent with Mr Leppard's emails of 6 and 9 November 2009. I also find that Mr Leppard explained these points to Mr Merry at the time.

180. Roger King promptly sent a copy of the S&P 2009 letter to Mr Brian Bourne at HSBC. He said that it confirmed the value of the Hotel Site on a residual basis at £18m. Mr Leppard said in his evidence that this was inaccurate insofar as it suggested that the letter contained a valuation. He also said that no banker would have read it as a valuation.

181. The claimants submitted that this showed that Roger King was prepared to misuse the letter and that this reflects on his (un)reliability. I agree with the submission that this was a misuse and that he misstated the effect of the letter. On the other hand any reader in Mr Bourne's shoes would have seen at once that the letter did not contain a residual valuation. This is an example of Roger King's tendency to overstate and exaggerate things to the point of falsehood. I find however that there is a danger in reading Roger King's use in correspondence of the words "value" or "valuations" as references formal market valuations. He was a self-made entrepreneur, who used these terms informally as a businessman and not as a lawyer or property professional.

Involvement of Knight Frank

182. In November 2009 Mr Merry approached Mr Dominic Mayes of Knight Frank LLP, seeking an assessment of the joint venture proposal and the initial consideration of £21 million.

183. Some individuals at Knight Frank, including Mr Elliott, had previously been made aware of the opportunity, as Mr Merry had presented the investment to them in July 2009 when he was first instructed by IGL to look for investment partners.

184. By email dated 16 November 2009 Mr Merry wrote to Mr Mayes, setting out a summary of the hotel project and the proposed joint venture. In that email, Mr Merry stated that:

> "We are very close to agreeing terms with an overseas investment fund to form a 50:50 joint venture partnership on the hotel and other land";
>
> "We have agreed a value of £21 million for this opportunity (£10.5 million per partner)"; and
>
> "The client [i.e. IGL] has an excellent and longstanding relationship with this investment fund established over more than 20 years of doing business together".

185. The claimants submitted that some of these statements were untrue. I agree. The parties were not close to agreeing terms; they had not agreed a price; and IGL had not had any relationship with the investment fund. I find that Mr Merry was muddled about the last point: the IG had previously worked for or with Libyan publicly owned entities including its health ministry in developing hospitals. But overall I agree with the claimants that he

must have known that what he told Knight Frank was exaggerated to the point of being false. As explained earlier, I have weighed this and other examples of misstatements made by Mr Merry when reaching an overall assessment of his evidence (and my conclusion that it must be treated with caution).

186. Mr Elliott and Mr Mayes of Knight Frank met Mr Merry and Roger King on about 26 November 2009.

187. On 27 November 2009 Mr Merry told Knight Frank that Roger King did not want to get involved in any planning review of the 35 acres of the Thames Water Land at that stage and said that he had pointed out to Roger King that "this will make it hard for you to get to £21 million for just the hotel land and land fronting the roundabout [i.e. the Hotel Site and the Retail Site]."

188. Mr Merry sent a revised version of the 1 December 2009 draft letter prepared by him and Roger King (see [169] above) to Mr Elliott on 7 December 2009. Mr Merry's email to Mr Elliott also included the same statements which had been included in his similar email to Mr Leppard about the use of "assumptions and considered possibilities rather than concrete statements that someone may attempt to rely on in the future."

189. The draft letter provided to Knight Frank also stated:

> "This will create a potential future capital value for the hotel of circa £58,000,000"; and
>
> "this [10% per annum average] level of return equates to a site value as at today of circa £18,000,000."

190. On 4 January 2010 Mr Merry wrote to Mr Elliott asking him to confirm if Knight Frank were interested in working with the defendants on the project, stating that "we already have a similar opinion from another major firm but we are also keen to get [Knight Frank's] views".

191. The claimants criticised Mr Merry for failing to point out that the S&P 2009 letter had referred to a "site cost" of £18m rather than a site value of that amount. I have concluded on balance that Mr Merry was not trying to mislead Knight Frank in that regard. The draft he sent was based on the 1 December draft and I find that he had simply failed to change this part of the wording. I do not think that he addressed his mind to this nuance. I also find that he would have thought that Knight Frank would only have been prepared to sign up to a letter which properly reflected their own professional views.

192. On 7 January 2010 Mr Merry spoke with Mr Leaver, a partner in the Strategic Consultancy and Public Sector division of Knight Frank, following which Mr Merry provided a copy of the text of the S&P 2009 letter. Mr Leaver appears only to have become involved at about that stage. He was not a hotel expert.

193. The provision to Knight Frank of the S&P 2009 letter (which referred to the site cost) supports the conclusion in [191] above that Mr Merry was not trying to mislead Knight Frank about S&P's advice.

194. By email on 8 January 2010 Mr Leaver confirmed to Mr Merry that,

> "As I have explained to you and Roger on the phone [Mr Elliott] remains consistent in his view that we are unable to assist, even though the advice would not be a formal valuation. I have to say that I do share this view having also looked at the numbers myself.
>
> We recognise the approach that the other firm [S&P] has adopted and, to use your words, we do agree that 'the letter says nothing'. We would, however, be uncomfortable about what the letter would be construed as saying, particularly if, as you have suggested, it is to be used by a third party for funding purposes. We live in an increasingly litigious environment and reputation is everything.
>
> Roger has clearly negotiated a very attractive deal and I would like to wish you all well with the project supported by the letter you have already received. I trust you will respect Knight Frank's position and professional judgment on this and I do hope that there will be opportunities where we will be able to work together again as we have so very successfully in the past."

195. The claimants submitted that this email showed that Knight Frank saw that the S&P 2009 letter might be construed by a reader as containing a property valuation and that Mr Merry realised that by showing it to third parties he would be putting a dangerous document into circulation. I do not accept this. As noted, it is common ground that the S&P 2009 letter did not contain a valuation of the land and that it cannot be read as containing one. I consider that this is clear on the face of the letter. It seems to me that Knight Frank was making the point that in a litigious world there was a risk of a disappointed third party seeking to deploy the document; not that this is how the letter could fairly be read.

196. Mr Elliott gave evidence at the trial. As already explained, in his witness statement he said that he recalled a meeting with Roger King and possibly Mr Merry in which he explained Knight Frank's serious reservations about the value of the Hotel Site. He said it was a difficult meeting. At the start of his oral evidence he corrected this and said that he now thought that any meeting with Mr King and Mr Merry was one where he had received information rather than expressed views and that he told Mr King of his reservations about the value of the land in a phone call rather than a meeting. Mr Elliott fairly accepted that he could not recollect what meetings had happened more than 12 years ago and that his memory was playing tricks. He also accepted that he had not given Roger King an actual number for the value of the Hotel Site but that they did not think they could get to the number the letter required.

197. These are my findings about these events:

    i) Knight Frank knew that the defendants were not seeking a land valuation of the Hotel Site, but wanted an assessment or appraisal of the investment and the proposed consideration of £21m.

    ii) There was a meeting between Knight Frank and Mr Merry and Roger King on about 26 November 2009. Mr King made it clear at the meeting that he did not want a full planning review of the Thames Water Land to be undertaken and it was clear from that that Knight Frank would find it hard to write a letter supporting the consideration of £21m. Knight Frank concluded that they could not support the consideration being sought.

iii) Mr Leaver, Mr Merry and Roger King had a conversation in which Mr Leaver (who was not a hotel sector expert) explained that his firm would not be able to sign the letter like the one signed by S&P. Mr Leaver did not venture any number or range of numbers for the value of the Hotel Site.

iv) I am not satisfied that Mr Elliott was party to that conversation. The email of 8 January 2010 suggests that it was Mr Leaver. There is nothing in the documents to suggest that Mr Elliott had a separate conversation with Mr King or Mr Merry in which he said anything about the value of the land. It also appears that Knight Frank were keen to remain on good terms with Mr King and they probably wanted to avoid a difficult discussion. I find that the conversation between Mr Leaver and Roger King and Mr Merry was not a difficult one.

Email of 4 January 2010

198. On 4 January 2010 Roger King emailed Mr Al-Agori regarding his living arrangements at one of Roger King's properties and his request for a 'further' loan of £10,000. Roger King told Mr Al-Agori that he needed

> "to CONCENTRATE on the completion of the Crown Plaza hotel and related property development projects at Rickmansworth with the Libyan Investment Fund as this will completely solve your own short term financial difficulties in one move. I therefore suggest that you totally concentrate on achieving this goal, whilst at the same time not pressing too hard, as this will prove counter productive, as Rajab carefully explained to you and me at our last meeting."

199. The claimants relied in closing on this email to show the closeness between Roger King, Mr Layas and Mr Al-Agori; and to suggest that Roger King knew that Mr Layas was prepared to act against the interests of the LIA. I shall return to these contentions below.

Presentation to the LIA in January 2010

200. On 6 January 2010 Roger King emailed Mr Leppard of S&P requesting a "'Blue Sky' feasibility study on the circa 8-10 acres of the potentially developable land, the main part of which could be acquired from Thames Water…on the basis of the maximum potential profit that we could potentially achieve." Roger King wrote that his "own take on it is that we create a new up-market retail shopping village as at Bicester", but noted that there was only time for a "back of the envelope study" on the basis of certain basic assumptions, "i.e. a purchase price from Thames Water of say circa £4.0m".

201. On 8 January 2010 S&P wrote to Roger King regarding the retail opportunity, attaching a summary development appraisal and cash flow (**the Retail Appraisal**). By that letter, S&P estimated an equivalent return of 16% per annum were the project to be held for ten years. S&P assumed a site price for the Retail Opportunity of £4 million but did not value the Retail Site or the Thames Water Land or purport to do so. Mr Leppard spoke to retail experts in S&P before producing the Retail Appraisal.

202. On the same day, 8 January 2010, Hertford King and Mr Merry met Mr Layas and Mr Rais in London. They provided and discussed a presentation pack regarding the proposed joint venture.

203. The presentation pack included the S&P 2009 letter; the Cash Flow Document; a situation plan of the Hotel Site; drawings and renderings of the proposed Crowne Plaza hotel; summaries of the Hotel project, the Hotel Site, the development timetable, the professional team, potential contractors and terms of the proposed IHG management agreement; details of IHG and the Crowne Plaza brand; IHG's Letter of Intent dated 19 May 2009 and IHG's proposed heads of terms dated 28 April 2009; IHGs' 10-year Profit & Loss Statement; and a project cashflow sensitivity analysis.

204. The presentation pack described the hotel opportunity as a "50% equity investment for a share of the freehold" with a "hotel site value of £17,300,000" and an "estimated net end value of plus £54 million based on a 7.5% yield".

205. Mr Rais emailed Hertford King on 12 January 2010 to say that the presentation material would be forwarded to the LIA's real estate subsidiary for their review, which was done by 19 January 2010. As noted by Hertford King on a copy of the meeting agenda for the meeting, Mr Layas and Mr Rais said to Hertford King and Mr Merry that they would get back to IGL by the end of the month.

206. I find that the defendants believed that Mr Rais had forwarded the presentation pack to a real estate subsidiary within the LIA.

207. There was a further meeting in January 2010 between Hertford King, Mr Merry, Mr Layas, and Mr Gray of James Andrew International, a property advisor who was assisting the LIA. I accept Mr Merry's evidence that he understood that Mr Gray was evaluating the project for the LIA, and that Mr Merry explained the project and the contents of the presentation pack.

208. Hertford King's evidence was that he did not recall Mr Gray's involvement or meeting with him, but I find that, in the course of negotiating the deal price, he is likely to have had a discussion with Mr Gray about their respective opinions on the value of the projects and the sites.

209. On 4 February 2010 Hertford King wrote to Roger King, Mr Merry and Mr Milind Pradhan by email headed 'Strategy with the LIA', setting out issues to discuss ahead of taking matters forward with Mr Gray and the LIA. This included the following passages:

> "1. How to handle the valuation issue.
>
> My suggestion is that we start by giving him [sc. Mr Gray] the [S&P] £20M valuation and then the latest letter and explain that no [sic] only have they got a "discount" on the earlier valuation. In addition, since the £20M valuation we have a) reduced the risk on the project significantly by creating a detailed design with IHG involvement, bottoming out construction cost, sorting out infrastructure issues, highways etc. b) spent X million on taking the project forward.
>
> This will deal with Jeremy [Gray]'s points that 'we have seen valuations and paid less' and normally they are talking to someone with a 'dream'. We have a 20m valuation and they will be paying less and we don't have a dream we have detailed project which will be ready to start in April.

> If the valuer is only going to do a desk top study then we need to sort out 2 below in detail.
>
> 2. The pack that we give Jeremy.
>
> We want to make this the best pack he has ever received. I am sure we have the raw materials to do this but the summary that goes with it is key. …
>
> 3. Presenting the cashflow and business model and explaining the upsides.
>
> This is obviously critical, we need to present the model (on A3!) highlight the conservative assumptions where appropriate and give them a list of upsides and comparatives with other crowne plaza's during this difficult trading environment and in 'normal' times."

210. Mr Merry responded the same morning. He said that he would work on annotating the cashflow with some explanatory notes and the performance statistics for Crowne Plaza hotels that they had received from IHG.

211. The claimants submitted that Hertford King's 4 February email showed that the defendants knew that the LIA was focusing on site valuation and that the defendants appreciated that they needed to persuade the LIA that the Hotel Site in particular had a value of (say) £18m. The claimants submitted that this is reflected in the references to the S&P £20 million valuation (which was a Red Book valuation) and the potential for a desk top valuation study to be carried out.

212. There is some force in those points. But the email also said that the presentation of the cashflow and business model were critical. On balance I accept the evidence of Hertford King that his comments on the valuation issue arose from a concern that the LIA with the assistance of Mr Gray might try to negotiate the overall price by referring to valuations and that IGL had to be in a position to rebut those arguments, but that the defendants were seeking in their dealings with the LIA to emphasise the potential returns to an investor from the development. This is supported by the email of the same day from Mr Merry which shows that he was working on annotating the cashflow. I find that, while there was some discussion between the parties about valuation issues, the defendants were consistently seeking to emphasise the financial returns to be made from the proposed developments. This was consistent with Mr Leppard's emails to Mr Merry of November 2009 and the discussions he had with Mr Merry about the way that investors were assessing potential property developments in the post-financial crisis markets. It is also consistent with the evidence of Hertford King (which I accept) that, from his perspective, investors (as opposed to secured lenders) were more interested in potential returns than formal valuations.

213. The claimants also submitted that the defendants knew from at least this stage that the LIA would be seeking a formal market valuation of the Hotel Site. I do not accept that submission. I find that at that stage the defendants thought that Mr Gray was assisting the LIA in appraising the potential joint venture and negotiating the price but the defendants did not know whether the LIA was intending to obtain a formal (i.e. Red Book) market valuation. I find that the reference in the email to "the valuer" possibly doing a desk top study was a reference to Mr Gray, not another valuer.

214. Also on 4 February 2010 Hertford King received a letter from IHG in which IHG said they were "delighted that we are making very strong progress on both the design and commercial terms" for the hotel project, and wished "to restate our full support for this exciting and strategic scheme". The letter enclosed IHG's 10-year Profit & Loss Statement for the hotel project, prepared by its corporate finance department.

215. Mr Leppard sent Roger King a letter dated 5 February 2010 in which he set out the current status of discussions with Thames Water regarding the IG's potential acquisition of the Thames Water Land. Mr Leppard's letter concluded "there is now nothing to stop a sale of [the Thames Water Land] taking place to your company and it is simply a matter of them being satisfied that they are getting best value for their asset."

Mr Al-Agori's introduction fee

216. On 4 February 2010 Roger King confirmed in a letter to Mr Al-Agori that, "subject to the completion of the sale of fifty percent (50%) of the shares in the owning company(ies) of the freeholds of [the Retail Site] and [the Hotel Site] for £10.5m to the [LIA]…we will pay within seven days of the receipt of the said £10.5m an introductory fee of five hundred thousand pounds…to your nominated account." This arrangement was finalised in a letter dated 14 May 2010 to the "Directors of Platform Business Corp" in which Roger King, on behalf of BPIL, agreed to pay "an introductory fee equal to five hundred thousand pounds sterling within seven days of receipt of the £10.5m by [BPIL] from the [LIA]."

The 8 February presentation pack

217. On 8 February 2010 Hertford King sent Mr Layas a further pack of supporting documentation. This included: aerial photos of the Hotel Site and Retail Site; a situation plan of the Hotel Site; title extracts from HM Land Registry for the Hotel Site; the S&P 2007 report; IHG's Letter of Support dated 4 February 2010; planning permission, s106 Agreement and s278 Agreement for the Hotel Site; design images of the hotel; tender drawings and elevations of the hotel; indicative terms agreed with IHG dated 28 April 2009; the Retail Appraisal; IHG's 10-year Profit & Loss Statement; Crowne Plaza UK Trading Analysis 2007-2009 showing performance for London and South East Hotels; cash flow models for the hotel project; the S&P 2009 letter; a plan of the Hotel Site and Retail Opportunity; a letter from S&P dated 5 February 2010 regarding the Thames Water Land; initial architects' layout drawings for the Retail Opportunity; and the letter from S&P dated 8 January 2010 enclosing a summary development appraisal and cash flow for the Retail Opportunity.

218. Hertford King's covering letter addressed to Mr Layas summarised the investment opportunity. It started:

> "As promised I set out a comprehensive summary of
>
> A. The Crowne Plaza hotel investment
>
> B. 1 Denham Way and the potential future development of the land which adjoints the hotel site.
>
> C. The proposal for the 50/50 Joint Venture and its structure";

219. The letter gave an executive summary of the proposal, referring to two development sites at J17 of the M25. It referred to a "long term 50:50 joint venture investment partnership".

220. The letter included the following:

i) It described the location of the property; the development history of the land and the relationship between the IG and the local planning authorities; and the business of the IG. It then described the proposed hotel development.

ii) It stated that "the [Hotel] site is currently subject to a loan from [BoS] of £10 million. The loan dates from December 2007 when [S&P] provided a bank valuation of the site for [BoS]. The valuation was for £20 million. A copy of the [S&P 2007 report] can be found at Appendix 4 of the accompanying pack".

iii) It explained that the site was two miles from IHG's global headquarters and that the negotiations with IHG had been led by Mr Arman, the development director of IHG for the UK. The letter described the limited competition from other hotels in the area. It then described the planning permission for the Hotel Site and the team of builders, architects and others that had been assembled to undertake the development. The project manager was identified as Beeson Investments Ltd (**BIL**), a company in the IG.

iv) It described the tender process that had led to a figure of £30m for all construction costs, fitting out costs and associated fees. It said that BIL proposed to fund the construction costs through a long term bank loan based on 60% of the entire project cost (land and construction). The timetable was for construction to commence in April 2010 and for the hotel to be ready by September 2011.

v) It described IHG as the world's leading hotel operator and set out the terms of the management agreement that had been negotiated with IHG. It then referred to IHG's ten year profit & loss statement for the proposed hotel project. The letter then referred to trading figures for the Crowne Plaza brand.

vi) Under the heading "Hotel Investment Analysis" it stated that BIL intended to hold the completed hotel as a long term investment property and that it had prepared a 12 year cashflow for the project, which allowed for 10 years trading post construction (this was the Cash Flow Document attached to the 2009 S&P Letter). The letter explained that the numbers for the revenues and operations had been taken directly from IHG's 10 year profit & loss statement. It said that the terms of the funding were yet to be finalised. The letter then set out various metrics based on the 12 year cashflow, including stabilised revenues of £4.35m per annum. A capitalised value (based on a capitalisation rate of 7.25%) was given at £56.7m.

vii) It stated that BIL required a minimum investment return of 10% per annum over the life of the project and that the total profits over the 12 year period would exceed £25.6m. It stated that BIL expected to exceed the projected return and profit from the project based on the conservative assumptions made by IHG, Crowne Plaza's recent trading history and BIL's conservative assumptions on taxation and capital allowances. The Cashflow Document was attached at appendix 12.

viii) It referred to the S&P 2009 letter. It said that S&P had "reviewed the project and cash flow projections on behalf of BIL in December 2009".

ix) It then described the additional development opportunity on the Thames Water Land. It said that BIL had successfully obtained permission for the development of two significant properties over the past 35 years on green belt sites and was currently working on the Retail Opportunity. The Retail Site was said to be capable of providing the only direct access from the roundabout with the M25. It said that the subject site (i.e. the Retail Site and part of the Thames Water Land) extended to approx. 10 acres and that BIL believed that there was an opportunity to develop a high quality retail village on the land. It referred to the desktop analysis undertaken by BIL in conjunction with S&P and S&P's letter of 8 January 2010 (i.e. the Retail Appraisal). It said that the proposals were highly confidential and were subject to the acquisition of the land and obtaining planning permission. It said that the land was currently zoned as Green Belt.

x) It concluded by saying that BIL was seeking a long term 50:50 joint venture investment partner to participate in the developments. BIL proposed "to sell a 50% share in the Company(s) that own(s) the [Hotel Site and the Retail Site] on the basis of a total land cost of £21 million (£18 million for the [Hotel Site] and £3 million for [the Retail Site])".

221. This letter shows that the defendants were seeking to attract the interest of the LIA by emphasising the potential investment returns from the developments. The letter enclosed the Cash Flow Document for the hotel project and asserted that the underlying assumptions were reasonable, indeed conservative. It attached the S&P 2009 letter and explained that it constituted a review of the cashflows from the development. The 12 year cashflow assumed a site cost of £18m for the land and that was reflected in the proposal that the parties should proceed on a 50:50 joint venture with a total site cost of £21m. Though the letter referred to the S&P 2007 report it did not otherwise say anything about the value of the land. It did however divide the £21m total land cost into £18m for the Hotel Site and £3m for the Retail Site. As will be seen this division was reflected in the later discussions.

Early contacts with Savills

222. On 11 February 2010 Mr Lock of Savills met Mr Layas and Mr Al-Agori.

223. Later that day Mr Merry emailed Mr Lock of Savills, noting that he understood that Mr Lock had met with Mr Layas and Mr Al-Agori earlier that day in respect of the hotel project, and offering to provide a further copy of the letter summarising the project and the supporting documents (i.e. the presentation pack provided on 8 February 2010). Mr Merry was unable to recall how he came to know about Savills' meeting with Mr Layas and Mr Al-Agori.

224. The same day Mr Lock emailed Mr Furze (then an associate in Hotel Valuations at Savills). He explained that he had met Mr Al-Agori, and that Mr Al-Agori was a contact of Mr Whitmey (a director in Savills' Development team), who had made the introduction. He said that Mr Al-Agori had introduced the Maple Cross site to the LIA. He said that there was a wider remit between Mr Whitmey and Mr Al-Agori for more

commercial work with the LIA and that Mr Whitmey was keen to ensure "we work through Mahmoud [sc. Mr Al-Agori]". He also stated that,

> "A full pack of info will be sent to us. The LIA deal is a 50/50 joint venture with the site owner Roger King. The land is being valued for the joint venture at £17m and LIA will inject equity to 50%". They tell me that they have lined dev funding up to 100% on construction which I find hard to believe. Construction costs of £28m. …
>
> "[S&P] have valued this before for Roger King at very high levels. They continue to support the project and the deal structure.
>
> "… Site value therefore £82,000 per bed which seems very high to me and always did.
>
> "End value is being projected at £58m, £28,000 per room. At this level one can see how it works back to £17m for the land BUT who would pay it?
>
> "Without upsetting Tim [Whitmey]'s relationship with Mahmoud and the longer term prospect of work with the LIA you [Mr Furze] may need to disabuse them of value early on.
>
> "At this stage I have said we will make a fee proposal and await the information. If we are a long way off value without doing too much work we may as well tell them in my view as to get to the end and find we have a struggle getting the fee because they don't like what we said no [sic] value would be a complete waste of time.
>
> The fee proposal is to go to Layas, copy to Mahmoud."

225. Mr Lock could not recall who had given him the indication of the value that was being sought.

226. Later on 11 February 2010 Mr Lock emailed Mr Al-Agori, copying in Mr Furze, Mr Whitmey and Mr Philip Johnston, referring to the earlier meeting with Mr Layas and thanking him for the introduction to the LIA. Mr Lock confirmed that he estimated a three week period to complete the valuation of the Hotel Site, and that, if their initial assessment indicated that Savills was supportive of the deal price for the Hotel Site, they would discuss a draft report at that stage.

227. On 15 February 2010 Mr Furze provided to Mr Layas a fee quote and scope of work for "investment advisory services" relating to the hotel project. In this letter, Mr Furze said that:

    i) He understood that the LIA had been approached for a "joint venture investment in the hotel development".

    ii) Savills were required to establish valuations on the bases of (i) Market Value of the Hotel Site with planning consent for hotel use; (ii) Gross Development Value of the hotel with a management contract with IHG in place (i.e. the turnkey hotel); and (iii) Market Value of the completed hotel on the assumption that the hotel has reached a mature level of trade; and

iii) In addition, Savills were required to explore "the specific investment fundamentals of the development".

iv) Mr Furze quoted a fee of £20,000.

228. Savills were not in fact instructed at that stage.

229. As just explained, Mr Merry knew that Savills had been contacted by the LIA. The claimants submitted that the court should find that Mr Merry and the other defendants knew or believed that the LIA were intending to instruct Savills to carry out a formal valuation of the Hotel Site: they say that Savills were well known property valuers and the natural inference (which the defendants would have drawn) was that they would be conducting a market valuation of the Hotel Site. I do not accept this submission. Property consultants provide a range of services. These include formal valuations, but also include investment or development appraisals. That can be seen from the role of S&P in providing the S&P 2009 letter. As explained above, I have accepted the evidence of Mr Leppard that he explained to Mr Merry in November or December 2009 that many clients were using development appraisals rather than formal valuations to make investment decisions and that Mr Merry understood this to be the case from about that time. I also accept the evidence of Hertford King that he believed that formal valuations were mainly used by banks and other secured lenders and not by property investors. Moreover the 11 February fee quote shows that at that stage the LIA was seeking investment advice and an exploration of the investment fundamentals and not just a market valuation.

230. I find that the defendants knew that the LIA were seeking advice from Savills about the proposed joint venture but that they did not know that the LIA was proposing to instruct them to perform a formal Red Book valuation.

Further events in February/March 2010

231. On 12 February 2010 Roger King sent the text of a draft letter to Mr Al-Agori by email, in which he asked Mr Al-Agori to arrange for Mr Layas to send an email addressed to Roger King. The letter then set out the text of the letter which Roger King intended Mr Layas to send to him, including for the LIA to confirm its interest in acquiring a 50% shareholding "in the ownership of your two S.P.V. companies which own the freeholds of the [Hotel Site and the Retail Site] inclusively for £10.5m, with an overall value of the two sites at £21.0m" and a statement that the price was understood to be non-negotiable.

232. Roger King concluded the letter with a tailpiece to Mr Al-Agori by saying that "we need some indication in writing from [Mr Layas] that the [LIA] is proceeding (as of course we both know, but only verbally), as we now have two other major investors (one a super rich individual and the other a major Fund) both of whom are interested in acquiring our sites for development."

233. The claimants submitted that this shows that Roger King believed that Mr Al-Agori had sufficient influence over Mr Layas to be able to get him to sign the letter. They also say that the tailpiece to the draft shows that Roger King was prepared to make false statements to try to get his way.

234. I find that Roger King believed Mr Al-Agori to have a close relationship with Mr Layas and that he might be able to persuade Mr Layas to provide a letter of intention to proceed.

On the other hand the tailpiece to the draft also shows that Roger King thought that he needed to give reasons to encourage Mr Layas to sign the letter and that Mr Layas therefore had his own mind and had not yet committed to proceed.

235. I also find that this comment again shows Roger King was willing to say things which he knew to be seriously overstated to the point of being false. There is no evidence of other investors showing any immediate interest in the two sites.

236. No such letter was in fact sent by Mr Layas.

237. The negotiations between the parties did not progress much over the following weeks. Roger King sent an email to Mr Leppard of S&P on 18 March 2010 noting "[the LIA] are proceeding slowly but we have been assured that they will appoint Savills to produce a valuation reference Maple Cross soon."

238. The claimants submitted that this showed that the defendants knew that Savills were going to carry out a market valuation. I do not think the evidence establishes this. As already explained, I find that the defendants were expecting Savills to give some kind of advice to the LIA concerning the proposed investment, but that they did not know whether that would be a formal valuation or a development appraisal. As with other references in the documents I find that Mr King's use of the word "valuation" in this email was probably informal shorthand for property advice (which could have been anything from a formal valuation to a development appraisal).

239. On 30 March 2010 Mr Merry wrote to Mr Lock of Savills asking whether there had been any news from the LIA, and confirmed that he understood that the LIA still intended to instruct Savills, inviting Mr Lock to send them "another polite chaser". I find that this shows that the defendants were keen to proceed with the deal with the LIA, which they saw as an attractive one.

Indicative development loan terms

240. By an email dated 23 March 2010 to Roger King and Hertford King, Mr Rorrison provided "indicative terms" for an "initial development loan". The proposed loan was stated to be "for your development at Maple Cross" and the sum offered was "circa £25m. Calculated along the lines of 60% of the current land value and plus 50% of total costs of the development".

241. I accept Mr Rorrison's evidence that this proposal was very indicative at this stage, and was a rough idea as to how the bank would calculate their lending at the time, which could either be approved or not approved by the bank's credit area. Mr Rorrison said in evidence that, had the deal gone ahead, the bank would have asked for a number of new formal valuations and feasibility studies, as the only valuation the bank had was the S&P 2007 Report which was out of date.

242. On 26 March 2010 Mr Pradhan (the Group Finance Director of IGL) responded to Mr Rorrison's email thanking him for "the indicative terms for the loan for the development of the Crowne Plaza at Maple Cross". Mr Pradhan asked whether Lloyds would consider revising the indicative terms so that the facility would be for 60% of the land value and development costs, rather than 60% of land value and 50% of development costs.

243. On 7 April 2010 Mr Rorrison agreed to revise the indicative terms as requested by Mr Pradhan.

244. In mid-2010 Mr Eakin was also working on the funding of the construction costs for the hotel. On 12 May 2010 Mr Eakin emailed Mr Pradhan and Mr Merry, suggesting that they meet "to discuss the possibility of either panel valuers or firms that would undertake a feasibility report", and noting that "whoever you go to for financing is almost certainly going to require a fresh valuation and probably some kind of feasibility [study]". A feasibility study would be a review of the projected revenues and costs of the developed hotel.

245. Mr Merry responded to Mr Eakin's email, confirming that he had approached TRI Consulting and PKF Hospitality (**PKF**) to provide fee proposals for a feasibility study of the hotel project. In an email on 19 May 2010 to Mr Pradhan and Mr Merry, Mr Eakin noted that they were "proceeding to talk and obtain draft feasibility report from PKF and also a specialist hotel valuation which will probably be from Colliers". He concluded by saying that "[t]he first two major hurdles to overcome are to make sure we obtain good, thorough, positive and acceptable reports from both PKF and Colliers". Mr Eakin's evidence (which I accept) was that the prospective lending bank would choose the panel valuer, and would not simply accept any reports obtained by a prospective borrower.

246. Mr Eakin confirmed that PKF were instructed at a meeting on 27 May 2010, and Mr Merry received PKF's draft report on 13 June 2010. Mr Eakin commented on the draft report by email the following day, saying,

> "The main body of the report reads well. This is good news. We need to work on the figures where they are being too cautious on Occupancy and ARR. This then feeds down to the Profit lines…You advised them when we met that you would probably want to sit down and go through the figures. I think we should do that as we should not accept these".

247. ARR means average room rate and is a standard measure used in the valuation of hotels.

248. Mr Eakin's evidence (which I accept) was that it was not unusual in his experience for the first draft of a feasibility study to be "slightly below where I would like it to be".

249. Mr Eakin and Mr Merry met representatives of PKF on 22 June 2010, following which, Ms Emma Dyson of PKF sent to Mr Merry "revised financials" for the Hotel Project on 24 June 2010, noting that "The key changes are a slightly higher average rate, increased food and beverage revenue and a reduced food and beverage cost". Mr Eakin emailed Mr Merry on 27 June 2010, noting that whilst the IHG figures were "now not too far out with the latest PFK figures [they are] still far enough out to give me concern".

250. Mr Eakin's evidence (which I accept) was that, while PKF had revised the figures for the average daily rate for years three and four of operation, he thought they were being too cautious for years one and two of operation. In the event, PKF provided further "revised financials" for the Hotel Project on 1 July 2010 "reflecting the higher occupancy in years 1 and 2". The 1 July 2010 report was supportive of IHG's projected figures.

April 2010

251. Returning to the history of the negotiations with the LIA, not much progress had been made by early April 2010. On 13 April 2010 Mr Merry emailed Mr Layas giving an update regarding the hotel project, including progress with Lloyds Bank (which had by then taken over BoS) for financing the construction costs of the development, the engagement of Taylor Wessing LLP to negotiate the proposed management agreement with IHG on behalf of the IGL Defendants, and the status of the tender process for construction contracts. Mr Merry concluded, "We hope that you are still interested in becoming our partner in the project. Please can you let me have an update as to where you are and if it is still your intention to instruct Savills?"

May 2010: agreement in principle

252. On 5 May 2010, following a telephone conversation, Mr Layas emailed Mr Merry asking for a "short executive summary" in relation to the hotel project.

253. Mr Merry responding the following day, 6 May 2010, attaching the requested summary which he described as a "1 page bullet point summary followed by a more detailed explanation of the critical features of the Joint Venture". The latter was substantially the same as the covering letter for the 8 February 2010 presentation pack.

254. Mr Layas forwarded the summary to Mr Rais on the same day, seeking the LIA's authority to proceed in forming the special purpose vehicle through which the LIA would participate in the joint venture on the basis that a 50% interest would be acquired for £10 million. It is unclear whether the £10m was an error. The IG had been seeking £10.5m and that was the figure agreed on 12 May 2010.

255. The LIA gave Mr Layas the authority he had sought and on 12 May 2010 Mr Layas wrote to Roger King stating "I am pleased to confirm that the Libyan Investment Authority are proceeding with the purchase of a fifty percent shareholding in your SPV Guernsey company MapleCross Properties Limited (which owns the freehold of the [Hotel Site] and the [Retail Site]) for £10.5m as advised by Strutt and Parker." The letter also stated that the LIA was "pleased to confirm that we expect this transaction to complete next month". The letter was marked "subject to contract".

256. It was common ground before me that this letter was written with the authority of the LIA.

257. Mr Rais (the Chief Executive of the LIA) said in oral evidence for the first time that he did not authorise the letter to be written and that he did not know about it at the time. I reject that evidence. Not only was it common ground that such authority was given, but Mr Layas had expressly sought authority from Mr Rais shortly beforehand. I reached the conclusion that Mr Rais was trying in his evidence to distance himself from anything to do with the transaction and put the blame for it onto others.

258. One consequence of Mr Rais' unhelpful stance as a witness was that there was no evidence about the reasoning process or information which had led the LIA to indicate its (subject to contract) agreement in principle to the £10.5m price for 50% of the joint venture. This was an unhelpful gap in the evidence.

259. At any rate, I am satisfied that Mr Rais read at least the executive summary document provided to him by Mr Layas on 6 May 2010.

260. On or around the same date, Mr Layas instructed Clifford Chance LLP to represent the LIA in connection with the joint venture transaction. The LIA also had the assistance of Mr Kamal Rhazali, a solicitor seconded to the LIA from Allen & Overy.

261. I find again (contrary to Mr Rais' oral evidence) that he authorised the instruction of Clifford Chance.

262. On 17 May 2010 a meeting took place regarding the joint venture transaction. Mr Layas attended for the LIA and LIA UK, accompanied by Mr Payne and Mr Lewis of Clifford Chance; on the IG side the meeting was attended by Hertford King, Mr Pradhan and Mr Merry.

263. At that meeting the parties agreed that the transaction should be completed if possible by 11 June 2010, with a 'backstop' date of 21 June 2010 in order to ensure that the deal closed before the UK budget was delivered on 22 June 2010.

264. On 18 May 2010 Hertford King emailed a copy of Mr Layas's 12 May 2010 letter to Mr Light of Stephenson Harwood, who acted for BPIL and IGL in the transaction. Mr Merry was copied into that email.

265. By email dated 20 May 2010 Mr Payne of Clifford Chance circulated, on the LIA and LIA UK's behalf, a detailed tasks list (**the Actions List**) in respect of the transaction and advised that for the transaction to be closed before the UK budget (to take place on 22 June 2010), it would have to operate to a tight timetable. The Action List included references to: "Valuation to support full value of transfer [of Retail Site from BPIL to [MRL]]" and "Valuation to support full value of transfer [of Hotel Site from [MPL] to [MHL]]", both of which were listed as "to be circulated by [IG]".

266. Hertford King's manuscript notes show that he met Mr Layas separately on 20 May 2010, to discuss and agree a briefing note for the lawyers.

267. By email dated 21 May 2010 Hertford King sent to Mr Layas a briefing note following their meeting the previous day, along with a draft shareholders' agreement and summary of the hotel development costs. Hertford King said he would be meeting with Stephenson Harwood on Monday 24 June 2010 to review the documents.

268. By email dated 21 May 2010 Hertford King circulated to Mr Payne, Mr Rais, Mr Layas, Mr Shariha (the head of the LIA's legal department and director of LIA UK), Mr Light and Mr Merry parts of the briefing note, as previously discussed with Mr Layas (**the Briefing Note**). This set out the proposed structure of the joint venture and stated, inter alia, that:

    i) "…the parties have agreed to form a 50/50 real estate Joint Venture (joint venture) to initially develop two properties that are currently owned by IG. The LIA will be making an initial investment of £10,500,000 in new shares in the company in return for a 50% shareholding and 50% of all future profits";

    ii) "Maplecross Properties Limited (MPL) will issue new shares so that the LIA will own 50% of the share capital for the payment of £10,500,000. These shares will be purchased by the LIA or a SPV nominated by the LIA"; and

iii) "MPL will immediately transfer this money to Beeson Property Investments Limited (BPIL) who will use it to repay any existing debts against the development sites on the same day that BPIL receives the £10,500,000".

269. By email dated 24 May 2010 Mr Light confirmed to Mr Payne his understanding, following a meeting with Hertford King earlier that day, "…that your clients have carried out their own appraisals of the projects and accordingly no further valuations will be provided by my clients". Mr Light's email attached a revised version of the Action List, in which the requirements for the valuations were marked "N/A" and "Not applicable".

270. Hertford King said in evidence that he recalled that he asked the LIA and Clifford Chance to confirm at a meeting in mid-May 2010 that the commercial terms of the joint venture were agreed and that the LIA did not require any further third-party valuations or due diligence before instructing lawyers and other advisors to work on the transaction. Hertford King considered it likely that he would have asked for this confirmation at the first meeting (i.e. that on 17 May 2010) and that he was given that confirmation by someone from the LIA, and assumed that it was Mr Layas. Hertford King said that he then understood that the LIA had already carried out their own appraisals and that no further valuations would be provided by the IG, which he shared with Mr Light at the meeting earlier that day.

271. I accept this evidence in part. I have concluded that Hertford King believed in mid-May 2010 that the commercial terms of the joint venture were agreed and had no expectation that there would be further valuations or appraisals before the lawyers got down to work. I am also satisfied that the defendants believed that the LIA's representatives including Mr Layas were keen to execute the deal and that the defendants did not think that there would be any further negotiation of the key terms. However I do not accept that the LIA and Clifford Chance said at a meeting that they would not require any further valuations or due diligence. The Actions List referred to the need for "valuations" and that was produced after 17 May 2010. I conclude that Hertford King's memory has been influenced by the terms of Mr Light's email of 24 June 2010 which said that the defendants would not be providing any further evidence of value.

272. Hertford King also gave evidence (which I accept) that around this time he arranged for a formal valuation of the Retail Site for stamp duty purposes, which was carried out by the Frost Partnership.

273. Mr Merry's evidence (which I accept) was that an equivalent valuation was not required for the Hotel Site because it was owned by an offshore entity which would not have to pay stamp duty.

274. On 27 May 2010 Mr Payne emailed Mr Shariha, Mr Rais and Mr Layas. He referred to Mr Light's email and asked what appraisal/valuation the LIA had carried out in respect of the two sites and asked to see a copy.

275. Mr Merry said in evidence that the LIA's requirement for further advice from surveyors arose from advice received from Clifford Chance that the LIA would not be able to rely on the contents of the S&P 2009 letter and the opinions contained in it because it was not addressed to the LIA. Mr Merry suggested that this was the source of his understanding that the LIA required something like the S&P 2009 letter. The claimants say that, having disclosed the entirety of Clifford Chance's file, there is not a trace of Clifford Chance

having provided such advice to the LIA, and that Clifford Chance only received the S&P 2009 letter on 24 June 2010. I shall return to this below to make findings on this point.

Early drafts of the LIA board memorandum

276. On 3 June 2010 Mr Layas forwarded to Mr Shariha a copy of his email to Mr Rais attaching the executive summary prepared by Mr Merry (see [253] above) and asked him "to prepare a memo to LIA's next Board meeting". I find that by this date Mr Layas was expecting the transaction to proceed and that he was already thinking about board approval.

277. There were a number of emails from Mr Layas to Mr Rais during this period, updating Mr Rais about the progress of the deal. I reject the evidence of Mr Rais that he was unaware of what was going on. This evidence was another unrealistic attempt to dodge responsibility.

278. On 6 June 2010 Mr Shariha forwarded Mr Layas' email to Mr Alhaj, a junior member of the LIA's in-house legal team, and asked him to draft a memorandum in Arabic to be submitted to the Board of Directors.

279. That afternoon Mr Alhaj sent an email to Ms Ghagha, a junior assistant in the LIA's legal department. It attached a draft of a memorandum addressed to the board of directors of the LIA. It was a one-page document. It referred to the LIA's "contribution to the partnership with the International Group Company in establishing the Crowne Plaza Hotel in London". The memorandum went on to provide brief information about the hotel project, including details about the Crowne Plaza and IHG brands, the location and specifications of the proposed hotel, and the proposed structure of the joint venture. It said that the hotel was expected to provide an investment return of at least 10% per annum. It said nothing about the market value of the site.

280. The following morning, 7 June 2010, Mr Shariha forwarded to Mr Alhaj a number of emails that had been sent to him by Hertford King the previous evening. These attached the following documents: (a) Schedule 1 to the Technical Services Agreement; (b) the draft Holidex Access and Systems Agreement; (c) the draft Hotel Management Agreement with IHG; (d) the signed agreement with John Sisk & Son Limited; (e) letter of intent to John Sisk dated 12 May 2010; (f) the Briefing Note; (g) Lloyds outline terms for a prospective development facility for the development of the Hotel Project; and (h) an email from Mr Rorrison dated 7 April 2010 regarding the terms of Lloyds' financing offer.

281. Mr Rhazali forwarded these emails to Ms Ghagha that morning and asked her to print the emails and attached documents.

282. Also on 7 June 2010 Ms Ghagha emailed Mr Alhaj a further version of the draft board memorandum in both Arabic and English. The English translation contained only minor and non-substantive amendments to the version that had been circulated the previous day. Ms Ghagha had reviewed the grammar and not the content.

The instruction of Savills

283. On 7 June 2010 Mr Rhazali emailed Mr Shariha, setting out his "general comments" on the proposed transaction, including that "we will need to carry out a proper due diligence on a number of areas: real estate…has a valuation been carried out by a surveyor?"

284. Later the same day, Mr Rhazali emailed Clifford Chance making some of the same points but in expanded terms. Under the heading "general comments on the proposed transaction" he said "we will need to carry out proper due diligence on a number of areas: real estate … Mr. Rajab has provided you with a valuation report, this report may be a bit old and therefore it is most likely that the figures set out in the report do not reflect the current market value of the property. Rajab will liaise with a tier 1 surveyor (e.g. Cushman or Knight Franck [sic]) and instruct him to carry out a valuation of the property."

285. There is no direct evidence as to the internal discussions that followed within the LIA.

286. I find Mr Rhazali or Mr Shariha spoke to Mr Layas about instructing a firm of surveyors.

287. On 11 June 2010 Mr Layas instructed Mr Furze of Savills to provide a "market value only" of the Hotel Site and Retail Site. Mr Layas then arranged for that letter of instruction to be forwarded to Hertford King. There is no documentary record of Hertford King forwarding this email on to anyone else or otherwise reacting to it.

288. Hertford King's evidence (which I accept) is that his role was the project management of the transaction (i.e., the exercise that was being carried out by Clifford Chance and Stephenson Harwood in completing the tasks on the Action List and negotiating and drafting the relevant legal agreements). His evidence in his witness statement was that he has no recollection of receiving the 11 June email from Mr Layas or whether he did anything about it; however, given how busy he was at the time with the legal transaction, he suspects that he took the view that it was not something that required any action from him. He also gave evidence (which I accept) that he believed by this stage that the deal was going to proceed and that he was already discussing business plans for the joint venture with the LIA's representatives. I find that Hertford King did not give much if any thought to this email. I find that, by this date, he believed that the deal with the LIA was going to proceed and that, if he was aware of the instructions to Savills, he thought little of them as he regarded them as part of the LIA's internal authorisation process, which he thought was a matter for Mr Layas. I accept his evidence that he did not discuss Savills' instructions with Mr Merry or Roger King.

289. On 14 June 2010 Mr Furze sent a fee quote by email to Mr Layas as the executive director of LIA UK. The fee quote for a "Market Value of the Hotel Site" proposed a valuation fee of £20,000 plus disbursements and VAT for the valuation of the Hotel Site alone, noting that "we understand that [the Retail Site] is earmarked to provide access to a larger commercial development in due course. On this basis it is likely that the value will be linked to the development potential of the commercial development, and should be valued accordingly."

290. Mr Lock's evidence (which I accept) was that Savills understood that Red Book valuations were required, and it was Mr Furze's intention to produce Red Book valuations of the Hotel Site and the Retail Site. As such, specific features or advantages of any particular purchaser (or of the proposed joint venture) would not have necessarily

been reflected in that valuation unless they were included as a special assumption, which did not form part of Savills' instructions.

291. Mr Layas responded to Mr Furze by email the same day, referring to an earlier telephone conversation and advising that the "Valuation report need [sic] to be submitted to us by no later than 21 June 2010".

292. Later that afternoon, Mr Furze sent an updated fee quote to Mr Layas by email, which included the valuation of the Retail Site, to be carried out by Mr Bamber (also of Savills). The updated fee quote stated that Savills' "Valuation Fee Quote" for providing "Market Values" of the Hotel Site and the Retail Site would be £20,000 and £5,000 respectively, and that the "Valuations" would be provided in Executive Summary form by 23 June 2010 at the latest, with completed reports to follow in due course. Mr Furze's covering email referred to a meeting with Mr Merry the following day, and that Savills would "endeavour to submit Market Values of the properties in Executive Summary format ahead of 23rd June."

293. Also on the afternoon of 14 June 2010 Mr Redman of Clifford Chance emailed Mr Rhazali, sending "the valuation prepared by the Frost Partnership on behalf of Beeson relating to 1 Denham Way dated 1 June 2010." Mr Redman also commented that "[t]his valuation values the site at £250k… [BPIL's] lawyers believe that the reference to the site having a value of £3 million may be an indicative or estimated value of the assembled site with the benefit of planning…As discussed, we understand you are conducting your own valuations of [the Hotel Site and the Retail Site]." Mr Redman emailed Stephenson Harwood the following day, asking for them to arrange for the company details of "Retail Newco," once known, to be inserted into the report and recirculated.

294. On 15 June 2010 Mr Layas responded by emailed letter to Mr Furze's fee quote, confirming that Savills' fee proposal was accepted and stating that the "Valuation Report" needed to be received by 23 June 2010.

295. Mr Merry gave evidence (which I accept) that he was asked by Mr Layas (either directly or via Roger King) to contact Savills and run through the project with them.

296. Mr Furze and Mr Bamber met Mr Merry on the morning of 15 June 2010. Mr Merry provided a summary of the project. Mr Merry followed up by email to Mr Furze and Mr Bamber later that day confirming that he would send a copy of the proposed draft management agreement with IHG. He did that later that day, noting that "we are still finalising a few minor non-commercial points and that the Agreement should be in final form within the next week." I find that Mr Merry did not discuss the proposed development funding at these meetings.

297. The claimants submitted that Mr Merry knew that Savills were undertaking a formal Red Book valuation of the two sites. They rely on the fact that Savills were valuers and that at the meetings on 15/16 June 2010 Savills did not suggest that they were doing anything other than providing a market valuation. The claimants also submitted that Hertford King knew of the instructions to Savills and is likely to have passed that on to Mr Merry and others. The claimants also submitted that Savills would have needed information about the prospective development financing in order to produce a review of the investment opportunity.

298. Mr Merry gave evidence that his understanding at the time was that the LIA wanted a similar letter to the S&P 2009 letter and that Savills were undertaking a review of the proposed development on their behalf. He says he did not know at this stage that Savills had been instructed to undertake a formal land valuation. Mr Merry initially said in evidence that he was pretty sure that he discussed with Mr Furze that Savills would be producing a letter setting out a review of the opportunity, but later on said that he did not mention to Savills that they would be undertaking a review of the investment. I shall return to make specific findings about this evidence.

299. On 16 June 2010 Mr Rhazali forwarded Mr Redman's email attaching the Frost Partnership valuation report to Mr Layas, asking Mr Layas if he had received the valuation report "from the surveyor you have instructed last week". Mr Layas responded to say that Savills had only been instructed on the previous day to provide "market value" of the Hotel Site and the Retail Site. He said that an executive summary would be sent on 23 June 2010 and that the complete valuation would follow in due course.

300. The same morning, 16 June 2010, Mr Merry sent Mr Bamber a copy of the Retail Appraisal, describing it as a "simplistic and initial appraisal in respect of the retail village opportunity".

301. That afternoon, Mr Furze emailed Mr Merry asking for the raw building costs as per the John Sisk contract.

302. On 17 June 2010 Mr Merry confirmed to Mr Furze by email that he would provide the John Sisk building costs that morning. He subsequently emailed Mr Yearwood of the IG, noting that "Savills are currently undertaking a review of the hotel development on behalf of the [LIA]" and asked him to send relevant documents summarising the building costs that day. Mr Yearwood responded early that afternoon, providing various documents showing the building costs. Mr Merry forwarded these on to Mr Furze and Mr Lock at 13:11 BST that afternoon.

303. The defendants submitted that Mr Merry did not know of the instructions to Savills and did not realise until 17 June 2010 that they had been asked to carry out a Red Book valuation. The defendants rely on Mr Merry's oral evidence and on the fact that he referred in his email to Mr Yearwood to Savills undertaking a "review of the hotel development". While it was put to Mr Merry in cross-examination that Savills could not have produced the equivalent of the S&P 2009 letter without knowing the proposed financing terms, Mr Merry noted that S&P did not have the financing terms when they produced the S&P 2009 letter.

304. I shall return to make detailed findings on this aspect of the dispute below.

Disinstruction of Savills

305. Shortly after midday on 17 June 2010 Mr Layas was informed by his secretary that he had missed a phone call from Mr Furze.

306. Mr Layas returned the call, though there is no record of precisely when he did so. Mr Furze's email of 15:50 (see below) refers to the call being that morning, but that cannot be read literally as it must have been after midday. The email is consistent with the conversation having taken place at some stage before lunchtime (i.e. before about 13:00).

307. Mr Furze had very little independent recollection of the call.

308. He said however that it was during the call that Mr Layas had ended Savills' instructions, and that is consistent with the documents.

309. I find that during the call Mr Furze alerted Mr Layas to the major disparity between Savills' valuation and the agreed purchase price for the Hotel Site; Mr Layas then aborted Savills' instruction on the basis that Savills' formal valuation would not meet his expectations; and Mr Furze agreed with Mr Layas that Savills could claim their time costs or 'an abort fee'.

310. Mr Layas' Blackberry phone records that he spoke briefly (c. 2.5 minutes) with Mr Al-Agori at 12:28. There is no direct evidence showing whether that was before or after Mr Layas spoke to Mr Furze. I shall return to this question below.

311. There is no record of calls made to or from the LIA's UK landline so it is not possible to tell whether Mr Layas had other calls. For instance, Mr Furze's conversation with Mr Layas does not appear on the Blackberry phone records.

312. At 13:11 Mr Merry sent his email to Mr Lock and Mr Furze enclosing the material about the construction costs. The claimants did not suggest that at the time he sent this email Mr Merry knew that Mr Layas had ended Savills's instructions.

313. I find that Mr Merry thought Savills were still being instructed by the LIA as at 13:11 on 17 June 2010 when he sent to Mr Furze the breakdown of the building costs agreed with John Sisk. (The contrary was not suggested to Mr Merry in cross-examination.)

314. At 14:05 Mr Layas sent an email to Mr Furze (copying Mr Merry), referring to their earlier telephone conversation, and stating that Savills' instruction was being withdrawn due to "timing constrains [sic]", and requesting the return of materials. Mr Merry gave evidence that this was the first he knew of the dis-instruction of Savills, and that he took Mr Layas' email at face value and believed that Savills had been dis-instructed because they could not complete their report in the time required. Mr Merry said in evidence that Mr Layas had copied him in to the email so that he would know to contact Mr Furze to recover the presentation pack that he had left with Savills following the meeting on 15 June 2010, and denied that he had been involved in any discussions with Mr Layas between 12:28 and the time of this email. I shall return to make findings about this below.

315. Mr Merry forwarded Mr Layas' email to Hertford King and Roger King at 14:19, saying "Email from Rajab to Savills……..fyi." It was put to Mr Merry that he sent on Mr Layas' email in this manner without comment because there had already been a discussion involving Roger King and Mr Layas as to what Mr Layas was going to say to Savills. Mr Merry denied any involvement or awareness of such a conversation. I shall again return to this below.

316. Mr Lock did not have much recollection of the relevant events apart from the documents. However, I accept his evidence that he did not recall any issues from Savills' perspective with the timeline for provision of the Red Book valuations, and that his understanding was that Mr Layas had withdrawn Savills' instruction because Savills could not support the anticipated purchase price, and not any other reason. Mr Furze's evidence (which I also accept) was that there was a degree of time pressure and that Savills were working

quickly, but said that he was confused by Mr Layas' reference to timing constraints, which had not been part of the earlier conversation.

317. Mr Layas' Blackberry records show that he had attempted to speak to Mr Merry at 14:14, and eventually did manage to speak with him at 14:24.

318. Mr Merry's evidence at trial was that he does not remember the contents of this call specifically but believes that Mr Layas asked him to investigate which other surveyors could provide the required advice to the LIA, meaning a letter similar to the S&P 2009 letter. I shall return to make findings about this below.

319. At 14:24 Mr Merry emailed Mr Furze, saying, "Sorry things haven't worked out" and requesting the return of the presentation pack.

320. Mr Lock emailed his colleague, Mr Whitmey, at 14:53 that afternoon, and said, inter alia, that:

    i) "it became obvious very quickly that we were no where near what the LIA had been told by the site owner the site was worth";

    ii) [BPIL] obtained "a site value a couple of years ago by [S&P] at £17-20m and passed this to the LIA";

    iii) [BPIL] did not provide to the LIA "a second val around Christmas that was much lower";

    iv) Savills had told the LIA that "we won't be anywhere near the figure – we are at about £4m…At a push we may get to 5-6m but not more";

    v) "Our commercial valuers say the [Retail Project] is a huge longshot and the [Retail Site] is worth perhaps 0.5m";

    vi) "The LIA has withdrawn its instruction and I am told by the agent for the land owner that the LIA is very disappointed with us and will look for other advice"; and

    vii) "I'm not sure I should know of the other valuation but if it can come to light the LIA may realise what is going on here."

321. As to this email:

    i) It is clear that Mr Lock spoke to Mr Merry at some point before it was sent.

    ii) Neither Mr Merry nor Mr Lock were able to recall the contents of that conversation. However, Mr Merry accepted that he was likely to have realised during this call that Savills had been instructed to carry out a land valuation. Mr Merry said in evidence that he thought there had been a "mix-up" on the LIA's part in instructing Savills to carry out a land valuation because Mr Merry did not think that was required by the LIA. Mr Merry also disputed in evidence that he said, "*the LIA is very disappointed with you*" and said this was an error of recollection on the part of Mr Lock because this was not his style of communication. I shall return to this evidence below.

iii) I find Mr Lock told Mr Merry that they had reached a preliminary valuation of £4m to £6m for the Hotel Site and that the other site (i.e. the Retail Site) was a long shot.

iv) Mr Lock referred in the email to a valuation given by another firm around December 2009. He was unable to recall in evidence what the other valuation was. The only other candidate suggested by the claimants was a valuation given by Knight Frank, but it was common ground that they did not in fact provide a valuation.

322. At 15:50 Mr Furze replied to Mr Layas' email of 14:05 and said,

> "We understand your position and hope that our revelation on current Market Values this morning will provide you with sufficient time review matters [sic]".

323. Mr Furze also attached an invoice to cover Savills' time costs for the work undertaken (i.e. the abort fee) as he had agreed with Mr Layas during their earlier conversation. I accept Mr Furze's evidence that it is unlikely that he would have asked a client to pay an abort fee had Savills' instruction been terminated because of concerns about timing because that would have been Savills' own fault.

324. At 16:20 Mr Al-Agori, who had introduced Savills to the LIA in the first place, emailed Mr Lock, copying in Mr Layas, saying to Mr Lock that "the LIA are ready to do the valuation for the land can we speak in the morning".

325. At 16:42 Mr Lock responded to Mr Al-Agori saying, inter alia, that:

i) Savills "realised quite early on that we were not going to get anywhere near the land values the site owner has apparently discussed with the LIA";

ii) Savills had "reported verbally to the LIA and they have now terminated our instruction";

iii) the "agent for the land owner … did not sound at all surprised by our figure for the land";

iv) Mr Lock understood that "conversations" between the parties had relied upon the S&P 2007 report, and that it was "not only out of date, but was almost certainly over optimistic by a large margin at the time it was produced";

v) "Our advice on land values is sound and was provided in a very timely manner";

vi) "At the very best we may be able to substantiate something in the region of £5m - £6m but we remain too far from the £17m - £20m talked about to be able to bridge the gap";

vii) "We were also requested to provide a value for [the Retail Site] that I understand is key to the development of bank land…Again we were not able to get close to the deal figure as we understand it to be"; and

viii) "As soon as we realised we were a long way from the deal price we reported to LIA. Much better this than to complete the report and then deliver the news."

326. The following comments may be made at this stage:

    i) Mr Lock reported these points to Mr Al-Agori rather than to Mr Layas. I find that this is because of the original introduction of Mr Al-Agori to Mr Lock by Mr Whitmey and the understanding within Savills was that Mr Lock would report to the LIA through Mr Al-Agori.

    ii) The email refers to a conversation with the agent for the land owner. I find this was a reference to Mr Merry.

    iii) The email says that the land agent (i.e. Mr Merry) was not surprised by the land values. Mr Merry's evidence was that he has no recollection of a call with Mr Lock, and that, far from being unsurprised by Savills' figures, he strongly disagreed with Mr Lock's view on land value. Mr Merry thought Mr Lock might have mistaken his politeness for not sounding surprised. I shall return to this evidence below.

327. At 17:25 on 17 June 2010 Mr Al-Agori forwarded Mr Lock's email to Roger King.

328. It is common ground that at some point after the dismissal of Savills Mr Layas sought assistance from Mr Merry in finding an alternative surveyor. Mr Merry's evidence is that he spoke to Roger King about alternative valuers in the afternoon and evening of 17 June 2010. I shall return to this.

329. More generally, as already indicated, I shall return below to make further and more detailed findings about (i) the events of 17/18 June 2010 and (ii) the instructions given to KS over the following days. It is more helpful to do this in the light of an understanding of the full sequence of events rather than attempting to address it piecemeal.

18 June and the instruction of KS

330. On 18 June 2010 at 09:17 Mr Merry emailed Hertford King commenting that "A hotel land value of £4 million gives an project [sic] IRR of 33%.....with everything else remaining unchanged". Hertford King accepted that he was told at the time about Savills' view of the value of the Hotel Site but he has no recollection about it.

331. On 18 June 2010 Mr Merry contacted KS to discuss the possibility of KS providing advice to the LIA. Mr Merry's evidence initially was that he was asked to do so by Roger King, on his understanding that Mr Layas had specifically requested help finding another valuer from Roger King. His evidence at trial was that it was Mr Layas who asked him, Mr Merry, for this assistance. I shall assess this evidence in more detail below.

332. On the same day, 18 July 2010, Roger King continued to communicate with Savills about the possibility of them giving advice on revised instructions.

333. Roger King sent Mr Lock a copy of the S&P 2009 letter and spoke with him on the morning of 18 June 2010. Mr King also sent Mr Lock a copy of a letter from IHG at 11:55.

334. Roger King also sent an email to Mr Lock at 12:54 saying,

> "Hopefully with some wisdom and a suitable revised instruction (which Mahmoud can probably arrange) from the LIA (acceptable to you to match the S+P letter) we can recover the situation on a transparent basis".

335. The claimants relied on this email to show that the defendants knew that, contrary to Mr Layas' email to Savills, there were no issues of timing constraints for two reasons. First, Roger King would not have tried to continue to persuade Savills to take a different approach. Second, Savills were willing and able to continue with the work and did not say that they could not do it because of timing constraints. Both of these points were put to Mr Merry in cross-examination. Mr Merry's evidence was that the exercise which Roger King was asking Savills to carry out was a different type of exercise, which was potentially more straightforward. I shall return to this below when making further findings.

336. Mr King forwarded this email to Mr Eakin at 13:09 asking Mr Eakin to call him. Mr Eakin was not asked about this in evidence.

337. In an email at 15:49 on 18 June 2010 to Mr Furze, Mr Lock:

    i) reported to Mr Furze that Roger King had said the "LIA is more concerned about return on investment than site value" and that Roger King had sent him a copy of the S&P 2009 letter, asking Savills to provide similar advice to the LIA;

    ii) asked Mr Furze to "see what equity IRR we get to assuming 60% debt and assuming a) our site value and b) the quoted £18m [S&P] are still at and make a comparison";

    iii) said that "If we are close and are happy to provide such advice in letter form caveated that it is for information purposes without reliance etc then it may be worth having a chat with [Mr Layas]. It seems to me that they don't need us to work this out for them, they should be fully capable of running the numbers for themselves. What we don't want to do is slip up by using the £18m site value which could predicate the number through the bank door. Over to you"

338. Mr Lock sent an email to Roger King at 17:35, which said,

> "Thank you for passing on the Strutts letter.
>
> We have calculated the running yield on equity adopting IHG numbers and a 60% debt assumption with usual terms. We have worked the numbers on Strutts land value of £18m and also on our revised land value (having yesterday seen latest construction costs and re run the value using IHG projections) of £5.7m.
>
> Using Strutt's figures we calculate an annual running yield of just over 3% in year 1 to 9% in year 10 with an average of about 5% pa. We cannot therefore understand how they have calculated their numbers.
>
> Adopting our site value we are closer to the running yield suggested in the Strutt's letter.

> We have also taken the opportunity to have a look at the equity IRR over 10 years inputting Strutts land value and we reach a negative conclusion indicating that an investor cannot pay anything like the value they suggest.
>
> The conclusion is that we could indicate to the LIA what the annual return on equity investment is on a 60% debt assumption but we would still be using our land acquisition assumption not Strutts.
>
> I am not sure this takes us any further forward. I can only conclude that Strutts have a much higher exit value to more than compensate. If Strutts are prepared to let us see their calculations I will happily take another look."

339. The documents containing Savills' working calculations of these metrics were produced during the trial and Mr Lock and Mr Furze were cross-examined about them. Mr Lock's evidence was that it was Mr Furze who ran the IRR analysis which sat behind the conclusions on running yield and the IRR expressed in his email to Mr King. Mr Furze's evidence was that this kind of analysis was outside his area of expertise which focuses on market valuations, and he described it as a "joint effort". At any rate, it emerged that there were two errors in that spreadsheet that led to Savills' IRR calculation: the equity at exit assumed a fixed percentage of 40% of the exit value rather than deducting the debt payable at exit; and the debt was then deducted from the equity at exit, rather than from the exit value. These two errors mean that the IRR numbers provided in Mr Lock's email were materially wrong.

340. On the other hand Mr Furze's evidence (which I accept) was that this error would have no impact on the running yield calculations in the spreadsheet, the outcome of which was communicated in Mr Lock's email to Mr King.

341. Shortly before 9:00am on Monday 21 June 2010 Roger King emailed Mr Lock and said that they had "obtained assurance from another large and leading agency acceptable by the LIA that they will reach the same conclusion as Strutt and Parker i.e. a combined value of the two sites at twenty one million pounds". He went on to say "I am extremely interested in purchasing hotel development sites particularly in central London or prime sites such as ours in Rickmansworth, as well as completed and existing trophy hotels. Should you have any for sale on a similar basis to your valuation for the LIA we are certain buyers […]." I find that this was a sarcastic way of ending the communications with Savills about an alternative form of advice. I find it shows that Roger King did not agree with Savills' views about value or the likely returns from the development.

342. Mr Merry accepted in evidence that the IG had not obtained such assurance from another large and leading estate agency (i.e. KS), not least because Mr Merry had only met with KS on 18 June 2010, i.e. the previous working day. KS had given their assurance that they would undertake the review, but had not given their assurance that they would reach the same conclusion as S&P, and Mr Merry accepted that this was untrue.

343. I find this to be another example of Roger King exaggerating things to the point of outright falsehood, even when there was nothing for him to gain from doing so.

344. The claimants also rely on this email to show that Roger King believed that the advice being procured from KS (i.e. the other "large and leading agency" referred to in his email) amounted to a formal Red Book valuation of the land. I do not accept that he was referring

to a formal market value of the land. As explained earlier Roger King tended to talk about valuations as shorthand for advice from a surveyor or property expert. He knew that S&P had not formally valued the two sites at £21m. I find that he was using language loosely; Roger King tended to draft emails quickly and without the kind of accuracy or precision that might be expected of a lawyer or other professional.

345. Mr Lock responded to Roger King's email later that morning, and Roger King forwarded that email chain on to Mr Al-Agori, Hertford King, Chester King, Witney King, Mr Merry and Mr Pradhan.

346. Turning to the communications between Mr Merry and KS, on 18 June 2010 Mr Merry contacted Mr Peter Haigh of KS by phone. This followed an introduction from Mr Eakin to Mr Haigh, who was a partner in the hotels and leisure team at KS. Mr Merry did not previously know anyone in the hotels team at KS.

347. Mr Merry sent an email at 10:06 on 18 June 2010 to Mr Haigh, copied to Hertford King, Roger King and Mr Eakin:

    i) Mr Merry told KS that "we have agreed to form a long term investment partnership with the Libyan Investment Authority (LIA)";

    ii) KS was asked to assist the LIA by providing it with "…a similar letter to the one provided to us by S&P";

    iii) The email attached the S&P 2009 letter, IHG's projections and the Cash Flow Document;

    iv) Mr Merry said, "I hope that [KS] will be interested in working on behalf of the LIA".

348. Hertford King was copied in to Mr Merry's email. I accept his evidence that he was not materially involved in the instruction of KS and was busy on other aspects of the transaction, including the business plans for the business. I also find that at the time he anticipated that the transaction was going to proceed.

349. Mr Merry met KS on 18 June 2010 at 15:00 at KS' offices in Warwick Street, London. The KS representatives were Mr Haigh, Mr Gee and Mr Mokarram. I find that Mr Merry told KS that he and CSPL were advisers to the King family. According to a note prepared by KS, at that meeting:

    i) Mr Merry told KS that the estimated value of the proposed joint venture was £21 million and that the intention was to split all costs and revenue between the joint venture partners on a 50:50 basis;

    ii) Mr Merry asked KS to produce a letter similar to the S&P 2009 letter, outlining the potential investment return of the hotel development in the long term, and essentially supporting the Cash Flow Document; and

    iii) He stated that the deadline for submission of the letter was 23 June 2010.

350. Mr Merry did not accept in evidence that he had said that the joint venture had a value of £21m. I find that he probably said words to that effect but that he did not intend to refer

to separate market valuations of the plots of land. Rather I find that he was describing the value being placed on the overall joint venture by the parties (£21m).

351. In any event I find that KS did not think that it was being asked to undertake a formal Red Book market valuation of the two plots of land. This is shown by the instructions later given to KS and the work KS actually carried out.

352. In a further email from Mr Merry to Mr Haigh and Mr Gee timed at 18:42 on 18 June 2010 with the subject line "Investment Partnership relating to the Crowne Plaza Maple Cross & Potential Retail Village":

    i) Mr Merry said: "[m]any thanks for... agreeing to review the above on behalf of the Libyan Investment Authority".

    ii) He asked KS to produce "...a similar letter to that provided by S&P to my client's Chairman, Roger King, supporting the likely future value and the investment returns of the developments over a 10-12 [year] period and the joint venture value of £21 million".

    iii) Mr Merry suggested the LIA would agree to a fee of £20,000 for the letter of opinion.

    iv) Mr Merry confirmed that he would "organise for a letter or email of instruction to be sent to you by Dalia Advisory Limited…on Monday morning".

353. By an email to Roger King and Hertford King sent in the evening on 18 June 2010, Mr Merry confirmed that KS had already started speaking to IHG and confirmed that they would be able to provide the required letter to the LIA for 23 June 2010. Mr Merry asked Roger King to arrange for Mr Layas to send a letter of instruction to KS, and set out the "key elements" of KS' review and opinion that were to be reflected in the letter of instruction, including that KS should review:

    > "the proposed Investment Partnership for the Crowne Plaza Hotel and retail village on land adjoining 1 Denham Way, Maple Cross
    >
    > IHG 10 year forecast
    >
    > …
    >
    > Estimated future capital values
    >
    > Estimated investment returns
    >
    > Recommendation to acquire a 50% interest in the Partnership based on a value of £21 million."

354. Again I find that the reference to the "value of £21m" was meant to be a reference to the overall joint venture as agreed by the parties to the proposed joint venture rather than a formal land valuation.

355. In the event Mr Layas did not send instructions to KS. Mr Merry accepted in evidence that Mr Layas had no involvement in settling the terms of the instructions to KS.

356. Rather Mr Merry produced a draft letter of instruction to be sent by Roger King to KS in the morning of 22 June 2010. It was sent by Roger King to KS on 22 June 2010. The email, inter alia:

    i) informed KS that following discussions, and based upon S&P's advice, the value of the joint venture "has been mutually agreed at £21.0 million";

    ii) requested KS to provide a letter "...supporting the Partnership's proposal for the new hotel and proposed retail village to include an analysis of the investment returns over a 10-12 year hold period and estimated future values… with a commencing – current value of the two freeholds sites Nos 1 Denham Way circa one acre and the hotel site known as Witney Place circa four acres for £21.0m";

    iii) confirmed that "[KS] are hereby instructed to provide a draft letter to Beeson Investments Ltd which after acceptance by Beeson Investments Ltd will then be addressed to the [LIA]…the LIA have in the first instance asked Charles Merry (Beeson Investments Ltd) to review your draft letter and that once it is in final form it is to be readdressed to the LIA, as aforesaid"; and

    iv) confirmed that "should for any reason the LIA not pay a fee of £20,000 for the said letter to [KS] then Beeson Investments Ltd will pay [KS] the £20,000 fee".

357. This email was cc.'d to Hertford King and Mr Merry, but not to Mr Layas or anyone else acting on behalf of the LIA.

358. Mr Merry said in evidence that he did not know why Roger King included the two-stage process of initially addressing the letter to Beeson Investments Ltd, but said that the reason he was to review the draft letter was because he was the person with the detailed knowledge and information about the project, and that it made sense for him to ensure that KS had included all the relevant information and assumptions.

359. The claimants submitted that there was no honest explanation for this two-stage process and that it was imposed to ensure maximum control over what KS would produce (and quite possibly to enable them to deny that they had been acting for the LIA should KS not report in the manner expected by Roger King and Mr Merry). The defendants submit that KS took no issue with this arrangement. Mr Merry denied that there was any such scheme when it was put to him in cross-examination. I shall return below to make findings about this.

360. In their defence filed in May 2017 in the original incarnation of these proceedings, KS stated that they understood that in instructing them, Beeson Investments Ltd were procuring a service for the benefit of the LIA, on the basis of their meeting with Mr Merry on 18 June 2010 and Roger King's letter of instruction, and that they understood them to be acting as ostensible agents of the LIA.

Communications between Mr Rhazali and Mr Layas

361. On 22 June 2010 Mr Rhazali emailed Mr Layas to query whether the executive summary from Savills "with respect to the valuation of the plots of land" had been received.

362. Mr Layas replied by email the same day, stating that Savills had advised him "last Friday" that they were unable to provide the executive summary and valuation report by 23 June 2010 because they needed more time for the commercial valuation of the Retail Site. Mr Layas confirmed that he had, therefore, instructed KS who were willing to produce a valuation report by 24 June 2010. The claimants say that Mr Layas lied in this email. I shall return to it later.

Revisions of the draft KS letter

363. At 9:05 on 23 June 2010 Roger King sent an email to Mr Gee requesting a draft of their letter by 13:00 that day. Roger King confirmed that the letter should be sent to the LIA direct once he and Mr Merry had reviewed it.

364. There followed an exchange between KS and Mr Merry in the afternoon of 23 June 2010, in which Mr Merry proposed a number of changes to the draft letter, and discussed his proposed amendments and the rationale behind them over the phone with Mr Matt Lederer of KS, some of which were accepted by KS in part as follows.

365. An initial draft was sent by Mr Lederer to Mr Merry at 14.26, to which Mr Merry replied at 14.34 to say that he would review and revert. This initial draft made no reference to the joint venture value of £21 million. It concluded as follows:

> "Summary and Conclusion
>
> Based on the limited information that we have been given we find little fault with the information provided and the assumptions made.
>
> However, due to the high level nature of the appraisals and in particular the omissions on tenant incentives and details on construction costs and programme, we recommend that further work is commissioned prior to making any investment decisions".

366. Mr Merry marked up changes to Mr Lederer's initial draft, which he discussed with Mr Lederer over the telephone. In the course of those conversations he proposed, inter alia, the following amendments:

    i) The heading of the letter was expanded to refer to the retail village at No 1 Denham Way, Maple Cross, London;

    ii) The gross development value of the completed hotel of £45.6m was amended to an "estimated value in 10 years of £56.7m";

    iii) Mr Merry changed a passage which read "This is assuming the land is worth £18 million as per the valuation competed [sic] by [S&P]" to "this is assuming a land value of £18 million", and removed the reference to S&P; and

    iv) KS's conclusion was amended to read "Based on the information that we have been given we support the partnership proposals based on £21 million".

367. At 17:18, KS sent an email to Mr Merry attaching a further draft letter "[a]s discussed with Matt Lederer". This version differed significantly from the draft sent to Mr Merry earlier that afternoon:

i) KS now accepted Mr Merry's proposed gross development value of £57 million on trading maturity;

ii) KS removed the reference to "limited" information which had been provided, instead saying "Based on the information that we have been given we find little fault with the information provided and the assumptions made";

iii) KS reinstated the language "This is assuming the land is worth £18 million as per the valuation completed by Strutt & Parker" - i.e. they did not accept Mr Merry's deletion of the reference to S&P; and

iv) The draft said, "Based on the information provided to us, including the valuation by [S&P], we consider an enterprise value of £21 million appropriate".

368. Mr Merry then proposed some further changes to the 17:18 draft in which:

i) Mr Merry again struck through the paragraph referring to "the valuation by Strutt & Parker"; and

ii) Mr Merry amended the conclusion to read: "Based on the information that we have been given we support the assumptions made and we consider an enterprise value of £21m appropriate".

369. Mr Merry gave evidence that he had twice tried to remove the reference to a valuation by S&P because he thought the LIA would not want a reference to S&P in this letter, but that KS insisted on retaining the reference and that Mr Merry considered that it was ultimately a matter for KS to decide what they wished to say in the letter. The claimants submitted that this was an acknowledgment by Mr Merry that his proposed amendments were intended to give the KS letter an air of independence, and to conceal its reliance upon the S&P 2009 letter. The defendants submitted that this shows that Mr Merry did not intend any opinions expressed by S&P should be incorporated into the KS letter. I shall return to this dispute below.

370. At 18:00 the same day, KS emailed a further draft to Mr Merry saying, "further to our conversation just now…You will see that in the Summary and Conclusions we mention [S&P], but combine the last 2 paragraphs into one as you suggested". The revised Summary and Conclusions now stated:

> "Based on the information that we have been given, including the valuation by Messrs Strutt & Parker, we support the assumptions made and we consider an enterprise value of £21 million appropriate."

371. It was common ground (in light of the decision of the court in the earlier applications before Judge Barker) that the contents of the letter and the corrections and amendments made by KS accurately reflected KS's honestly held professional opinion.

372. At 18:16, Mr Gee's secretary emailed the final version of the KS letter to Mr Layas directly, with Mr Merry in copy, describing it as a "due diligence letter". It was in the form of the final draft sent to Mr Merry at 18:00.

373. Shortly thereafter, Mr Merry forwarded KS's email attaching the KS letter to Roger King, Hertford King and Mr Al-Agori.

374. Mr Merry then replied to KS's email thanking them for their "very comprehensive summary of the project" and confirming that he will pass on any feedback from the LIA and discuss how to process KS's fee.

375. It was common ground that KS did not have any communications with Mr Layas before providing the KS letter.

Treatment of the KS letter within the LIA

376. Mr Layas forwarded the KS letter to Mr Rhazali and Mr Shariha at 10:55 on 24 June 2010. He described the KS letter as the "King Sturge Valuation Report". The email chain showed that KS had copied the KS letter to Mr Merry.

377. Mr Rhazali replied soon afterwards, noting that the KS letter is "more an opinion on the feasibility and profitability of the project rather than a proper valuation of the site", and requesting a copy of the "valuation of the property made by S&P which has valued the land at £18 million" as referred to on p. 7 of the KS letter.

378. Later that day, Mr Layas forwarded a copy of the S&P 2009 letter and the Cash Flow Document to Mr Rhazali.

379. Mr Merry said in evidence that neither he or Roger King had any hand in Mr Layas providing the S&P 2009 letter to Mr Rhazali, that Mr Layas already had the S&P 2009 letter and the Cash Flow Document, and that neither he nor Roger King told Mr Layas to send Mr Rhazali these documents. I accept Mr Merry's evidence on this point: there is no record of the letter being resent by Roger King or Mr Merry to Mr Layas and there is no record of a relevant email or call at this time.

380. Mr Rhazali then forwarded Mr Layas' email and its attachments to Clifford Chance and Ernst & Young (who were involved in due diligence for the LIA), referring to the attached "project cash flows and a "report" from [S&P] on the hotel project" (inverted commas in the original).

381. Mr Rhazali then sent a copy of the KS letter to Clifford Chance and EY, noting that "it is not a proper valuation report, but it contains useful information on the project".

382. On 6 July 2010 Mr Merry sent an email to Mr Layas confirming that KS would send an invoice in respect of their work in providing the KS letter to be addressed to MPL. The email was signed by him on behalf of CSPL. In the event, Hertford King's evidence was that KS's fee was paid by the joint venture and not by the LIA.

Provision of the KS letter to Mr Leppard

383. Meanwhile, on 24 June 2010, Roger King sent the KS letter to Mr Leppard of S&P, describing it as a "valuation letter from [KS] to the LIA", and asking for Mr Leppard to provide "a similarly worded updated letter as discussed".

384. I again find that Roger King used the phrase "valuation letter" as non-technical business shorthand to mean advice from a surveyor. It is common ground that the KS letter is not a valuation report.

385. Mr Leppard responded by email that morning:

    i) He said that "I see that King Sturge make reference to the [S&P] "Valuation of the land at £18m";

    ii) He wished to make it "quite clear" that S&P "have not valued the land at £18m"

    iii) He confirmed "[KS] are not entitled to rely on that in their report"; and

    iv) He said that he did not know how KS "have the information as they have not spoken to me".

386. Mr Leppard said in evidence that his concern was that S&P had not given a valuation and that he did not want anyone later to say that they had. Mr Merry gave evidence about the email. He said that he did not think much about it.

387. The claimants contended that this email demonstrates that Mr Leppard had read the KS letter as conveying that there had been a valuation by S&P of the Hotel Site of £18 million, that a fundamental premise of KS's conclusion was mistaken, and that the defendants were consequently obliged to correct the misrepresentation contained in the KS letter by informing the LIA of S&P's email. I shall return to this submission below.

388. On 28 June 2010 Mr Leppard sent to Roger King and Mr Merry a draft updated version of the S&P 2009 letter. This draft continued to assume a site price of £18 million, and had been expanded to include a section headed "Potential for Development on Adjoining Thames Water Land". In this section, Mr Leppard advised that Volterra Consulting (expert retail consultants) be commissioned to undertake the necessary research to ensure that the targeted mix of retailers would work. I accept Mr Leppard's evidence that he did not believe any firm of surveyors would have that particular expertise.

Approval of the joint venture by the LIA Board

389. On 20 June 2010 Mr Ibrahim Khalifa, secretary to the board of directors of the LIA, emailed a number of directors of the LIA inviting them to attend a board meeting scheduled for 27 June 2010. His email attached the agenda items for the meeting. This did not refer to the proposed joint venture investment.

390. Mr Khalifa has signed a witness statement but did not give evidence at trial, being unwilling to do so. He says in his statement that he has no specific recollection of the LIA's consideration and approval of the joint venture investment. He states that not all transactions to be considered by the board would appear in the agenda pack, specifically if they were not put forward for approval until after the agenda pack had been finalised and were to be presented to the board for the first time at the meeting; and where a transaction was dealt with this way, it would be listed under "other matters" as the last agenda item in the board minutes.

391. According to metadata, the board memorandum drafted by Mr Alhaj and Ms Ghagha on 6 and 7 June 2010, was last edited on 24 June 2010, although it still shows the date 20

June 2010 on the face of the document. This version of the memorandum differs from that circulated on 7 June 2010 including that it refers to "accompanying documents" in the final paragraph where the board is invited to adopt the decision approving the contribution outlined in the memorandum.

392. The metadata does not show what changes were made and there is no record of any version between 7 June 2010 and 24 June 2010.

393. I shall return below to the claimants' contention that the memorandum was probably produced after the receipt of the KS letter.

394. The LIA board of directors met in Tripoli on 27 June 2010. As a translated note of the minutes of that meeting records:

    i) The Board Meeting convened at "precisely 10 AM" and concluded at "precisely 5 PM";

    ii) The joint venture investment was included under the "miscellaneous new developments section", indicating it was a late addition to the agenda;

    iii) Mr Rais presented the opportunity to invest in the "MyHotel project in London" to the Board.

    iv) It was common ground that the minutes made clear that the proposed investment of £10.5 million represented 50% of "the value of the company that owns the project" and not 50% of the value of the Hotel Site.

    v) It does not appear that the Retail Opportunity formed any part of Mr Rais' presentation or the board's consideration of the proposed investment.

    vi) The Board approved the investment at the meeting.

395. As already explained, though it was common ground that Mr Rais presented the hotel investment opportunity to the Board (as recorded in the minutes), he denied this in his oral evidence. I reject his evidence.

396. I do however find that any presentation he gave was brief and that he did not go into any detail.

397. The investment proposed pursuant to the JV agreement was raised at a subsequent LIA board meeting on 26 August 2010. The minutes of that meeting show that the Board endorsed the minutes of the board meeting which had taken place on 27 June 2010 (i.e. the meeting at which entry into the JV agreement had been approved), subject to the addition of "the objection from Dr. Khalid Said Kaawan, a member of the Board of Directors, to implementing the project, due to the size of the project not being in line with the policy of the [LIA]." Dr Kawan did not give evidence at trial but in a witness statement said that he does not recall the events of the 27 June board meeting (save that Mr Rais presented the joint venture investment to the board), and that he objected to the investment on the basis that it "did not fit with the LIA's general investment strategy", which was "to invest in real estate funds, as opposed to investing directly in individual real estate assets".

398. I shall return later to address the questions whether the KS letter was before the Board and whether the Board considered it.

The JV agreement

399. The JV agreement was entered into on 19 July 2010. The parties to the JV agreement were:

i) MPL: the joint venture vehicle, which was the parent company of Maplecross Retail Limited (**MRL**) and Maplecross Hotel Limited (**MHL**) (which were to become the owners of the Retail Site and Hotel Site respectively);

ii) BPIL: the subsidiary of IGL which was beneficially entitled to the two issued shares in MPL at the time of the JV agreement (and continued to be the entity through which the IG participated in the joint venture);

iii) IGL: as guarantor of BPIL's obligations; and

iv) MHICL: the company which was to be the LIA's special purpose vehicle for participation in the joint venture.

400. The express terms of the JV agreement included terms providing for:

i) MHICL to subscribe for two B shares in MPL (i.e. a 50% shareholding in MPL) against payment of the sum of £10.5 million (Schedule 2, Paragraph 2.1.3);

ii) MPL to pay the sum of £10.25 million by way of special dividend to BPIL (clause 3.3 and Schedule 2, Paragraph 3), which sum BPIL was to use to repay the BoS Loan immediately upon receipt (Schedule 2, paragraph 3);

iii) MPL to loan the sum of £0.25 million to MRL, which sum MRL was to pay to Beeson Investments in consideration for the freehold interest in the Retail Site (Schedule 2, Paragraph 4.3);

iv) MPL to transfer the Hotel Site to MHL, a newly formed subsidiary company of MPL (clause 3.4);

v) Beeson Investments to transfer the Retail Site to MRL, also a newly formed subsidiary of MPL (clause 23.3.2);

vi) Subsequent development of the Hotel Site and the Retail Site and the subsequent operation of the eventual hotel following development, including an obligation on the shareholders to contribute further sums to the development; and

vii) The appointment of International Hospitals Group Limited or its affiliate as development manager for the Hotel Project and the Retail Opportunity.

401. The terms of the JV agreement also included an entire agreement clause by which each of the parties to the JV agreement acknowledged and agreed that in entering into the JV agreement "...it does not rely on, and shall have no right or remedy in respect of, any agreement, representation, warranty, statement, assurance or undertaking of any nature whatsoever (other than those expressly set out in the Agreement) made by or given by

any person prior to the date of this Agreement" but that "[n]othing in this clause shall limit or exclude any liability for fraud" (clause 24.6.2).

402. On the same day that the JV agreement was entered into (19 July 2010), advisory agreements were signed between CSPL and each of MHL and MRL whereby CSPL was to receive £2,000 a month from each company.

403. In order to bring into effect clause 3.4 of the JV agreement, MPL executed as a deed a Land Registry TR1 Form for the transfer of the whole of the registered title of the Hotel Site to MHL, the entity which was to hold the Hotel Site within the joint venture structure. The TR1 Form records under 'Consideration' that "The transferor has received from the transferee for the property…Eighteen Million Pounds (£18,000,000)".

404. The equivalent TR1 Form in respect of the transfer of the Retail Site pursuant to clause 23.3.2 of the JV agreement recorded under 'Consideration' that "The transferor has received from the transferee for the property… Two Hundred and Fifty Thousand Pounds (£250,000)".

405. The minutes of a meeting of the board of directors of MRL on 19 July 2010 to approve the purchase of the Retail Site record that "it was noted that the consideration for the Transfer would be £250,000…and a valuation from the Frost Partnership dated 1 June 2010 supporting this value was produced to the meeting."

406. The minutes of a meeting of the board of directors of MHL on 17 August 2010 to approve the purchase of the Hotel Site record that "it was noted that the consideration for the transaction would be £18,000,000", but contain no reference to valuation information presented to the Board.

Events following the signing of the JV agreement

407. The parties relied on some subsequent events.

408. The LIA paid a further £1.76 million itself, or via its subsidiary MHICL, pursuant to requests for further funding dated 16 August and 23 November 2010.

409. A Red Book valuation was prepared for Lloyds Bank in June 2011 in connection with possible development funding. By a report dated 29 June 2011 (**the CBRE 2011 report**), CB Richard Ellis Hotels Ltd (**CBRE**), instructed by Lloyds Bank, opined that:

    i) the market value of the completed 207-bedroom hotel (day one of trading) was £41,700,000;

    ii) the market value of the completed 207-bedroom hotel (upon stabilised trading) was £46,500,00; and

    iii) the market value of the Hotel Site with current consent for a 207-bedroom hotel was £6,400,000.

410. The minutes of a meeting of the board of directors of MHL on 16 August 2011 noted that Lloyds had received the CBRE 2011 report that "indicates a Day 1 value of £45m, at 60% LTV this would support a loan of £27m. However, as reported last month the Bank

has also approved a limit on the loan based upon free cash or EBITDA in year 2 on a multiple of 6, which restricts the loan to £19m."

411. Hertford King's evidence was that Lloyds changed their lending criteria shortly after the JV agreement was concluded, meaning that they were no longer prepared to lend funds to cover the entire costs of construction of the hotel project. However, Hertford King did not recall an indication received from Lloyds that they would be prepared to lend on the basis of 60% of the 'Day 1' value of the Hotel Site.

412. Mr Merry's evidence on this issue has changed: in his first witness statement he said that it was the lower than expected valuation that caused Lloyds to reduce its funding offer to £19 million , but in his second witness statement he referred to the bank's revised lending criteria. However, in cross-examination he accepted that Lloyds were not going to lend more than £19 million as a result of CBRE's valuation of the Hotel Site at £6.4 million. I accept the evidence of Hertford King on this point.

413. On 21 May 2012 Mr Merry sent a letter to the directors of MHL on behalf of CSPL setting out their "opinion of market value" of the Hotel Site as at the date of the letter in connection with the preparation of the audited 2011 accounts by PwC. The letter confirmed that "the current market value of the [Hotel Site], subject to the freehold tenure and with full planning permission for a 207 bed hotel (soon to be increased to 222) is £18,000,000."

414. The claimants said that this episode undermined Mr Merry's credibility. They submitted that this was an ostensibly independent valuation and that, as Mr Merry knew, he was not a qualified valuer, that he did not carry out a proper valuation, and that he did not follow the relevant professional requirements of stating the basis of the valuation. I have concluded that this point does not affect Mr Merry's credibility. He did not say he was carrying out a formal Red Book valuation. Nor did he purport to be an independent valuer. The letter was not an ostensibly independent valuation. It was a short letter addressed to the directors of MHL who had asked Mr Merry to produce it.

415. In the event, PwC were not satisfied with CSPL's opinion and required a Red Book valuation.

416. This was resisted by the IG. Witney King sent an email to Mr Pradhan of 31 May 2012, in which he stated:

    i) "we strongly disagree that the joint venture company should consider paying for a red book valuation for the site in relation to the 2011 audit, as this would be a waste of shareholders funds";

    ii) "Whoever suggested a red book valuation for the site for the 2011 audit is either trying to generate consultancy fees, naïve and/or reducing the chances of the joint venture succeeding (intentionally or not) … I assume that PWC are making a position for themselves";

    iii) "it is common knowledge that any red book valuation for any development property would be very conservative/low compared to the commercial and development upsides/reality";

iv) "A red book valuation of the property could damage the whole purpose of joint venture company to develop the site into a hotel as rapidly as possible"; and

v) "any Bank considering lending funds to the joint venture company will want 'their own independent valuation' set to their own requirements – why would the joint venture waste very limited funds for a separate red book valuation that we do not want or need and that may not be used for any lending purpose?"

417. On 5 July 2012 Mr Leppard emailed Witney King, referring to their recent telephone conversation regarding the "joint venture property holding at Maple Cross". Mr Leppard understood "that the joint venture company has been asked to provide an updated valuation by the Auditors (PWC) to the company….Unless there is a specific audit reason for needing a Red Book Valuation I have not come across this as a requirement for other single asset or private property company clients…The most relevant evidence is of course the transaction in June 2010. Your joint venture partners were independently advised on the transaction at the time of the purchase of this site and since then there has been no material change to market conditions in this sector in our opinion." Mr Leppard confirmed in cross-examination that he was referring to the KS letter when he said that the LIA was 'independently advised on the transaction at the time of the purchase'.

418. Later that afternoon, Witney King asked Mr Pradhan to forward Mr Leppard's email to the directors of MPL, saying that "it is apparent that the PWC request for a costly Red Book valuation is unreasonable" and suggesting that S&P be instructed "to resolve any remaining concerns of PWC in relation to the 2011 audit".

419. On 5 July 2012 Mr Pradhan emailed Mr Peter Buck of Marlborough Trust, with Mr Rhazali and Mr Akram Rayes (of LIA UK) (among others) in copy, asking if the directors of MPL would contact Mr Leppard with a view to obtaining a fee quote from S&P.

420. Mr Rhazali replied to that email, saying that he had spoken with Mr Rayes who confirmed that the "LIA did not agree to appoint [S&P] to solve the audit issue with PwC i.e. [S&P] can provide clarification to PwC on the [S&P 2007 report] but if PwC is still requesting for a new red book valuation and that both partners agree for it, then another tier 1 independent valuer should be appointed to carry out the valuation".

421. On 21 September 2012 Mr Leppard emailed Roger King, noting that he was "in some difficulty in producing a "red book" site valuation as requested by PWC some while ago". Mr Leppard suggested to Roger King that he get "PFKHotels [sic] to produce an end value of the Hotel…and if that produces a satisfactory answer we can derive the site value from that."

422. Mr Leppard was not asked about this in cross-examination.

423. A Red Book valuation was ultimately provided by S&P on behalf of MHL on 6 November 2012, which set out S&P's opinion on the market value of the Hotel Site as at 22 October 2012 (**the S&P 2012 report**). This valuation:

i) was stated to be for "internal company accounts purposes only";

ii) relied on an Updated Market Demand Study with earnings Estimates for a Proposed Crowne Plaza Hotel at Maple Cross, Hertfordshire dated November 2012, prepared

by PKF Accountants & Business Advisors, who advised that the market value of the hotel upon income stabilisation (i.e. in year three of operation) would be £62.0 million;

iii) relied upon a Cost Plan dated 23 October 2012 prepared by NBM Construction Costs Consultants which anticipated construction costs to be approximately £31 million; and

iv) concluded that the market value of the Hotel Site, on the basis of the proposed management agreement being in place, was £18.5 million.

424. The S&P 2012 report was provided to MHICL as a B shareholder in MPL.

425. In the event, PwC appear to have been satisfied with the valuation report produced by S&P as they approved the 2011 accounts of MHL which valued the freehold property of the company at £18.5 million.

426. In 2013 the LIA instructed Savills as follows:

i) On 29 January 2013 Mr Rayes of the LIA met with Mr Furze of Savills. According to Mr Furze's notes of that meeting, Mr Rayes was pushing for a valuation to be conducted before a possible restructure of senior management within the LIA.

ii) On 14 February 2013 Mr Furze called Mr Rayes. According to Mr Furze's notes of that call, they discussed the new department specialising in real estate, and a potential consolidation of all assets under their UK portfolio.

427. On 13 May 2013 Mr Omar Khattaly, a director of the LIA, who was appointed its representative in respect of the joint venture, signed Savills' letter of instruction, in which Savills:

i) referred to a meeting on 26 May 2013 in which the LIA confirmed their instructions to Savills to undertake a valuation of the Hotel Site and the Retail Site;

ii) confirmed that they were not aware of any conflict of interests preventing them from providing independent valuation advice;

iii) confirmed that the valuation sought by the LIA was for internal audit purposes;

iv) confirmed that the valuation would adopt the RICS definition of market value (i.e. the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties have each acted knowledgeably, prudently and without compulsion); and

v) confirmed that the valuation would be on the following bases:

- "Market Value of the [Hotel Site] as at June 2010
- Market Value of the completed hotel as at June 2010 (on a day 1 basis)
- Market Value of the [Hotel Site] in today's market

- Market Value of the completed hotel in today's market (on a day 1 basis)
- Market Value of [the Retail Site] as at June 2010
- Market Value of [the Retail Site] in today's market"

428. On 16 May 2013 Mr Merry wrote two letters to Mr Furze (one in respect of the Hotel Site and one in respect of the Retail Site), each of which referred to a recent site visit and enclosed information for Mr Furze to consider in reviewing the proposed developments.

429. On 27 June 2013 Savills provided its valuation report to the LIA. In that report:

i) Savills confirmed that Mr Furze had inspected the Hotel Site and the Retail Site in the presence of Mr Merry on 10 May 2013;

ii) Savills confirmed that they had valued the Retail Site for residential use only, and that they had specifically not taken regard of any alternative use value in light of the fact that BPIL did not own or control the remaining land required to assemble the site proposed for the Retail Opportunity, and that Savills could not therefore consider "any value implications that this high level proposal may have upon the subject sites"; and

iii) Savills concluded that:

a) the gross development value of the hotel as at the date of the report was £31.7 million;

b) the gross development value of the hotel as at June 2010 was £16.6 million;

c) the market value of the Hotel Site as at the date of the report was £2.5 million;

d) the market value of the Hotel Site as at June 2010 was £2.6 million;

e) the market value of the Retail Site as at the date of the report was £350,000; and

f) the market value of the Retail Site as at June 2010 was £325,000.

430. Meanwhile, on 31 May 2013, Witney King had written to Mr Khattaly. In that letter, Witney King:

i) referred to "the frustrating delays resulting primarily from the Libyan conflict and the banking collapse/recession";

ii) highlighted the 'significant amount of work' that had already been undertaken by the IGL Defendants on the Hotel Project;

iii) set out a summary of discussions between the IGL defendants and potential funding institutions with regard to the Hotel Project;

iv) noted that the LIA had appointed Savills to undertake a valuation of the Hotel Project and the Retail Site "despite receiving a copy of a 'Red Book' standard

valuation from the joint venture only a few weeks ago, that the joint venture's accountant's PwC [sic] have accepted for their audit purposes";

v) advised that "in our opinion it cannot be in the best interests of our joint venture for Savills to be undertaking a valuation when at the same time we are in negotiation with their existing client, Thames Water, with regard to the acquisition of approximately 55 acres of further land in relation to the joint venture's potential retail project"; and

vi) noted that "we have effectively lost considerable sums as a result of the 2011 conflict in Libya and note the subsequent changes in the management within the LIA which have been frustrating. We have supported the LIA throughout the challenging times of 2011 and 2012 and please be assured that we will continue to do so in the best interests of our 50:50 Joint Venture Partnership".

431. On 23 July 2013 Mr Layas emailed Mr Breish, the then chairman of the LIA, attaching the KS letter, the S&P 2012 report and the PKF 2012 Feasibility Study and setting out what he described as "self explanatory materials clarifying and supporting all issues attached to this investment" and saying that the investment was "based on the evaluation of three different prominent land valuers". The information contained in Mr Layas' email was forwarded on from Witney King, who in turn forwarded on information from Mr Merry. In it:

i) The KS letter was described as a 'valuation letter';

ii) The PKF 2012 Feasibility Study was described as a 'valuation report';

iii) Mr Merry said that "the LIA later gave us a copy of the [KS letter], after it was produced"; and

iv) Mr Merry said that S&P's recent residual land valuation for the Hotel Site only was £18.5m "which is an increase of half a million pounds on the [KS] value for the [Hotel Site] in 2010".

432. It was put to Mr Merry that in this email he tried to create the impression that he had not seen the KS letter until a point after it had been produced, and that he had consequently not been involved in its production, whereas in truth he received the KS letter at the same time as Mr Layas (having been copied in to KS's email to Mr Layas which attached the KS letter). Mr Merry sought to justify this on the basis that Mr Layas already knew that Mr Merry had received the KS letter at the same time as he did, and that he thought others in the LIA, such as Mr Rhazali, were aware that he was assisting the LIA.

433. I have concluded that in his email Mr Merry deliberately made false statements in July 2013 in order to seek to dissuade the LIA from further investigating the background to the transaction. He was trying to justify the agreed price by referring to the advice the LIA had received from KS. He knew that KS had not given a valuation of £18m for the Hotel Site. The statement that the LIA provided the KS letter to the IG after it was produced was also misleading in that it airbrushed out the role played by Mr Merry himself in instructing KS and commenting on the drafts of the KS letter. I have concluded that the reason Mr Merry made these statements was that by July 2013 the LIA appeared to be raising concerns about the entire investment and Mr Merry wanted to deflect further

investigations into the original transaction. I shall return below to the claimants' submission that this episode demonstrates that Mr Merry appreciated that he had been dishonest in his dealings with Mr Layas and in instructing KS in June 2010.

434. On 2 August 2013 Roger King wrote to Mr Breish. Roger King:

i) confirmed his understanding that Mr Khattaly had recently obtained an opinion on the value of the Hotel Site from Savills, but noted that this valuation had been carried out on behalf of the LIA only, and not on behalf of MPL;

ii) noted that he had been advised "(by rumour only) that the LIA Savills opinion is lower than present and recent formal valuations";

iii) said that "we strongly disagree with any reduction in the valuation of the joint venture Company's assets. As the LIA well knows, the joint venture Company's hotel development land holding was independently and formally valued by the joint venture Company's third party surveyors (being [S&P]) and subsequently approved by both the joint venture Company's independent Directors in Guernsey and the joint venture Company's auditor PricewaterhouseCoopers (PwC) for the joint venture Company's formally signed 2012 annual audit";

iv) said that "The LIA properly obtained a formal valuation of their own from leading surveyors which endorsed the purchase price, as part of their own due diligence before completing their purchase of 50% of the equity and were advised on the formation of the Joint Venture Company by their solicitors Clifford Chance and Allen & Overy";

v) explained that "to contact Savills on behalf of the LIA for an opinion of the value of the [Hotel Site] when Savills have already been appointed to negotiate the potential sale of the (50 acres of development) land to our joint venture Company by the owner Thames Water was, to be blunt, directly against the best commercial interests of the LIA and our 50/50 joint venture Company";

vi) noted that "IG could have…terminated the Joint Venture due to the LIA's failure to meet its obligations under the mutually agreed terms of the Joint Venture's Shareholder Agreement in 2011, but as a clear demonstration of our (as ever) goodwill to the LIA…we carefully decide to continue to support the LIA for the long term benefit of our equal partnership"; and

vii) queried Mr Khattaly's motive "in apparently trying to downgrade the value of the LIA's and the joint venture Company's assets? and what use will this private LIA Savills opinion (if it exists) serve?"

435. This email also contained the untrue statement that the LIA had procured its own formal valuation of the land in 2010. It again shows Roger King's imprecise use of language and casual approach to facts. I do not however think that it misled the LIA. It would have been obvious to the LIA (which had the KS letter) that it had never obtained a formal valuation of the land.

436. On 28 August 2013 there were board meetings for each of MPL, MHL and MRL. The minutes of each of those meetings records as follows:

i) Mr Khattaly "read a message from the Chairman of the [LIA]…in respect of the recent valuation of property that has been carried out through Savills and states that the numbers do not add up from the LIA point of view…The Chairman has requested that the entire project should be put on hold until the valuation issue has been resolved";

ii) Mr Khattaly stated that the valuation of the Hotel Site was £2.5 million, and noted that the "original contract for the land was valued at £21 million…which is creating concerns with the LIA and the Libyan government"; and

iii) Witney King said, "this was a total surprise to [IGL]".

437. Mr Merry was at that meeting. The claimants submitted that the reference to the Savills' valuation of £2.5m being a total surprise was misleading and that Mr Merry knew this. They argued that Mr Merry had been aware in June 2010 that Savills had reached at least a preliminary value of say £4m, so that the 2013 Savills valuation could not have been a "total surprise". The claimants say that Mr Merry's failure to correct Witney King's statement shows that he has no regard for the truth. I do not accept this submission. I find on balance Witney King was referring to the recent (2013) valuation being a surprise and the claimants did not rely on any evidence to show that was not true. I do not think that any conclusions can be drawn against Mr Merry based on this episode.

438. The LIA provided the Savills report to its financial advisers. In an email, Mr Buck (one of its advisers):

i) noted that "Savills value the [Retail Site] at £325k as at July 2010 (purchase price of £250k)…At least the LIA can't have any squabble over the price paid for that parcel of land!";

ii) stated that he had reviewed the valuation and tried to compare it to the S&P 2012 Report and was struggling to understand the 'huge difference';

iii) commented that "we are not chartered surveyors and Savills is one of the most respected out there in the market";

iv) noted that Mr Layas requested KS "to carry out a review which was produced on 23.06.2010", but that "Unfortunately in [Mr Gee's] figures he has assumed that the valuation of the land by S&P is accurate at £18m"; and

v) said that "There is clearly a HUGE difference between Savills and the previous valuations and it is clear why the LIA have concerns firstly over the price they paid for the land and secondly over the viability of the project and end profit margin figures. [Mr Khattaly] has informed me that he will…be forwarding a copy of the valuation to Witney [King]."

439. On 3 October 2013 Mr Khattaly provided to Witney King and Mr Buck a copy of Savills' valuation report.

440. In June 2014 S&P provided a further Red Book valuation of the Hotel Site to MHL (**the S&P 2014 report**). The market value of the Hotel Site was estimated by S&P to be £18.6

million. It is common ground that the S&P 2014 report was provided to MHICL as a B shareholder in MPL.

441. On 10 June 2014 Hogan Lovells, acting for the LIA, wrote to KS (now called Warwick Street (KS) LLP). Hogan Lovells:

i) stated that the LIA invested in the hotel project and Retail Opportunity by way of the JV agreement with BPIL, and that Hogan Lovells were "presently investigating the circumstances surrounding that transaction, particularly in light of subsequent advice which [the LIA] has received as to the likely value of its investment";

ii) noted that KS reviewed the proposed project in June 2010 and provided the LIA with the KS letter, but that they had been unable to locate a copy of the instructions to produce the report; and

iii) requested for KS to arrange for a copy of their file in relation to this matter to be forwarded to Hogan Lovells.

442. Hogan Lovells also wrote to BPIL on 17 June 2014 on behalf of the LIA. In that letter, Hogan Lovells:

i) referred to the valuation advice received from Savills in 2013 that appeared to be at odds with valuation advice received by BPIL from S&P in 2009;

ii) noted that the LIA was "keen to reconcile [KS's] advice with that now obtained from Savills";

iii) observed that KS's instructions to produce the KS letter appeared from the LIA's files to have been arranged through Mr Merry acting as BPIL's agent; and

iv) asked BPIL to confirm whether they had a copy of those instructions and, if so, to provide a copy of the instructions, together with any related correspondence, to Hogan Lovells.

443. Jones Lang LaSalle Limited (**JLL**), who had by this time acquired KS, responded on 24 June 2014 saying, "We have now retrieved our file, with indicates that [KS] was instructed….by Beeson Investments Limited … Our records do not demonstrate that the [LIA] was an instructing party and we are therefore unable to release a copy of our file to you on their behalf".

444. On 30 June 2014 Hogan Lovells wrote to BPIL, enclosing a copy of JLL's letter, noting that JLL had confirmed that KS's instructions came from BPIL, and not from the LIA. Hogan Lovells asked BPIL to provide "a letter on BPIL headed notepaper confirming that JLL are authorised to release their file".

445. On 5 August 2014 Stephenson Harwood, by now acting on behalf of BPIL, replied to Hogan Lovells, copied to Mr Merry. Stephenson Harwood confirmed that:

i) "None of Beeson Investments Limited ("BIL"), BPIL or Mr Merry instructed [KS] to provide valuation advice to [the LIA]. [The LIA] asked BPIL/Mr Merry for assistance in securing valuation advice at short notice in June 2010"; an

ii) "Since none of [Mr Merry], BPIL or BIL instructed [KS] to provide valuation advice to [the LIA], BPIL is not in a position to provide any letter authorising [JLL] to release its file."

446. On 7 August 2014 Hogan Lovells wrote to Stephenson Harwood asking them to "confirm that your client authorises [KS] insofar as they are in a position to do so to disclose their file to us. If [KS] are of the understanding that your client instructed them, even if your client disagrees with that, then that should be sufficient."

447. Stephenson Harwood responded on 21 August 2014, saying that "BPIL is satisfied that the misunderstanding, if there is one, is on the part of your client and [JLL]. Its position remains that none of [Mr Merry], BIL or BPIL instructed [KS] to provide a valuation to your client, as confirmed by the valuation itself. Accordingly, this is a matter between your client and [JLL]."

448. In the event, KS provided its file to Hogan Lovells on 6 January 2017.

449. The claimants submitted that in this correspondence Mr Merry allowed or caused Stephenson Harwood to make misleading and evasive statements. Mr Merry accepted that it was likely he had provided information for the purposes of that correspondence. He said in evidence that there was nothing misleading in the answers given by them since KS had not provided "valuation advice". I conclude that this evidence was evasive and misleading. The passage from the letter of 5 August 2014 says in terms that Mr Merry assisted the LIA in securing valuation advice. That was a reference to the KS letter. So Mr Merry cannot have thought when the 5 August letter was written that Hogan Lovells question was narrowly limited to a formal Red Book valuation. I have concluded that Mr Merry deliberately gave misleading instructions to Stephenson Harwood in 2014 and that his evidence to the court on the point was also evasive.

450. I have carefully considered whether the fact that Mr Merry caused these untruthful statements to be made in the correspondence and gave evasive and untruthful evidence should lead me to infer that he was aware that the defendants had behaved wrongly, indeed dishonestly, in 2010. I have concluded that it would not be right to draw this inference. Hogan Lovells were clearly making preliminary inquiries without much information. I have concluded that Mr Merry was trying to deflect these inquiries in the hope that the problem would go away. This episode (and his evidence to the court) does him no credit, but there are alternative explanations for his false statements, and I have concluded that they should not lead me to infer that he knows that the defendants were guilty of the alleged wrongdoing. However this correspondence and Mr Merry's evasive evidence are to be taken into account in reaching an overall assessment of the defendants' conduct (see further below). They are also a reason for approaching Mr Merry's evidence with real care.

Liquidation of MPL

451. In May 2016 the Thames Water Land was acquired from Thames Water by Impact Property Development Limited, for the price of £4,200,000.

452. On or around 5 June 2017 MPL was put into Members' Voluntary Liquidation in order to enable an orderly sale and distribution of the assets of MPL and its subsidiaries.

453. In late 2017 a sale of the Hotel Site was agreed. Contracts were exchanged but the buyer failed to complete the purchase. Although the price at £11.5 million is not admitted by the claimants, the claimants admit that it was referred to at £11 million in BPIL's accounts.

454. In March 2018 the Hotel Site was sold by MPL, without the Retail Site and without the benefit of any proposed agreement with IHG, for £8.3m. The liquidator made distributions to the creditors.

455. On 22 January 2020 Beeson and Sons Limited acquired possessory title to the unregistered strip of land between 1 Denham Way and the Thames Water Land (i.e. by adverse possession). The proprietorship register states the value of this land as at 11 May 2020 was £40,000. On the same date, Beeson and Sons Limited also acquired the Retail Site for £250,000.

Procedural history of the LIA's claims

456. By their original Particulars of Claim dated 16 November 2016 (and as further subsequently amended several times), the claimants alleged that they had understood, and relied upon, the KS letter as containing a property valuation. They alleged that KS was guilty of deceit. That version of the claim (as amended) made no allegation that the S&P 2009 letter contained (or was relied upon as containing) any representations.

457. In a judgment of 23 October 2018 Judge Barker held that:

    i) The documents were: "consistent only with genuine work to arrive at a true opinion… there is nothing before me to suggest that King Sturge were, or might have been, other than honestly willing to make the changes that were made" ([118]); and

    ii) "The [KS] letter simply cannot reasonably or realistically be construed as a property valuation" ([118]).

458. By order of Judge Barker sealed on 12 November 2018:

    i) the claimants were granted permission to re-amend the Particulars of Claim in a form, which was then immediately struck out as against KS and the defendants. The Claim Form against KS was also struck out; and

    ii) the Claim Form against the defendants was struck out unless the claimants complied with certain conditions, including filing an application for permission to amend that Claim Form and advance new Particulars of Claim against the defendants.

459. By order sealed on 28 January 2019 the claimants were refused permission to appeal against the Order.

460. The claimants accept that they are bound by the judgment of the Court handed down on 23 October 2018, including the findings set out above.

461. By order sealed on 18 March 2020 the claimants were given permission to file and serve the Re-Re-Amended Particulars of Claim (**the RRAPOC**).

Expert evidence

462. The parties led expert evidence on valuation issues. Evidence about valuation was potentially relevant to the issues of (i) falsity of the representations alleged as to the market value of the Hotel Site and the enterprise value of the joint venture and (ii) quantum should I find liability on the part of the defendants. As explained earlier, the parties were agreed that quantum issues should be left to a further hearing (if necessary).

463. The claimants called three experts.

    i) Christopher Dallison of Avison Young, a Fellow of RICS and a RICS Registered Valuer, gave evidence about the market value of the Hotel Site as at 23 June 2010.

    ii) Andrew Pilbrow of Dalston Warner Davis LLP, a chartered surveyor and RICS Registered Valuer, gave evidence about the RICS market value of the Retail Site as at 23 June 2010.

    iii) Jim Davies of FRP Advisory LLP, a valuation professional and member of the Chartered Institute of Management Accountants, gave evidence about the "enterprise value" of MPL (the joint venture company) as at 23 June 2010.

464. The defendants called Mr Steve Taylor of Interpath Advisory, a valuation professional and chartered accountant, who gave evidence about the business or enterprise value of MPL as at 23 June 2010.

465. Mr Dallison was hesitant in his oral evidence and was unable to provide persuasive answers for some of the reasoning in his reports. He was inclined to retreat into his shell rather than offer helpful explanations of his opinions. I put this tendency down to nervousness rather than a lack of expertise or conviction, but it did mean that some parts of his evidence were not well supported or elucidated when he was challenged. An example of this was Mr Dallison's decision to rely on the GVA reports (explained more fully below) rather than on contemporaneous documents. These formed a central plank of his valuation approach. As explained below, I did not find Mr Dallison's reasons for adopting these reports rather than the contemporaneous evidence to be persuasive. Indeed I accept the defendants' submissions that the GVA reports amounted to expert evidence which did not comply with the CPR safeguards and which was not tested by cross-examination. On the other hand, the defendants did not call any evidence from a surveyor and their challenges to Mr Dallison were therefore not supported by contrary evidence. Overall I concluded that Mr Dallison was doing the best he could to assist the court.

466. The market valuation conducted by Mr Dallison adopted the definition of market value found in the RICS valuation guidance.

467. In arriving at his opinion of the market value of the Hotel Site, Mr Dallison employed a discounted cash flow (**DCF**) methodology, taking into account a projected cashflow of the development to arrive at a gross development value or "Day 1 value" of the completed hotel, from which he carried out a residual valuation to arrive at the market value of the Hotel Site. As a cross-check of his DCF, Mr Dallison also referred to comparable transactions. However Mr Dallison noted that due to the market recession at the time, there was little evidence of similar hotel development sites as at June 2010, and that

significant adjustments were required to compare other transactions with the Hotel Site. Mr Dallison concluded that the Hotel Site had a zero value as at the valuation date.

468. Turning to Mr Dallison's adoption of the GVA reports, rather than relying on (a) the IHG projections for the DCF calculations and (b) the construction costs agreed with John Sisk (the IGL defendants' tendered contractor) for his residual valuation exercise, Mr Dallison chose to rely on a separate feasibility study carried out in 2018 by GVA (as it was then known) (**the GVA feasibility study**) and a build cost estimate also carried out by GVA in 2018 (**the GVA QS report**, together with the GVA feasibility study, **the GVA reports**).

469. Mr Dallison explained his reasons for choosing to rely on the GVA reports:

    i) As to the IHG projections, he said there was a question mark over the date on which the IHG projections had been prepared, the source of their data, and that the IHG projections might have been unreliable given that that IHG would have had a vested interest in securing the Hotel Site for one of its hotels given the proximity to IHG's global headquarters, and thereby might have employed overly-optimistic assumptions as part of their marketing efforts to the IG.

    ii) As to the build costs, Mr Dallison did not identify any specific reason why he considered them to be unreliable, but in evidence suggested that the GVA QS report would have reflected a hypothetical purchaser's costs in the notional market.

470. Mr Dallison accepted that his adoption of the GVA reports formed an important part of his valuations; the figures would have differed materially had he used the IHG projections and the contemporaneous evidence about the expected build costs.

471. The defendants submitted that the GVA reports amount to expert reports within the definition of CPR r.35.2 for which no permission has been given and which have not been prepared in accordance with Part 35. Nor had the makers of these reports been subjected to cross-examination. The defendants also contended that Mr Dallison did not advance sufficient reasons for adopting them rather than using the contemporaneous materials.

472. The claimants sought to justify Mr Dallison's reliance on the GVA reports on the following bases. Mr Dallison had considered and agreed with GVA's work, having explained his understanding of the reports, his experience in assessing such work and his views on the GVA reports, and that this was consistent with an expert's ability to refer to literature or to the results of any "examination, measurement, test or experiment" carried out by another person, so long as they identify those who carried out that separate work. I am unable to agree that the GVA reports can be seen as the results of an examination, measurement, test or experiment, but are themselves based on a series of contestable assumptions and opinions about the matters they address. I accept the defendants' submission that the GVA reports are in effect expert reports for which no permission has been given. They have therefore not been prepared with regard to the usual protections written into the relevant rules of court.

473. It is also material that the GVA reports were prepared for the court-appointed receivers of the LIA in order for them to assess the claims. They therefore appear to have been prepared as part of the forensic process. As to the weight I can give to the GVA reports

as untested expert evidence, it is also relevant that the GVA feasibility study was prepared by a junior employee at GVA, although it appears to have been checked and approved by more senior people within the relevant teams at GVA. For reasons explained above, none of them was called as a witness. The GVA feasibility study was prepared some eight years after the events in issue. It makes a series of assumptions about occupancy, room rates, average spend, costs and many other relevant variables. Its outputs are less favourable than the IHG projections. There is also the danger that they were prepared with the benefit of hindsight, but this has not been tested.

474. I did not find Mr Dallison's reasons for preferring the GVA feasibility study over the IHG projections to be persuasive. He said that he was uncertain about the date of preparation. He could easily have clarified that the IHG projections were prepared by IHG's corporate finance department in February 2010. He could also have discovered the persons responsible for producing the IHG projections, namely IHG's corporate finance department.

475. Further, on balance I do not accept his contention that the IHG projections were inherently likely to be overoptimistic. Though IHG no doubt wished to enter a contract to manage the proposed hotel, its own incentives were based on the projections being met and it would have been giving a hostage to fortune if it had overstated the likely returns for the owner of the hotel. IHG was a very large and experienced hotel operator and it had a good grasp of the local conditions, given the proximity of its headquarters. I also have regard to the evidence of Mr Eakin (a very experienced market actor) to the effect that IHG was unlikely to frustrate its own future earning ability by presenting unduly optimistic forecasts to a potential developer at the same time as basing a substantial proportion of those potential earnings on incentive fees which were to be triggered by out-performing those same forecasts.

476. Moreover, as already explained, PKF, a respected independent firm, carried out a contemporaneous feasibility examination of the IHG projections. By 1 July 2010 they had effectively concluded that the IHG projections were supportable. The claimants submitted that as at the valuation date of 23 June 2010 PKF were still advising that some of IHG's projected figures were over-optimistic. But it appears to me that this is an issue on which the court may and indeed should properly take into account evidence which came into existence shortly after the chosen valuation date which throws light on the position as at the valuation date.

477. Mr Dallison said that, as a valuer, he had experience of assessing projections and feasibility studies such as the GVA feasibility study and that he had concluded that the GVA study was to be preferred to the IHG projections. However, other than the justifications referred to above, he did not explain why the GVA study was to be preferred. In my view he did not adequately explain the reasons for disregarding the contemporaneous views of PKF. Ultimately I concluded that Mr Dallison's decision to use the GVA feasibility study was insufficiently justified.

478. I also found Mr Dallison's reasons for relying on the GVA QS report unpersuasive. Mr Dallison did not suggest specific reasons why the John Sisk construction costs might have been unreliable or why he should not place any weight on them. While a market valuation postulates a hypothetical sale - and disregards attributes or advantages available to a specific purchaser that is not available to the general market - the John Sisk costs were the product of a competitive tender process and appear to me to be good evidence

of the likely build costs. I therefore find that these were unlikely to have been significantly at odds with construction costs generally available to the relevant market at the time (being property development companies like the IG). The GVA QS report was prepared much later and there is no reason to suppose that it was more realistic or accurate than the contemporaneous evidence.

479. Mr Dallison accepted that his decision to use the GVA reports rather than the contemporaneous evidence would have made a material difference to his views of market value.

480. As noted above, Mr Dallison concluded that the gross development value of the hotel development as at 23 June 2010 was £31.2 million, and that (once appropriate deductions were made for build costs, professional fees etc.) the residual valuation resulted in a zero valuation for the Hotel Site. This was a striking conclusion in the light of the other evidence. The Hotel Site was valued by S&P at £17m-20m in 2007. Savills' preliminary views in June 2010 were that the Hotel Site was worth (perhaps) £6m. CBRE provided a Red Book valuation of the Hotel Site for Lloyds in June 2011, which concluded that the site value was £6.4m. S&P produced a Red Book valuation on 6 November 2012 which concluded that the market value of the Hotel Site, on the basis of the proposed management agreement being in place, was £18.5m.

481. I accept of course that markets fluctuate and that the valuation date is significant. It was common ground that the hotel markets and the property development markets were seriously affected by the global financial crisis of 2007/8. But it was also common ground that the markets had improved to some extent by 2010. I did not consider that Mr Dallison had adequately explained how he reached a market value of zero when other professionals had produced positive values (albeit ranging wider) at around the relevant times. I have real misgivings (especially in light of my concerns about his use of the GVA reports) about Mr Dallison's conclusion that the value of the site was zero in June 2010.

482. However, for reasons I shall explain further in a moment, I do not consider that I should at this stage in the proceedings seek to reach a concluded view on the market valuation of the Hotel Site.

483. Mr Pilbrow gave evidence about the market value of the Retail Site as at 23 June 2010. He adopted the RICS definition of market value.

484. Mr Pilbrow reached a market value of £200,000-£300,000 for the Retail Site. He said that there was no hope value to be attributed to the Retail Site because of the remote possibility of obtaining the requisite planning permission. Further, he said that the position of the area of intervening unregistered land between the Retail Site and the land owned by Thames Water meant that there was no ransom value for the development of the retail opportunity on the Thames Water Land – in short, the Retail Site did not provide access to that land.

485. Mr Pilbrow had the appropriate expertise and was a good witness, who did his best to assist the court.

486. The defendants submitted that Mr Pilbrow's evidence did not take matters further than the 2010 valuation carried out by the Frost Partnership and in particular, failed to consider the value of the Retail Site as part of the Retail Opportunity, and not merely a "ransom

strip" by which the Retail Opportunity could be accessed. As already noted, a market valuation of the Retail Site was carried out by the Frost Partnership in June 2010 which concluded that the then-market value of the plot was £250,000.

487. It is also common ground that in order to develop the Retail Opportunity the joint venture would need to acquire some or all of the Thames Water Land (which it did not yet own). It was also common ground that there was no planning permission for such a development and the experts agreed that the project was embryonic.

488. As just explained, Mr Pilbrow made an assumption as to the ownership of the unregistered land between the Retail Site and the Thames Water Land, which was acquired by the IGL defendants in 2020 by means of an application for adverse possession. Hertford King explained in his evidence that the unregistered land was either owned by Thames Water or was land to which the IGL companies had had rights by way of adverse possession. This point arose late in the day and the claimants did not have much opportunity to address it. But it turned out to be of limited importance because the anticipated access to the Thames Water land at that stage was via the Thames Water Land and not the unregistered land or the Retail Site. I do not accept the defendants' suggestion that the Retail Site could be regarded as having significant value as a ransom strip.

489. The defendants submitted that Mr Pilbrow had insufficient expertise to venture opinions as to the likelihood of the grant of planning permission or the viability of the Retail Opportunity. Mr Pilbrow accepted that he was not a retail consultant or specialist. But I do not think there was any real substance to this challenge. A valuer of land undertaking a market valuation is required to consider its value in its best use. As at June 2010 nobody had even applied for planning permission for the Retail Land. Any hope value was about the Retail Opportunity (to be developed on other land, not owned by the owner of the Retail Land at that time) rather than a value for the Retail Land itself. I accept the evidence of Mr Pilbrow that, applying the RICS market value test, any hope value arising from the Retail Opportunity was too remote to be taken into account.

490. I further accept the evidence of Mr Davies that any hope value that could be derived in 2010 as to the Retail Opportunity itself would attach to the Thames Water Land (i.e. the proposed development site), which the joint venture did not own and would be required to pay market value to acquire. As he put it, it was a "nil sum game" for the joint venture.

491. Mr Davies gave evidence about the "enterprise value" of MPL (the joint venture company) as at 23 June 2010. The term enterprise value was of course used in the KS letter.

492. Mr Davies was a careful and impressive witness. Mr Davies was instructed to prepare his report on the value of MPL. He reached the view that the joint venture was a property company and that the best proxy for its value was the combined value of its net assets. Its assets were the two parcels of land. He took the values of these from the valuations of Mr Dallison and Mr Pilbrow. His valuation for MPL of £230,753 is indeed the combined value of the Hotel Site and the Retail Site (as given by Mr Dallison and Mr Pilbrow respectively), adjusted for the book value of the other assets and liabilities on MPL's balance sheet.

493. Mr Davies also explained that the term "enterprise value" has a technical meaning for valuers. It means the total value of its equity and its net debt (i.e. debt minus cash or cash

equivalents). The term is generally applied to listed companies with a market capitalisation. As I understood their evidence, neither Mr Davies nor Mr Taylor appeared to think that the term "enterprise value" in the KS letter was being used in this technical sense.

494. The defendants submitted that Mr Davies's approach to the valuation of MPL was wrong. They argued first that Mr Dallison and Mr Pilbrow had approached their respective valuation exercises on the basis of "market value" and not on the basis of "investment value" or "worth". These are alternative measures of valuation found in the professional literature. In essence "investment value" or "worth" is the value of the asset to a particular owner, which may have its own investment criteria. This is to be contrasted with market value, which postulates a hypothetical sale between a willing seller and a willing buyer (and therefore strips out the particular interests or investment objectives of actual market players).

495. The defendants submitted that it would have been more appropriate - at least for the purposes of assessing issues of liability - to consider the actual position of the parties and not the value which might arise on a hypothetical sale.

496. The defendants also submitted that, in the real world, the joint venture would itself develop the Hotel Site and would therefore keep the profits (known in the valuation methodology as "developer's profits") by doing so. Likewise in the real world the joint venture would not have had to pay stamp duty as it already owned the land and the proposed investment involved the issue of shares in an off-shore company. The defendants said that this had important consequences for the market valuations advanced by the claimants' experts (leaving aside the criticisms of Mr Dallison for adopting the GVA Reports). So, for instance, Mr Dallison deducted a substantial notional developer's profit (£4.6m) in the residual valuation of the Hotel Site; he deducted costs of acquisition for the Hotel Site, which was already owned by the joint venture; Mr Dallison had included stamp duty at 4% in his deducted costs of acquisition, for which no liability would arise on the acquisition of shares in MPL, a Guernsey-company. The defendants submitted that, while such deductions might be appropriate for a Red Book valuation, they do not reflect the way the parties were assessing the potential joint venture investment, which was by reference to the expected (or at least hoped for) returns over the long term. In short the LIA were not considering buying the Hotel Site in order to sell it; they were considering going into a long term joint venture which was proposing to develop a hotel and then own the Hotel Site.

497. The defendants also submitted that Mr Pilbrow's approach failed to take into account the value to the LIA of entering into the joint venture. He had ascribed zero value to the Retail Site beyond that of a derelict bungalow, which did not capture the benefit of the proposed Retail Opportunity for the LIA of entering into a joint venture with the defendants. In considering the joint venture, the LIA was not assessing the opportunity as the acquisition of land which might be sold to someone who wanted to build a house on it; they were doing so in the hope that the defendants' proposals for acquiring and developing a retail village on the Thames Water Land would come to fruition. There were of course risks and uncertainties attached to that proposal (which was embryonic), but if it came off the rewards would potentially be huge. The defendants submitted that the LIA was assessing the joint venture by reference to the expected (or at least hoped for) returns over the long term. They were investing on the basis of their assessment of the

defendants' expertise and experience in property development, particularly in the Maple Cross area.

498. The defendants contended that these advantages available to the LIA upon entering the joint venture were not fully reflected in Mr Davies' evidence, which was derived from the market valuations (of Mr Dallison and Mr Pilbrow) of the two sites.

499. I shall return to these submissions in a moment.

500. Before that it is helpful to summarise the evidence of their expert, Mr Taylor. He was well qualified to give evidence and I concluded that he was doing his best to assist the court. Mr Taylor accepted that he did not have expertise as a land valuer.

501. Mr Taylor used a DCF methodology and residual valuation calculation to arrive at a value attributable to the hotel development of £14.4-£17m and a value attributable to the retail development of £2.3-£4.6m. As to the value attributable to the hotel development, an important difference between Mr Taylor and Mr Dallison derives from their use of different underlying assumptions: Mr Taylor relied on the IHG projections and Mr Dallison the GVA feasibility study. There were other significant differences, including about discount rates. The claimants challenged his evidence on these points. However, as explained below, I do not consider that it is helpful or necessary for me to attempt to resolve these differences at this stage. I indeed consider that I would require further assistance from the experts before being in a position to do so.

502. As to the Retail Land, the claimants submitted that Mr Taylor's approach was flawed. Mr Taylor had adopted S&P's Retail Appraisal figures, whilst accepting that this was essentially preliminary work rather than an outline feasibility study and, for example, would not be of any real value in supporting an application for development funding or as something to present to an investor as a serious opportunity. Mr Taylor also accepted that the proposed retail village was speculative, and that the joint venture did not own the necessary land for the development (being the Thames Water Land). Mr Taylor said (and I accept) that it sounded "remarkably like an idea, doesn't it". Mr Taylor also accepted Mr Davies' position that the acquisition costs for the Thames Water Land would need to be deducted from his valuation of the retail development. I consider that there was some force in these criticisms.

503. I concluded ultimately that the expert evidence was very limited (if any) assistance to the court in relation to the liability issues. This was partly because there was no agreement about the basis of valuation. It was unfortunate that some of these differences were not identified in advance of the trial.

504. I also concluded that there was insufficient material on which the court could reliably determine even the issue of the market value of the shares as at June or July 2010. The parties and their experts did not spell out sufficiently for the court to reach an assessment the full consequences of selecting one set of assumptions rather than another. It would have been far more helpful had the experts given a road map explaining how the selection of one or other combination of assumptions would lead to materially different values – and setting out the reasons for supporting one set of assumptions over another. This was not done. As already noted, a resolution of the valuation issues would to my mind need further evidence and another hearing.

505. But in any event, for reasons given in more detail below I have concluded that the KS letter (whether alone or together with the S&P 2009 letter) did not contain any representations about the market value of the two properties (or indeed the shares in MPL). I also find as a fact, as regards the KS letter, that the defendants did not consider that it contained a market valuation of the two sites of land; rather they regarded it is a development appraisal, akin to the S&P 2009 letter (again see further below).

506. The expert evidence about market value is therefore of little assistance when considering the issue of falsity for the purposes of the misrepresentation case.

507. The KS letter of course referred to an "enterprise value". I find that it was not used in the technical valuer's sense and the evidence of the experts about the term is of no real assistance in determining issues of falsity.

508. As also explained below I find as a fact that the defendants did not believe that the LIA had decided to enter the joint venture on the basis of the market value of the two parcels of land. Rather they believed that the LIA was assessing the investment on the basis of the materials provided about the potential returns from the investment – the cashflow documents. As regards the hotel, the proposal was for the hotel to be built out and held for at least some years (to be managed and operated by IHG) before being sold. The information provided to the LIA during the negotiations emphasised the total investment returns. These would by definition have included e.g. the developer's profit (which would have been shared between them). As regards the Retail Land nobody could sensibly have thought that the LIA was interested in a proposal to buy and hold a plot of land with a view to selling it for someone to build a house on it. I find that the defendants understood that the LIA was primarily interested in the potential retail village development, with all of its risks and potential rewards. Given these factual conclusions, it appears to me that the expert evidence does not help the court in assessing the other issues raised by the claims.

509. As to damages, I have already explained the position taken by the parties in closing – that the court should leave questions of quantum to a second hearing. Let me explain why this seems appropriate. I have not heard full submissions about the appropriate measure of value for assessing quantum on the present facts. The claimants submitted that the court should take the market value of the shares at the transaction date. The defendants submitted that the relevant issue is the value to the claimants of the shares at that date and that the "investment value" measure is a better proxy for that. In the absence of developed submissions I shall not reach a conclusion on this point.

510. Moreover on my factual findings the defendants did not view KS as providing a Red Book valuation (i.e. a market valuation of the land). Rather they thought that KS were providing an appraisal of the cash flows from the venture (from both the Hotel Site and the Retail Site). For these reasons I do not consider that the concept of "market value" in its strict sense is of particular utility in considering the other issues of liability in this case.

511. For these various reasons I do not consider it is necessary or helpful to express further conclusions about the expert evidence.

Analysis of the claims

512. In this part of the judgment I shall address the claims and defences in turn. I shall start by analysing the pleaded claims; set out the relevant legal principles; and analyse and reach conclusions about the disputed elements of the claims. As part of the third step I reach further findings about the contested factual issues identified earlier.

The deceit claims

The pleaded case

513. The claimants plead in [64] of the RRAPOC that the defendants represented or caused to be represented or adopted and approved representations that:

> "[64.1] the "enterprise value" of the joint venture was £21m;
>
> [64.2] the value of the Hotel Site was £18m;
>
> [64.3] the valuations to that effect contained or referred to in the KS letter and the S&P 2009 letter were, and were honestly believed to be, accurate and reliable; and/or there was no reason to believe that those valuations were or might be inaccurate or unreliable."

514. The claimants plead in [65] that the representations were made or caused to be made to the claimants as follows.

    i) The first and second representations were made in the KS letter and the S&P 2009 letter.

    ii) The third representation was implicit in the KS letter and the S&P 2009 letter and in the sending of those documents to LIA UK for further communication to the LIA on 24 June 2010.

    iii) The KS letter was written and sent on the defendants' instructions and request, so that they caused or procured the making of the representations. It is alleged that the S&P 2009 letter was sent by the defendants to Mr Rais and Mr Layas in January 2010. It is also alleged that the defendants knew that Mr Layas sent another copy to the LIA on 24 June 2010 as support for the KS letter and that the defendants adopted and approved the representations the two letters contained.

    iv) It is also alleged that the defendants made the representations contained in the S&P 2009 letter by forwarding it to KS as part of the instructions to KS.

515. At [66] it is pleaded that the defendants caused or procured the representations to be made intending the claimants to act on them.

516. At [67] it is alleged that the representations were false in that the Hotel Site was worthless or worth substantially less than £18m; that the joint venture "was a worthless enterprise for the claimants", alternatively worth as an investment very substantially less than £21m; and the defendants knew or suspected that the valuations contained or referred to in the KS letter and in the S&P 2009 letter were inaccurate or unreliable.

517. At [68] it is alleged that the defendants made the representations knowing they were untrue or without belief in their truth and recklessly.

518. At [69] it is alleged that the claimants relied on the representations in deciding to enter the joint venture.

519. In the Re-Amended Defence at [81] the defendants plead that the claimants are bound by the findings of Judge Barker on 23 October 2018. This is admitted in the Re-Amended Reply.

Legal principles

520. These are summarised in *European Real Estate Debt Fund (Cayman) Limited v Treon* [2021] EWHC 2866 (Ch) at [340]-[375]. There is no need to repeat the summary here.

521. In addition, the following principles are relevant.

i) A party may be liable for representations made by a third party if he manifestly approves and adopts those representations, and the other elements of the tort of deceit are satisfied. If so, he will be liable as a primary tortfeasor: *Bradford Third Equitable Building Society v Borders* [1941] 2 All ER 205 at 211A.

ii) To have 'manifestly' approved and adopted a third party's representation, the approval and agreement of the party alleged to be liable must have been manifested or communicated to the claimant in some way: *Ivy Technology Ltd v Martin* [2022] EWHC 1218 (Comm) per Henshaw J at [351]-[354].

iii) The law does not recognise the concept of 'composite fraud'. An action in fraud will not lie where a statement is made by an agent who honestly believes it to be true, merely because the principal or another agent knew it to be false: Chitty on Contracts (34th edition) at 9-061.

iv) If one agent makes a statement honestly believing it to be true, but another agent or the principal himself knows that it is not true, knows that the statement will be or has been made, and deliberately abstains from intervening, the principal will be liable. In these circumstances the party with the guilty knowledge can himself be treated as being guilty of fraud: Chitty on Contracts (34th edition) at 9-061.

v) If a statement conveys a false impression, the representor cannot excuse himself by saying that the representee had the means of finding out the truth or was negligent in failing to do so: *Nocton v Ashburton* [1914] AC 932 at 962.

vi) The defendant's knowledge is to be judged subjectively: "the question is not whether the defendant in any given case honestly believed the representation to be true in the sense assigned to it by the court on an objective consideration of its truth or falsity, but whether he honestly believed the representation to be true in the sense in which he understood it albeit erroneously when it was made": *Akerhielm v De Mare* [1969] AC 789.

vii) It is essential that the representor should have intended the statement to be understood in the sense in which (i) it was understood by the representee and (ii) it was untrue, or should have deliberately used the ambiguity for the purpose of deceiving the representee and succeeded in doing so: *AIC Ltd v ITS Testing Services (UK) Ltd (The Kriti Palm)* [2006] EWCA 1601 at [253].

viii) Reliance or inducement is a question of fact. The representee must have understood and relied on the representation in the sense in which it was false: *Arkwright v Newbold* (1881) 17 Ch D 301 at 324.

ix) Where a statement was made (with the necessary knowledge and intention) which is likely to induce a representee to enter a contract, there is a presumption of fact that it did so induce the representee. I accept the defendants' submission that a representee who was never aware of the representation cannot invoke the presumption.

What representations did the defendants make, cause or adopt?

522. The claimants contend that the representations were contained in the KS letter and the S&P 2009 letter and, in the case of the third representation, in the sending of those documents to LIA UK, for further communication to the LIA.

523. The KS letter was addressed by KS to Mr Layas at LIA UK. It said that he had asked KS to review the proposed development project at Maple Cross. It described the location of the proposed hotel, the existing competition, the management contract, IHG's standing and the Crowne Plaza brand. It then reviewed IHG's revenue and costs projections and stated "[o]verall, we are comfortable with the projections produced by IHG. As with all current projections, they are subject to changes in the wider macroeconomic environment". It then addressed build costs and the capability of the builder.

524. Under the head "Estimated Future Capital Value and Hotel Returns" it said that Mr Layas had asked for KS's opinion of "Market Value of the hotel site as fully fitted and equipped operational upon completion of the development". It then said,

> "As agreed, our comments in relation to the valuation information provided constitutes an informal opinion only and is subject to certain limitations as detailed below. We have not inspected the site and have relied upon information provided to us by you.
>
> The opinions of values expressed herein should not be used for any purpose other than general guidance. Our opinions of value are subject to a full, formal report which will set out the assumptions, conditions and caveats which underline and qualify the valuations. In providing a formal report we would need to carry out further due diligence."

525. Though it promised to provide a market valuation of the site as completed, the letter did not actually give one. Instead it gives a calculated figure of £57m on trading maturity, on the basis of IHG's projections being achieved and using a yield of 7%.

526. The letter then set out the various returns. Under the heading "loan/value" it said that a loan of £30m at 4.75% should be achievable. It then said,

> "This is assuming the land is worth £18m as per the valuation competed [sic] by Strutt and Parker".

527. The letter then said that KS would expect a project of this type to generate an IRR in excess of 10%.

528. The letter then turned to address the retail village proposal. It said that the purpose of the letter was to interrogate the assumptions and values that had been attributed to the scheme. KS said that they proposed to focus on the assumptions that had been made in the appraisal for the retail village idea.

529. At the end of the letter, under the heading "Summary and Conclusion" KS said,

> "Based on the information that we have been given, including the valuation by Messrs Strutt and Parker, we support the assumptions made and we consider an enterprise value of £21 million appropriate."

530. This concluding statement falls to be read in the context of the whole document. The letter as a whole expressed a series of opinions about the projected returns for the two developments and the robustness and reasonableness of the assumptions underlying them. It also states that insofar as views are expressed on value KS has not carried out a formal valuation and that the views are for general guidance only.

531. There is no definition of or further elucidation of the term "enterprise value" in the letter. The claimants did not rely on any evidence to suggest that they understood it in a particular sense.

532. I have concluded that it was used to mean the value of the whole joint venture business to a potential investor.

533. I have therefore concluded that the last page of the KS letter contained an express representation that KS was of the opinion that a value to an investor of £21m for the whole joint venture business was reasonable.

534. The KS letter taken alone and read in isolation contains a statement that S&P have valued the Hotel Site at £18m and that this is something that KS has taken into account in reaching their opinion about the value of the joint venture.

535. The claimants' case is however that the alleged representations about the Hotel Site were made in both the KS letter and the S&P 2009 letter. This means that the two letters fall to be read together. I also note that the claimants' case was that LIA Board relied on both the KS letter and the S&P 2009 letter. It did not seek to advance a case that the KS letter was read or relied on by any of its decision makers in isolation from the S&P 2009 letter.

536. Rather, the claimants' case is that, when determining what, if any, representations were made about value in the S&P 2009 letter, one should assume that the reader is approaching it having read the statement in the KS letter that S&P had valued the land at £18m.

537. The S&P 2009 letter did not contain a valuation. It said that it was a review of the proposed development project. S&P had reviewed the development profile of the hotel. The letter then referred to an analysis of trading over the next 12 years. It said that on the assumption that IHG meet their forecasts there will be stabilised net incomes of more than £4.25m in years ten and beyond and that using a yield of 7.0% to 7.5% this would mean that the hotel should be capable of achieving a future capital value of c.£58m. That was not a site valuation. The crucial passage then said that "[b]ased on the financial model assumptions attached with this letter, with a site price of £18m, the internal rate of

return from the overall investment will provide an average return of 10% per annum." The attached cashflow describes the site cost of £18m as an assumption.

538. Reading the S&P 2009 letter in the light of the statement in the KS letter, I do not think that the S&P 2009 letter can realistically be read as containing a valuation of the Hotel Site at £18m. It is clear that that figure is an assumption, used to calculate the IRR from the overall investment on the further assumption that the trading projections were met.

539. For these reasons I do not consider that, taking the two letters together (including reading the S&P 2009 letter in the light of the statements contained in the KS letter), there was any representation that the value of the Hotel Site was £18m.

540. I turn to the implied representation case.

541. I have already found that the KS letter represented that KS was of the opinion that the £21m was a reasonable measure of the value to an investor of the whole joint venture business.

542. The test as to whether a statement of opinion involves a further implied representation (e.g. that the person stating the opinion genuinely believes it and has reasonable grounds for his belief) involves considering the meaning which is reasonably conveyed to the representee; the material facts of the transaction, and the knowledge of the parties respectively, their relative positions, the words of the representation and the actual condition of the subject matter: see *The Kriti Palm* at [255].

543. I have concluded that there was a further implied representation that KS genuinely believed its opinion that a value of £21m to investors of the whole joint venture business was reasonable; and that KS was aware of no reason to believe that this opinion was unreliable or inaccurate.

544. Since KS's state of mind is no longer in issue in these proceedings, this implied representation does not avail the claimants. If they were to succeed against the defendants they would have to establish an implied representation about genuineness of *the defendants'* beliefs about the enterprise value of the business (or that they had reason to believe that an enterprise value of £21m was inaccurate or unreliable).

545. I do not think it can realistically be suggested, on the facts pleaded by the claimants, that the LIA or LIA UK as representee reasonably thought that the KS letter or the S&P 2009 letter said anything about the defendants' beliefs. As far as the LIA and LIA UK were concerned the opinion was that of KS. KS were expert property professionals and they were stating their expert opinions. The meaning that would reasonably have been conveyed to the claimants in the circumstances could only have been about KS's (and not the defendants') opinions.

546. It is not part of the claimants' deceit case that the claimants as representees understood that the defendants were involved in the production of the KS letter. Indeed their own case under this head is that they relied on the KS letter as an independent report.

547. Moreover as part of their conspiracy case in RRAPOC [74.3.3] the claimants allege that Roger King and Mr Merry deliberately concealed their involvement from the LIA.

548. The claimants also accuse Mr Layas of dishonesty and they do not seek to suggest that his knowledge of the involvement of the defendants in the production of the KS letter is to be attributed to the LIA or LIA UK. On the contrary, they contend that his knowledge should not be attributed to them.

549. In these circumstances, I do not think that the provision of the KS letter or the S&P 2009 letter conveyed any implied representation about the beliefs of the defendants about the value of the joint venture.

550. Nor in these circumstances could it reasonably be suggested that there was a representation to the effect that there was no reason for anyone other than KS itself to believe that the opinions expressed in the letter were inaccurate. There is nothing in the KS letter to suggest that it contains or conveys the opinions of anyone other than KS itself.

551. In any case any such representation would be impossibly wide as it would amount to a representation as to the states of mind of an unspecified and unlimited class of people – perhaps anyone in the world.

552. The claimants sought to rely on the fact that Roger King and Mr Merry procured or caused the making of the representations contained in the KS letter. But, supposing that to be so, it does not assist the claimants. The representations contained in the KS letter were representations as to the opinions of KS about the value of the joint venture business and the other matters stated therein; that such opinions were genuinely held; and that KS knew of no reason to think those opinions unreliable or inaccurate. The question whether they were false therefore depends on whether KS (and not the defendants) held those opinions and whether KS (and not the defendants) knew of grounds undermining those opinions. There is no case that KS did not genuinely believe the opinions stated; nor is there any case that KS had reasons for thinking their own opinions were unreliable or inaccurate. Accordingly, there is no case that these representations were anything other than true. It is accordingly irrelevant that Mr Merry or Roger King may have caused or procured the statements. There is no liability in law for making true statements or for causing others to make them.

Falsity

553. The express representation made in the KS letter was that KS was of the opinion that a value of £21m for the whole joint venture business was reasonable. The implied representation was in effect that KS genuinely believed this and had no reasons for doubting the accuracy or reliability of its opinion.

554. As just explained, there is no case that KS did not genuinely believe the opinions stated; nor is there any case that KS had reasons for thinking their own opinions were unreliable or inaccurate.

555. The claimants sought to argue that the representation about the enterprise value of £21m was false because the value was in fact less than that (they said the same thing about the alleged representation about the valuation of the Hotel Site). They argued that the valuations should have been far lower.

556. I am unable to accept this argument, for the reasons just given. Any representations about value in the two letters could only have been expressions of opinion of the professional firms signing the letters. As I have said in the case of the KS opinion about enterprise value, there was an implied representation that KS genuinely believed its opinions and that it knew no grounds to render its own opinions inaccurate or unreliable. In order to establish that the representation was untrue it would be necessary to establish that KS did not believe what it said or that there were reasons of which it was aware which rendered those opinions unreliable or inaccurate. The claimants have not sought to do that.

557. Moreover, as already explained, the exercise undertaken by the claimants' expert witnesses was to assess the market value of the land and the business as a whole, using the technical definition of market value. I do not however think that any representations about enterprise value in the KS letter are to be read as incorporating that definition. The KS letter did refer at one point to carrying out a market valuation of the Hotel Site, but it is clear from the letter that KS did not do that. Moreover KS made clear in the letter that they had not undertaken a formal valuation exercise. When it came to the expression of the conclusion KS used the undefined term "enterprise value" and did not set out the basis of valuation. KS did not say that this was a formal market valuation (incorporating the usual assumptions about a hypothetical arm's length sale). I do not think that a reader of the letter would have thought that KS were using the market value standard (and I note that the claimants called no evidence seeking to explain that any of their decision makers actually understood the letter to do so). This is negated by KS's express statement which said that anything they said was for general guidance and was not a formal valuation. This is a further reason for concluding that experts' views reached many years later after conducting a formal market valuation using the market value standard are of little assistance.

558. I have explained why I do not consider that the representee would have understood the representations (which were expressions of opinion) were made by anyone other than KS. It follows in my view that the state of mind of others (such as the defendants) about KS's opinions are irrelevant to the representations contained in the letters.

559. I therefore find that the claimants have failed to establish that the representations made in the KS letter were false. It follows that the deceit claim fails.

560. In case I am wrong in concluding that there were no implied representations about the state of the defendants' minds, I should consider the case on the basis that the KS letter contained such a representation. The issue on that hypothesis is whether the defendants did not genuinely believe the opinions about the enterprise value of the joint venture and whether they knew of reasons to believe that those opinions were inaccurate or unreliable.

561. Before considering falsity a little more needs to be said about the content of any such representation and the defendants' understanding of it. As explained earlier, in cases of deceit the claimant has to show that the defendant understood the representation in the same sense as the claimant understood it (leaving cases of deliberately playing on an ambiguity aside). As I have said, the KS letter does not set out the basis of valuation when it refers to an enterprise value. Nor does it purport to set out a valuation reached after a formal process. It is clearly not based on Red Book valuations of the two plots of land.

562. I find that the defendants would have understood the KS letter to be saying that, based on the projected returns from the two developments, the joint venture as a whole was worth £21m.

563. In their pleading the claimants rely for their case of falsity on the defendants' knowledge of Savills' preliminary opinions and the communications which followed on 18 June 2010.

564. I do not consider that this establishes that the defendants knew that what KS said about an enterprise valuation of £21m for the joint venture was unreliable or inaccurate. Indeed I have concluded on the whole of the evidence that the defendants believed that the joint venture as a whole was worth no less than £21m. I find as follows:

i) From late December 2009/early 2010 the defendants were assessing the joint venture by reference to projected investment returns. I find that the defendants regarded IHG's projections as realistic and achievable. The defendants incorporated them into the 12 year cashflows (i.e. the Cashflow Document).

ii) They were supported in this by Mr Eakin, who regarded the prospects for the hotel positively.

iii) They were also supported in their views about the cashflow analysis by Mr Leppard's advice in the S&P 2009 letter.

iv) They genuinely believed that the hotel, if developed, would be successful.

v) The defendants also thought that the retail village development was realistic and, if it came about, would be very profitable. They believed that the IG could acquire the Thames Water Land and that they would be able to achieve the necessary permissions to develop it.

vi) The defendants appear to have had an optimistic outlook about these developments. Hertford King and Mr Merry gave unchallenged evidence about their confidence in the hotel project. They referred to their views that it was a better prospect than a four star Radisson Blu hotel development being considered in Coventry in 2010. Mr Merry thought that this demonstrated how sensible the IG's appraisal was and Hertford King said, "we aren't asking for anything crazy". I accept this evidence.

vii) The defendants knew by 17 June 2010 that Savills' had been asked to carry out a formal market valuation of the Hotel Site and had come to a preliminary valuation of £4-6m. But I do not consider that it follows that the defendants thought that the joint venture as a whole was worth less than £21m. Mr Merry had understood from Mr Leppard in December 2009 that it would probably be difficult to obtain a Red Book valuation, in part owing to the lack of comparable evidence.

viii) I also find that Mr Merry and Roger King did not accept or agree with the preliminary conclusions of Savills. Mr Merry sent an email on 18 June 2010 saying that on Savills numbers the rate of return would be more than 30%. Roger King sent his email of 21 June 2010 asking Savills to offer him properties valued on their approach – a sarcastic way of indicating that he thought little of their valuations.

This is also consistent with Hertford King's evidence that his father did not have much respect for professionals and liked to challenge their views.

ix) I also accept the evidence of Mr Merry that he would not have expected KS to say anything in the KS letter which they did not believe to be accurate and reliable. The KS letter also went in some detail through the assumptions underlying the cashflows and concluded (putting things broadly) that the assumptions were reasonable and appropriate. KS were a well known and respected property consultancy. I find that the KS letter confirmed the defendants' optimistic opinions about the proposed venture and its value to investors.

565. I would therefore have concluded that the defendants genuinely believed the overall value of the venture to potential investors to be in the order of £21m and that the defendants were not aware of reasons for believing that that opinion was inaccurate or unreliable.

Knowledge and intention of the defendants

566. This issue does not arise if I am correct in saying that the only representations made by the delivery of the KS letter and the S&P 2009 letter were representations made by KS as to their opinion about the enterprise value (including the implied representations as to the genuineness and reliability/accuracy of their opinions). If I am right about that, the state of mind of the defendants is irrelevant to the deceit claims.

567. In case I am wrong about this, I would have found that the defendants intended the claimants to rely on any representations made in the KS letter. On their own case the defendants assisted Mr Layas in obtaining advice from KS. I find that they knew that the LIA might well rely on that advice in deciding whether to enter the joint venture.

568. In case I am wrong in saying that the state of mind of the defendants is irrelevant to the deceit claims, I should consider whether they had the requisite guilty knowledge: i.e. the allegation that they knew or were reckless as to whether the representation by KS about the enterprise value of £21m was unreliable or inaccurate. For the reasons given in the previous section I have concluded that the defendants believed the overall value of the joint venture to investors to be no less than £21m and were not aware of grounds rendering that opinion unreliable or inaccurate. I would therefore have concluded that this element of the deceit case was not established.

Inducement/reliance

569. This does not arise on my earlier findings.

570. I address it in case I am wrong so far.

571. The claimants plead in [52] and [53] and [69] of the RRAPOC that the Board of the LIA relied on the representations. They allege that the KS letter and the S&P 2009 letter (or at least a summary of their contents) were put before the Board of the LIA at the 27 June 2010 meeting. The claimants do not contend that the KS letter (and not the S&P letter) were considered by the board.

572. As already explained, the claimants were unable to produce any documentary records showing that the KS letter and the S&P 2009 letter were placed before the LIA Board or

considered by it at the 27 June meeting. There is no documentary record showing what documents were provided at the meeting concerning the joint venture.

573. The documentary record shows that the first draft of the board memo was produced on 6 June 2010. It referred to an investment return of 10% but said nothing about value. On the following day a series of documents were emailed to Ms Ghagha to be printed out.

574. A further version of the board memo is likely to have been produced on 20 June 2010. I reach that conclusion because that is the date appearing on the face of the final version of the memo. It referred to some attached documents but does not identify them. I conclude on the balance of probabilities that the attachments were the documents printed out on 7 June 2010.

575. Metadata recovered from the LIA's documents shows the final version of the memo being produced on the afternoon of 24 June 2010 (which is after Mr Rhazali received the KS letter and the S&P 2009 letter). It was still dated 20 June 2010. There was no evidence that any changes were in fact made to it or what they were.

576. It is common ground that the board pack for the 27 June meeting was sent out in advance of the meeting by Mr Khalifa and that this did not contain any materials about the joint venture transaction.

577. The LIA did not call any witness who was able to recall what documents were placed before the LIA board in relation to the proposed joint venture.

578. Mr Rais said in his witness statement that documents were circulated to the directors before or at the relevant meeting. He also said that though he has no recollection, because the joint venture was not on the agenda, he believes a separate clip of documents would have been prepared and handed to board members shortly before or at the start of the meeting.

579. Mr Rais said in his statement that he believes, based on the normal practice of the board, that the board would have needed to see some indication of value from an independent valuer.

580. As to the actual events at the meeting, Mr Rais' oral evidence was very poor as already explained. Though he accepted in his witness statement that he presented the joint venture proposal, in his oral evidence he denied this, and said that the minutes recording him doing so were inaccurate. I concluded that I could give little weight to his recollections about the meeting.

581. I also find that any presentation he gave was likely to have been brief (consistent with the evidence of Dr Kawan).

582. Ms Ghagha had no recollection of the actual events. She accepted that it might well be the case that the board memo and accompanying documents were only provided to the board in hard copy at the meeting.

583. She said that in her experience the board would not approve an investment like the joint venture without supporting documents, such as an appropriate valuation.

584. The statement attached to the hearsay notice of Mr Khalifa (the secretary to the board) says that he has no recollections of the transaction. He says that he was copied in on some emails and this was most likely because those working on the file knew that as secretary he would put together the relevant documentation for the board. He says that where an item was not on the agenda for a meeting any documents would be supplied to the board either immediately before or at the meeting. Sometimes the person presenting the item would hand out hard copies or sometimes Mr Khalifa himself would do it. In the case of real estate investments the board would require an independent valuation of the property being acquired, "whether it was a direct investment or, like the Maple Cross transaction, a share purchase".

585. I was informed that Mr Khalifa was not willing to give evidence, even by remote link. I note that his evidence appears to be that the board would have required a valuation of the land. The KS letter was not expressed to be a land valuation and nor was the S&P 2009 letter. He says however in his evidence that the KS letter (which he cannot remember) was "exactly the sort of valuation report that would have been provided to the Board". There would no doubt have been cross-examination about this. Given his unwillingness to give evidence, I am unable to place significant weight on his evidence.

586. There was also a hearsay notice from Dr Kawan. He says that at the end of the meeting of 17 June 2010 Mr Rais "briefly presented the [joint venture] investment to the Board". He cannot remember any particular supporting documents. He says that the board would most likely have required prior sight of a valuation or at least confirmation from Mr Rais that a valuation had been obtained (although the latter would have been unusual). I was informed again that Dr Kawan was not willing to give evidence, even by remote link. There would no doubt have been cross-examination about his evidence, which differs in emphasis from that of Mr Khalifa. I am unable to place any significant weight on his evidence.

587. I have reached the following conclusions.

i) The contents of the final version of the board memo were drafted on 20 June 2010. There is no evidence of any changes to its contents being made on 24 June 2010.

ii) The board memo did not refer to any valuation of the Hotel Site. On the other hand it referred to investment returns of 10% per annum. This also appeared in the earlier version of 6 June. This is consistent with the information provided by the defendants since February 2010.

iii) There is nothing to show that the board memo was updated after the receipt of the KS letter by Mr Rhazali on 24 June.

iv) The joint venture transaction did not appear in the agenda for the board meeting of 27 June. It is probable that this item was presented to the board at the meeting itself and the directors were provided with hard copy documents at the meeting.

v) It is likely that the documents printed out on 7 June 2010 were provided with the memo. Ms Ghagha explained that she would compile hard copies for the board.

vi) Mr Rais presented the joint venture proposal to the board. The item was dealt with late on in a long meeting and his presentation was brief. There was no evidence that any particular documents were referred to as part of the presentation.

vii) I am not persuaded on the evidence that the board invariably or even usually required valuation reports for land transactions. Mr Rais' evidence cannot be given much weight for the reasons I have given. Nor can the hearsay evidence. Ms Ghagha's evidence was only that the board would not approve an investment like the joint venture without supporting documents "such as an appropriate valuation".

viii) In any event, the documents show that Mr Rhazali did not regard the KS letter or the S&P 2009 letter as valuation reports. This is shown by his emails of 24 June (see [380] and [381] above). It is therefore understandable that he did not forward them to be included in the board pack. Mr Rhazali's understanding is an important part of the story in which to assess the claimants' evidence that the board packs would generally include valuation reports: Mr Rhazali, who had a central role in marshalling material for the board, did not think that the two letters were valuation reports.

ix) There is no email or other record of Mr Rhazali sending the KS letter to either Ms Ghagha, Mr Khalifa or Mr Alhaj to be printed out for or emailed to the board. This is in contrast to the evidence concerning 6 June 2010, where Mr Rhazali was responsible for selecting the material to be printed out. The evidence suggests that any documents to be printed out and provided to the board members would have been sent to one of those three persons. Had that happened it is probable that it would have happened by email.

588. For these reasons the claimants have not satisfied the burden of proving that the KS letter or the S&P 2009 letter were placed before the board at its meeting on 27 June.

589. If I am wrong, and the two letters were included in the documents available for the Board, I find as follows:

i) On that assumption, the KS letter and the S&P 2009 letter were not provided to the Board in advance of the meeting, but were only provided to them with a larger collection of documents (being those printed on 7 June 2010).

ii) Though I am unable to give his evidence much weight, the only positive evidence about the meeting is Dr Kawan's, that Mr Rais made a "brief presentation" of the joint venture transaction at the end of the meeting. The amount of the investment in the joint venture was small for the LIA compared with its usual investments. This was indeed a point specifically raised by Dr Kawan. This also helps to explain why the presentation in relation to it was limited or brief.

iii) The documents printed out on 7 June 2010 were voluminous and it is unlikely (if the presentation was brief) that the directors had time to read through them.

iv) There is no evidence to suggest that the board considered any documents concerning the joint venture transaction in advance of Mr Rais' presentation.

v) The board memo did not refer to any valuations – instead it referred to investments returns of 10%. There was therefore nothing to prompt the directors to search through the papers for a valuation.

vi) It is inherently unlikely that the board would have spent time going through a large bundle of documents at the meeting without guidance and without being told where any valuation was to be found.

vii) The claimants have therefore failed to establish on the balance of probabilities that at that stage the attention of the Board was specifically drawn to the KS letter or the S&P 2009 letter.

590. The claimants have therefore failed to establish to the necessary standard that the directors of the LIA ever read the KS letter or the S&P 2009 letter.

591. The claimants accepted that if they failed to establish that the letters had been read there would be no room for the application of the presumption of inducement.

592. But in any event (even taking into account that presumption) I have concluded on the balance of probabilities (for the reasons already given) that the claimants did not rely on any representation contained in the two letters.

593. The claimants submitted at trial that they could establish reliance or inducement by showing that the legal team was induced by the representations in the KS letter and the S&P 2009 letter in recommending the transaction to the Board. I do not consider that this is part of the pleaded case (which I have summarised above). Moreover there was no evidence from anyone in the legal department to support this version of events. Ms Ghagha could not recall the KS letter. Mr Rhazali was not called as a witness.

594. So I conclude that this allegation is not open to the claimants.

595. But in any case I am not satisfied that the claimants have established that the LIA's legal department (or legal team more widely) relied on the alleged representations. As already explained, Mr Rhazali asked for valuations of the two sites. When he was provided with the KS letter his immediate reaction was that it was not a valuation report and he sought the S&P 2009 letter. When he received this he sent it on describing it to Clifford Chance as a "report" (see [380] and [381] above). Mr Rhazali was able to conclude on a quick reading that the KS letter was not a valuation report, and I have no doubt that his use of the speech marks around the word "report" show that he did not think that the S&P 2009 letter was a valuation report for the Hotel Site either.

596. I also note Mr Rhazali's comment that the KS letter contained useful information about the project: that was said in contradistinction to the idea that it might be a valuation. The claimants have not established on the balance of probabilities that the LIA's legal department relied on or was induced by any representations about enterprise value or indeed site value in the two letters.

Conclusion

597. The deceit claims fail.

The agency duty and dishonest assistance claims

The pleaded case

598. In [70] to [72] of the RRAPOC the claimants allege that the defendants owed them a duty of honesty in instructing KS and breached that duty as follows:

    i) Roger King and/or Mr Merry and/or the other defendants acting under their direction agreed with Mr Layas that they would instruct KS on behalf the LIA and LIA UK ([70]).

    ii) In doing so the defendants acted as agents for the claimants and owed them a duty of honesty. This required them not to accept instructions which they knew to be dishonest and to give honest instructions to KS. It is also alleged that they were required to forward to the claimants anything which came to their notice which cast doubt on the instructions given to KS ([71]).

    iii) In breach of that duty the defendants accepted instructions from Mr Layas which they knew or believed to be dishonest; gave instructions to KS which they knew to be false and misleading in the respects set out in [50]; failed to inform the LIA and LIA UK of Savills' opinion; requested KS to draft its letter with a view to persuading the LIA to enter the joint venture agreement; and deceived the claimants in the respects set out in [64]–[69] (i.e. the allegations of deceit already addressed above) ([72]).

599. In [73] the claimants allege that the defendants dishonestly assisted Mr Layas to commit a breach of his fiduciary duty as a director of LIA UK. In [73.2] the claimants allege that the defendants dishonestly assisted such other defendants as are primarily liable for breach of their duties owed as agents to the claimants. The facts relied on are the same.

600. The case on causation advanced by the claimants in closing in respect of these claims was that had Mr Layas acted honestly, or had the defendants acted honestly as agents, the views of Savills about the market value of the two sites would have been communicated to the LIA (i.e. to those acting in the transaction other than Mr Layas). Savills would then have been instructed to report more fully and the LIA would not have proceeded to enter into the deal, at least on the terms that it did.

Legal principles

601. As regards the claims that the defendants acted as agents the material principles may be summarised as follows (based on *Bowstead & Reynolds on Agency* (22nd edn) paras 1-001, 1-004, 1-005, 1-006, 2-001 and 2-032):

    i) The power of an agent to affect the principal's legal relations is an important feature of the relationship of agency, along with its fiduciary nature. The absence of both these features will make a finding of agency unlikely.

    ii) The mere fact that one person does something in order to benefit another, and that the latter is relying on the former to do so, does not make the former the agent of the latter.

iii) The relationship of principal and agent can be constituted by the conferral of authority by the principal on the agent, which may be express or implied from conduct. The conferral of authority is voluntary or consensual but a formal contract is not required.

iv) A unilateral manifestation of will by the principal is important since this is the basic justification for the agent's power.

v) It is sufficient if the principal manifests to the agent that the principal is willing to have its legal position changed by the agent.

vi) The conferral of authority is to be judged objectively.

vii) Both principal and agent must assent to the agency. Where mutual assent is to be implied, the correct test is whether one party conducted itself towards the other in such a way that it was reasonable for that other to infer assent.

viii) The parties' consent need not necessarily be to the relationship of principal and agent itself but may be to a statement of fact on which the law imposes the consequences which result from the agency. Agency is consensual not contractual: *Branwhite v Worcester Works Finance Ltd* [1969] 1 AC 552, 587E-F.

602. As to the scope and content of agency:

i) The scope of agency is to be ascertained by applying ordinary principles of construction.

ii) An agent is bound to act in accordance with the terms of the authority conferred and to perform what it has undertaken to do.

iii) An agent must adhere to its instructions. In general an agent is under a duty to keep the principal appropriately informed; but the scope of the duty is governed by the terms and context of any contract.

603. As regards the fiduciary duties of agents:

i) These include a duty to act honestly.

ii) A duty of honesty is not a duty of care and dishonesty cannot be proved by negligence.

iii) It is possible for a fiduciary relationship to arise between two commercial counterparties. However if their relationship is already regulated by a contract, wider duties will not lightly be implied, particularly where the contract has been negotiated at arms' length between parties with comparable bargaining power.

604. As to attribution of knowledge and fraud:

i) Knowledge can be attributed to a company, either (i) by virtue of an agency relationship or (ii) where a person with relevant knowledge represents the company for the purposes of the transaction in question.

ii) As to attribution in agency relationships:

a) A principal will generally be deemed to have the knowledge of his agent relating to the subject matter of the agency and which was acquired by the agent acting within the scope its actual authority.

b) Where an agent has actual or ostensible authority to receive communications on behalf of the principal, communication to the agent is communication to the principal.

c) Where an agent owes a duty to communicate relevant information to his principal this raises a rebuttable inference of fact that it has in fact done so.

iii) As to attribution arising from acting in a representative capacity:

a) The starting point will usually be that the knowledge of a company's directors will be attributed to it.

b) Ultimately identifying whether knowledge can be properly attributed requires considering the context and purpose for which attribution is relevant.

c) Where a director has fraudulently acted in breach of duties owed to the company, his knowledge will rarely be imputed to the company.

605. As to sub-agency and fraud:

i) The general rule is that an agent may not delegate their authority to a sub-agent save with the express or implied authority of the principal (or where the sub-agent's acts are later ratified by the principal).

ii) The relation of principal and agent may be established by an agent between the principal and a sub-agent if the agent is expressly or impliedly authorised to constitute such relation and it is the intention of the agent and of such sub-agent that such relation should be constituted.

iii) A sub-agent must not follow the directions of a more senior agent if the sub-agent knows, and in some circumstances ought to know, that the senior agent is acting dishonestly.

iv) The sub-agent may owe fiduciary duties to the principal. Further the sub-agent may become implicated in the agent's breach of duty and be liable for dishonest assistance in a breach of the agent's duty (*Bowstead* at 5-008(3)).

606. As to dishonest assistance, the material principles may be summarised as follows:

i) There must be a trust or fiduciary obligation owed by the fiduciary to the claimant.

ii) There must be a breach of trust/fiduciary duty by the fiduciary, which need not be dishonest.

iii) The defendant must have assisted in or procured the breach:

a) It must be shown that the relevant assistance played more than a minimal role in the breach being carried out.

b) Some facilitative conduct is required over and above mere notice or knowledge of the breach of duty by the fiduciary; the assistance must make a difference and advance the breach in some way.

c) There is no requirement to show that the assistance provided would inevitably have resulted in the beneficiary suffering a loss.

iv) The defendant must have acted dishonestly in providing the assistance. The test is objective. The parties agreed that the court should follow the approach set out in *Ivey v Genting Casinos* [2017] UKSC 67 at [74]. The court must first ascertain the actual state of the defendant's knowledge or belief as to the facts. Once this is established the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the objective standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he or she has done is, by those standards, dishonest. The standards in question are those of an ordinary honest person in the circumstances of the defendant.

v) For this purpose, deliberately turning a blind eye counts as knowledge. For the limitations of that concept see *Group Seven & Ors v Nasir* [2019] EWCA Civ 614 at [59]-[60].

Further factual findings

607. As already explained, though the two sets of claims are analytically separate, there is a substantial overlap in the material facts relied on by the claimants. Both claims proceed on the basis that the defendants knew that Mr Layas was acting dishonestly and contrary to the interests of the claimants; and that they agreed that they would obtain the advice of KS as a way of allowing him to conceal Savill's views from the LIA. The claimants also allege that the way the defendants instructed KS was dishonest.

608. Further detailed findings of fact are required. I arrange them under three heads: whether Mr Layas acted contrary to the interests of the claimants and therefore in breach of his duties; whether the defendants acted dishonestly in instructing KS; and whether the defendants knew and agreed that Mr Layas would conceal the opinions of Savills from the LIA. The third head is really a sub-set of the second, but it helps to address it separately.

(i) Mr Layas's conduct

609. The claimants have not joined Mr Layas as a party. They nonetheless invite the court to make findings of dishonesty against him and I must make findings on the evidence before the court. I do so in the knowledge that his documents have not been produced and that, more generally, the documentary record before the court is incomplete.

610. The claimants allege in RRAPOC [30] that Mr Layas acted contrary to the interests of the LIA (and therefore in breach of his fiduciary duties as a director of LIA UK) in the following respects. He decided to conceal from the claimants that Savills' preliminary opinion was that the combined market value of the two sites was worth much less than

£21m; he sought assistance from Mr Merry and the other defendants in finding an alternative surveyor in order to conceal Savills' opinion "and furnish the LIA with a valuation in the sum of £21m". The obvious reason for doing this was that the LIA would not enter into the joint venture agreement unless the proposed price was supported by an appropriate valuation addressed to the LIA or LIA UK. The claimants also allege that Mr Layas acted contrary to the interests of the LIA in allowing Mr Merry and Roger King to conduct the instruction of KS without himself being involved.

611. The breach alleged by the claimants to have led to loss to the claimants is the failure to disclose the opinions of Savills to others within the LIA.

612. There was no dispute that Mr Layas owed relevant fiduciary duties. He was a director of LIA UK.

613. The claimants did not plead any case about Mr Layas' motives for acting against his principal's interests. I accept that there is no requirement to plead a motive. However it is important for the court to consider motives when allegations of fraud are made. At the trial the claimants invited the court to conclude that he and Mr Al-Agori had reached an arrangement for Mr Layas to receive a share of Mr Al-Agori's introduction fee. There was no direct evidence to support this allegation but the claimants contended that it was the probable inference.

614. The key events relied on by the claimants were these:

    i) Mr Layas knew that the LIA had asked for a valuation of the two plots of land and he had instructed Savills to do this.

    ii) When Mr Furze told him Savills' views on 17 June 2010 he aborted the instruction. He did this without discussing it within the LIA.

    iii) Mr Layas's email of 14:05 on 17 June to Mr Furze referred to timing constraints. However, as Mr Furze explained in evidence (and I so find) there was no discussion about timing constraints in their conversation; and it is unlikely that Savills would have been entitled to an abort fee if they had indicated that they could not produce their work within the agreed time.

    iv) Mr Layas did not immediately tell Mr Rhazali or Clifford Chance that he had distinstructed Savills or decided to instruct other surveyors.

    v) In the following week Mr Rhazali was still expecting to receive Savills' executive summary and asked for it in his email of 22 June 2010. Mr Layas responded by saying that he had replaced Savills because they had advised that they were unable to provide the executive summary and valuation report by 23 June 2010 because they needed more time for the commercial valuation of the Retail Site. Mr Layas confirmed that he had, therefore, instructed KS who were willing to produce a valuation report by 24 June 2010.

615. I find that Mr Layas's email of 22 June 2010 was false and misleading: there is no evidence that Savills had said that they needed more time for the commercial valuation of the Retail Site. Mr Layas had agreed that Savills would provide an executive summary of their valuations by 23 June 2010 and there is nothing to suggest that Savills had said

that they could not meet that deadline. I have concluded that Mr Layas misled Mr Rhazali about the reasons for aborting the retainer of Savills and that the real reason he had done this was that they had said that their preliminary views of value were well below the agreed joint venture price.

616. In this regard I reject the defendants' submission that the email of 22 June 2010 could be read as truthful. They point out that it refers to Savills having advised him that they were unable to provide the executive summary and valuation report by 23 June 2010 because they needed more time for the commercial valuation of the Retail Site and that this was strictly true. That is not an explanation of the email since the chronology shows that Mr Layas had agreed with Savills that they would provide the executive summary by 23 June 2010 and a full report would follow.

617. I have concluded on balance that Mr Layas's failure to disclose the preliminary views of Savills to the deal team within LIA (including Mr Rhazali) and not to explain the full basis on which other surveyors were being instructed was a breach of his fiduciary duties.

618. I do not however consider that there is a sufficient evidential basis for the court to conclude that Mr Layas had a secret arrangement with Mr Al-Agori to share the latter's introduction fee. That allegation, of corruption, was not pleaded and was only raised for the first time at the trial itself. Moreover, Mr Layas's conduct is at least equally consistent with him having a firm belief in the viability and desirability of the proposed investment as a good one for the LIA and a firm desire that it should complete. It is possible that he was keen for investments to be made through the LIA UK in order to promote his own standing as head of the London office. This is also consistent with Mr Layas reaching the view on 17 June, after discussions with Roger King and/or Mr Merry that the LIA would be better served by a development appraisal (see further below).

619. That does not mean that he was not in breach of his duties of good faith to the LIA: had he performed those duties he would have explained what he had done and why he had done it, rather than sending the misleading email of 22 June 2010. He would also have passed on the preliminary views of Savills. But it does explain his actions without supposing that he was corrupt.

620. In reaching this view I have considered Mr Layas' adoption of Mr Merry's email of 23 July 2013. The claimants submitted that it showed that Mr Layas was seeking to mislead the LIA and cover up the full story, and that he did so because he knew that he was guilty of wrongdoing.

621. I am satisfied that by passing on the 23 July 2013 email Mr Layas was trying to deflect the LIA's investigations and cover up his own conduct. I have just concluded that Mr Layas was indeed in breach of his fiduciary duties. I do not however consider that the events of 23 July 2013 throw further light on the reasons why Mr Layas breached his duties. These events do not however persuade me that I should conclude that he was party to a corrupt arrangement with Mr Al-Agori.

622. In summary, whatever may have been his motive, I consider that Mr Layas breached his duties in failing to report what had happened on 17/18 June and then giving a misleading explanation to Mr Rhazali.

(ii) The defendants' motives

623. The claimants alleged that Mr Merry and Roger King knew that Mr Layas was acting in breach of his duties to the LIA and that they dishonestly assisted him and each other in concealing the views of Savills from the LIA. The defendants submitted that they agreed to assist him in finding another firm of surveyors, KS, and then liaised with them to obtain a report, and acted honestly throughout. The claimants contended that, while their case depends largely on inference, the court should conclude that the defendants were dishonest.

624. I have (as with the rest of the case) taken account of the malleable, fallible, nature of recollection, the documentary record and the inherent probabilities. I have also taken account of the motives of Mr Merry and Roger King – the two individuals accused of dishonesty. I shall consider those motives before returning to the detailed documentary evidence and other considerations. It is helpful to do so here because I am dealing with the crucial elements of the case of dishonesty; but I have assessed the motives of all the various actors in the events when reaching findings of fact throughout this judgment.

625. Mr Merry was a chartered surveyor with his own firm. He had family relationships with the King family through marriage. He had been working for the IG since 2009. But the IG was not his only client. He stood to make consultancy fees of £48,000 p.a. from the joint venture company if the deal completed, pursuant to advisory agreements between CSPL and each of MRL and MHL. In the event he was paid £224,000 under those agreements between 2010 and 2015. He explained that the income derived from his work on the joint venture would have been about 13% of CSPL's fee income in the period 1 December 2009 and 30 November 2010. He was a professional and had much to lose if he was implicated in dishonesty.

626. In June 2010 Roger King was 74. He had a long history of property development in the UK and abroad. His companies had successfully developed Stoke Park, a country house hotel with a golf course, country club, spa, tennis courts and other facilities. His companies had also developed hospitals in a number of countries, including in the Middle East. His companies had banking relationships which they depended on for funding. Mr King and his companies had much to lose if he was implicated in dishonesty.

627. The proposal being discussed in June 2010 was a long term joint venture for the development of the plots. I accept the evidence of Hertford King that the defendants expected to be entering a long term relationship with the LIA, at the heart of which would be the profitability of the project. The defendants would have anticipated that, as 50% shareholders in the venture, the LIA would carefully scrutinise and analyse the value of its investment. The defendants would therefore have anticipated that if the LIA were misled into investing into the transaction, and it turned out to be much less profitable than anticipated, there would have been a high chance that it would be discovered and would quickly sour the relationship, or worse. To have duped the LIA would therefore have been high risk.

628. In this regard I accept the evidence of Hertford King that the defendants expected the relationship to be a long term one and one which would lead potentially to ten to twenty years of ongoing projects together.

629. The claimants accepted that the defendants were running a risk, but said that it was one they willingly took. As part of their pleaded case, the claimants alleged in [13] of the RRAPOC that by June 2010 BPIL was in a parlous financial position as it was due to

repay the BoS loan of £10m but had no hope of raising the money other than from the LIA. As already explained, the court heard evidence from Mr Rorrison that the loan would have been further extended. There was also unchallenged evidence from Mr Pradhan to the same effect. The claimants did not pursue this allegation in closing.

630. The claimants did however maintain in closing that BPIL would have had to have repaid the loan at some point in order to progress with the development because they needed to discharge the security over the property.

631. However there was no evidence that there was any great urgency to do so and I accept Mr Pradhan's evidence that the IG would continue to pay the interest on the BoS loan to maintain the value of the site.

632. On the other hand it appears to me from the history that the defendants wanted to close the deal with the LIA if they could. The price they had negotiated was substantially higher than an offer IGL had itself made to another possible partner. It was not however one they were hard pressed to close in order to meet outside obligations. They could have waited, possibly until markets picked up. In short, misleading the LIA would have been fairly risky and the defendants were not under a pressing or urgent need to complete the transaction.

633. With these points in mind I turn to make further findings about the disputed events.

(iii) The defendants' views of Mr Layas before 17 June 2010

634. Mr Layas was the main representative for the LIA's side who dealt with Roger King, Hertford King and Mr Merry. They had all attended meetings with Mr Layas in late 2009 and early 2010 to discuss the proposed venture and the commercial deal.

635. It was accepted by the claimants in their closing speech that by early 2010 everyone had concluded that the proposed hotel venture was likely to be profitable. Included within that must be Mr Layas.

636. Mr Layas had fairly recently been appointed as the head of LIA UK. This was a senior position. The defendants could reasonably have supposed that he was a trusted representative of the LIA.

637. It is also a reasonable and probable inference that Mr Layas would have had an incentive to find and promote investments in the UK, if only to justify his new position.

638. Mr Layas signed the letter of 12 May 2010. He then met Hertford King, Mr Merry and various advisers on 17 May 2010 to discuss the practical work that would ensue. He appeared to be a reasonably effective and diligent director of LIA UK.

639. Hertford King circulated the Briefing Note of 21 May 2010 to Mr Layas among others, setting out the proposed structure of the joint venture.

640. There was no suggestion in the pleaded case or in the case advanced at the trial that the defendants had any reason to question the integrity or honesty of Mr Layas before the events of 17 June 2010. The claimants did not suggest this to the defendants (or their witnesses) during cross-examination.

641. The claimants referred in closing to the email dated 4 January 2010 from Roger King to Mr Al-Agori concerning a disagreement they were having about money and Mr Al-Agori's occupation of a flat owned by Mr King. Mr King said that Mr Al-Agori should concentrate on the completion of the Crowne Plaza hotel and related property development projects with the LIA as this would solve Mr Al-Agori's financial difficulties in one move. He suggested Mr Al-Agori should "concentrate on achieving this goal, whilst at the same time not pressing too hard, as this will prove counter productive, as Rajab carefully explained to you and me at our last meeting". The claimants said that this showed that Mr Layas had given advice to Mr King about how to deal with the LIA. I do not consider that this was any reason for Roger King to doubt Mr Layas's integrity. It suggests that Mr Layas wanted to proceed with the deal and had let his counterparty know that pushing too hard would be unproductive if this was to be achieved.

642. I therefore find that the defendants had dealt with Mr Layas as the main representative at the LIA for several months before 17 June 2010; that he had appeared competent; and that they had no reason to question or suspect his honesty or integrity.

(iv) The defendants' understanding of Savills' role, before 17 June 2010

643. There was a dispute between the parties as to what Mr Merry and Roger King thought the LIA were seeking from Savills before the events of 17 June 2010.

644. The claimants submitted that the evidence established that Mr Merry and Roger King knew well before 17 June 2010 that the LIA was seeking market valuations of the two plots of land from Savills. The defendants contended that the evidence shows that they thought Savills was working on a development appraisal.

645. I have already commented on much of the relevant evidence but there are also some further points. It is helpful to draw them together here.

646. The claimants relied on an entry made by Mr Merry in a notebook on 31 October 2009 (and therefore after the first meeting with the LIA on 20 October 2009) saying "CM draft valuation letter £18 mill based on revised assumptions". I do not consider that this shows that Mr Merry knew that the LIA would require a formal valuation. It was at an early stage and nothing can be inferred from the notes.

647. The claimants relied on Hertford King's email of 4 February 2010 to Roger King, Mr Merry and Mr Pradhan. I have addressed this at [212-213] above. It shows that the defendants thought that Mr Gray might seek to negotiate about the price but does not show that they knew that the LIA was or would be seeking a market valuation.

648. The claimants relied on the fact that Mr Merry and Roger King knew from February 2010 that the LIA was thinking of asking Savills to assist (and chased Savills for updates). The claimants submitted that it was self-evident that they would be undertaking a market valuation of the land since Savills were well known valuers. I have addressed this point earlier. I accept the evidence of Mr Merry that the defendants did not know what the LIA might instruct Savills to do. He pointed out that Mr Lock (with whom he communicated at that time) was a broker and not a valuer. I also accept the evidence of Mr Leppard that he probably told Mr Merry that most of his investment clients were asking for development appraisals rather than formal valuations.

649. The claimants relied on the fact that Hertford King received a copy of the LIA's instructions to Savills on 14 June 2010. There is no evidence however that he passed these to Mr Merry or Roger King. I have found that he did not discuss this with Mr Merry or Roger King.

650. The claimants relied on the meetings between Mr Merry and Savills on 15/16 June 2010. They said that Mr Merry must have understood at those meetings that Savills were carrying out valuations of the land.

651. Mr Merry gave evidence that he thought at the time that Savills were carrying out a development appraisal. He said that in any event he was there to give information and not to discuss Savills' instructions. At one point in his oral evidence he suggested that he actually discussed this with Mr Furze and that he said they were undertaking a development appraisal. I reject that evidence, as Mr Furze (who knew his instructions) would not have said that and it was clear from other answers Mr Merry gave that he had no reliable recollection of what was said at these meetings and I concluded that this was self-interested or wishful reconstruction, a narrative moulded by hindsight.

652. The claimants also said that had Savills been undertaking a development appraisal they would have required sight of the funding terms and that Mr Merry knew that none had been provided to Mr Merry's knowledge. I did not think this point carried much weight. A development appraisal could proceed on the basis of assumptions about funding (as in the S&P 2009 letter) and I also note that details of the funding proposals had already been provided to the LIA (as shown by the print out of hard copy documents on 7 June 2010).

653. I find that the discussions at the meetings between Mr Merry and Savills on 15/16 June 2010 are consistent with Savills undertaking either a market valuation or a development appraisal. I find that Mr Merry met Savills in order to provide information and answer questions, that the nature of Savills' instructions were not discussed, and that Mr Merry did not conclude from the meetings that Savills were undertaking a formal market valuation; but nor did Savills say that they were carrying out a development appraisal.

654. The defendants relied heavily on the email from Mr Merry to Mr Yearwood on the morning of 17 June 2010 where he referred to Savills undertaking a review of the hotel development (see [312] above). It appears to me that this document provides some support for the defendants' position but its weight should not be overstated: it is not to my mind inconsistent with Mr Merry understanding that the review being carried out was a formal market valuation.

655. Mr Merry said in his witness statement and repeated in his oral evidence that he understood at some stage after Clifford Chance were instructed that they had advised the LIA that they needed a letter similar to the S&P 2009 letter but addressed to the LIA. He was unable to give any details about where this understanding came from. He referred however to the versions of the Action Lists where, after the explanation of the position from Mr Light (that he understood that the LIA had carried out their own appraisals of the projects and that no further valuations were to be provided by the defendants), the reference to IGL providing valuations was deleted.

656. There is nothing in Clifford Chance's files (which have been disclosed) to show that they ever advised the LIA that they needed a letter like the S&P 2009 letter. Moreover, the only instructions that appear to have come from the LIA seeking advice from a property

firm on the transaction were those to Savills of 14 June 2010 seeking a market valuation of the two plots and not a letter or report like the S&P 2009 letter.

657. Mr Merry was unable to explain the basis for his understanding. The deletion in the Action Lists does not support the notion that Clifford Chance gave any such advice.

658. I have concluded that Mr Merry's evidence on this point was unreliable. I do not however think that this evidence was invented. Rather it was self-interested or wishful reconstruction and Mr Merry has persuaded himself of its reality having immersed himself for years in the documents and the contentious issues. I therefore do not agree with the claimants' submission that the rejection of this part of Mr Merry's evidence leads to the inference of guilt.

659. As already noted, Hertford King gave evidence that at one of the meetings about the joint venture after 12 May 2010 someone from the LIA side had said that they had already carried out their own valuations and that he was therefore not expecting any further valuations to be carried out. There is no evidence that the LIA had obtained any valuations before then. I have addressed this above. I find that this was not said at the meetings. Hertford King, like the other witnesses, could remember little of what was said 12 years ago and I think it more likely that Hertford King's evidence has been affected by seeing the Action Lists which deleted the request for further valuations from IGL.

660. I have however concluded that the parties were proceeding after 12 May 2010 on the basis that the price had been agreed in principle and that there was no suggestion from anyone on the LIA's side that the price was dependent on any further investigations or evaluations they were conducting.

661. I also find that the defendants believed after 12 May 2010 that Mr Layas wished the transaction to proceed and that the task of the lawyers and deal teams thereafter was to reduce the joint venture terms to agreed contractual documents. The defendants knew that the LIA board would have to approve the deal but, on the basis of the positive attitude shown by Mr Layas and Mr Rais, anticipated that this would be achieved.

662. Taking the evidence on this issue in the round, I conclude that Mr Merry and Roger King did not have a clear understanding before 17 June 2010 of what Savills had been instructed to do. As already explained, a large property consultancy like Savills can give various kinds of advice, ranging from formal Red Book valuations to investment appraisals. I have already found that from the time of the communications with Mr Leppard in late 2009 Mr Merry appreciated that at least some investors were making their decisions based on investment appraisals rather than formal valuations. From at least February 2010 the defendants were emphasising the investment returns (including the 10% IRR set out in the 12 year cashflow) in their February presentation. It appeared to them from the letter of 12 May 2010 that LIA had agreed the price and that this would not be up for renegotiation as a result of the LIA's further work.

663. I am therefore unable to accept the claimants' case that Mr Merry and Roger King knew or thought before 17 June 2010 that Savills had been asked to undertake a formal market value exercise (i.e. a Red Book valuation).

(v) Events of 17 to 23 June 2010

664. I have covered some of the factual ground already, but here make detailed findings of fact about the principal disputed issues.

665. Mr Layas and Mr Furze spoke at some time after 12:05 on 17 June 2010. That was when Mr Layas's secretary left a message saying Mr Furze had called.

666. The claimants contend that the call between Mr Furze and Mr Al-Agori was probably before 12:28 when Mr Layas spoke to Mr Al-Agori for about 2.5 minutes.

667. The claimants invited the court to infer that this was because Mr Layas was very concerned that what Mr Furze had said would stymie the transaction and he reported this at once to Mr Al-Agori.

668. As to this:

i) The call between Mr Layas and Mr Furze must have taken a reasonable time. Mr Furze explained his preliminary views on value. It is probable that he would have spelt things out in some detail rather than just giving the headlines. Mr Layas then decided to terminate Savills' instruction. The parties then discussed and agreed an abort fee. Mr Furze could not recall precisely when the call with Mr Layas took place.

ii) Mr Furze's email of 15:50 the same afternoon refers to the call having been that morning, but that cannot be read literally as it must have been after midday. It is consistent with it taking place at some stage before lunchtime.

iii) Mr Layas spoke to Mr Al-Agori frequently. There were 117 calls between them listed on Mr Layas's Blackberry record for November 2009 to August 2010. Little can therefore be inferred from the fact that a call was made at that time on 17 June.

iv) The 12:28 call with Mr Al-Agori was short, being only a couple of minutes. It seems to me that if (as the claimants submitted), Savills' disclosure of their views generated a crisis for Mr Layas and Mr Al-Agori, their conversation would have taken much longer than that.

v) The claimants submitted that Mr Al-Agori was close to Roger King and that he would immediately have communicated with Roger King whatever he was learning from Mr Al-Agori. It is likely that Roger King would very quickly have passed on anything he learnt from Mr Al-Agori to Mr Merry. However, as I have found Mr Merry was not aware of the termination of the Savills' instructions when he sent his email to Mr Furze at 13:11 enclosing the construction costs.

vi) Overall, the claimants have not proved that the call between Mr Furze and Mr Layas took place before 12:28, or that Mr Layas told Mr Al-Agori what had happened in the call they had at 12:28.

669. At any rate it is now common ground that Mr Layas terminated the instruction of Savills during the call with Mr Furze. It is also common ground that this was before any contact between him and the defendants concerning Savills' views.

670. This represented a significant shift in the claimants' case. In their opening skeleton argument the claimants invited the court to infer that Mr Layas must have spoken to the defendants before he terminated Savills' instructions. They said this at [116]:

> "No email or other contemporaneous document shows precisely how Savills' disinstruction came about. But there is an inescapable inference that it happened in broadly the following way. RL passed what Savills had told him on to Mr Al-Agori, who in turn passed it on to CM, and/or one or both of RK and HK. RL may even have passed it on directly to CM or RK. One of CM or RK, or Mr-Al-Agori (on instructions), then prevailed on RL to disinstruct Savills. RL then did so untruthfully citing 'timing constraints'."

671. The claimants accepted in closing that the evidence of Mr Furze established that the retainer had been terminated in the first conversation between him and Mr Layas. This was necessarily before any contact (direct or indirect) between Mr Layas and Mr Al-Agori or the defendants.

672. In closing their case at the trial the claimants nevertheless submitted that I should infer that Mr Merry and Roger King were aware of the preliminary views of Savills and the termination of their instructions before Mr Layas sent Savills the email of 14:05 which referred to the instruction being withdrawn due to timing constraints. The claimants invited the court to infer that Mr Merry and Roger King had spoken to Mr Layas or Mr Al-Agori and had concocted together the idea that Savills should be told that they were being dismissed for this reason.

673. The claimants' case was that the reference to "timing constraints" was an excuse manufactured between Mr Layas, Mr Al-Agori, Mr Merry and Roger King as a pretext for suppressing or concealing Savills' opinions.

674. I also note that this was not one of the claimants' pleaded allegations. It is particularly important where a fraud case is brought so long after the relevant events that the matters said to give rise to an inference of dishonesty are set out with full particularity. I shall nonetheless consider the evidence and the inferences to be drawn (without resolving the pleading point, at this stage).

675. The defendants' case was that they did not know about the termination of Savills' retainer before receiving the 14:05 email and that they took it at face value.

676. As to this:

i) At 13:11 Mr Merry sent his email enclosing the material about the construction costs. I have found that at the time he sent this email Mr Merry did not know that Mr Layas had ended Savills' instructions.

ii) At 14:05 Mr Layas sent his email to Mr Furze (copying Mr Merry), referring to their earlier telephone conversation.

iii) Mr Merry forwarded Mr Layas' email to Hertford King and Roger King at 14:19.

iv) Mr Layas's telephone records show that he had attempted to speak to Mr Merry at 14:14, and eventually did manage to speak with Mr Merry at 14:24.

677. The claimants submitted that the way Mr Merry circulated the email at 14:19 without comment and without any expression of surprise about the termination of Savills' instruction supports the inference that urgent discussions must have taken place between Mr Layas, Mr Al-Agori, Mr Merry and Roger King before this. That is a possible inference, but it to my mind is equally likely that Mr Merry forwarded the 14:05 email and then picked up the phone to Roger King to discuss it. So I do not consider that I should draw the inference urged by the claimants.

678. The claimants also argued that it is likely that the idea for including the reference to timing constraints came from the defendants' side. Mr Merry denied this and I accept his evidence on this point.

679. The claimants observed that the 14:05 email copied in Mr Merry and said that this should lead to an inference that he was involved in its preparation, or at least knew it was coming. But there was a reason for Mr Layas to copy in Mr Merry, i.e., that Mr Merry had given Savills much of the information about the proposal and Mr Layas was asking for it to be returned.

680. Indeed if any inference is to be drawn from the inclusion of Mr Merry in the email, it rather weighs against the claimants' case than for it: if there was a secret conspiracy between Mr Layas and the defendants to conceal the bad news emanating from Savills, Mr Layas would probably not have copied Mr Merry (one of the conspirators) into the email to Savills.

681. The claimants have not persuaded me that the defendants knew about the email of 14:05 before it was sent. I am not satisfied that there is sufficient evidence to support the inference that the idea of timing constraints came from the defendants.

682. I find as a fact that Mr Merry took the email of 14:05 at face value. He did not know what had happened between Mr Layas and Mr Furze or others at Savills when he received the email and he had no reason to doubt it. The message he took from it was that the instruction of Savills had been terminated.

683. I have mentioned the absence of any pleading of this point. I have resolved it against the claimants on the facts, but I would not have made a finding on this point on the pleadings in any case.

684. The claimants referred at the trial to the emails from Mr Lock that afternoon in which he explained that he had spoken to Mr Merry and that Mr Merry had not expressed surprise about the very low site value.

685. Mr Merry was unable to remember anything about this conversation. Nor was Mr Lock (apart from confirming what was said in his emails). Mr Merry said in his witness statement that he had probably expressed his disagreement with Savills' valuation. I find that actually he probably said very little to Savills one way or the other.

686. However I find, Mr Merry, like Roger King and Hertford King, thought that the venture was likely to succeed and would be profitable; and that, to an investor, the overall business was probably worth the £21m implied in the number they had agreed with the

LIA. But since he thought at the time of that conversation that Savills were no longer acting it is understandable that he did not attempt to persuade them.

687. Returning to the conversations between Mr Layas and Mr Merry at 14:24, this lasted just over two minutes. Mr Merry gave evidence during the trial that it was probably during this call that Mr Layas asked him to assist in finding other surveyors. His evidence in this regard has shifted. In his first statement, signed in 2019, Mr Merry said that it was Roger King who told him that Mr Layas wanted another surveyor to provide an investment or development appraisal along the lines of the S&P 2009 letter. In his second statement, served in 2022, Mr Merry referred to Mr Layas' phone records (which had been disclosed by this time). He said that he could not remember what had been said in the call at 14:24 but that he believed Mr Layas asked him to investigate which other surveyors could provide the required advice to the LIA.

688. I reached the conclusion that Mr Merry lacked any real recollection of the call and that his evidence was largely based on remoulded self interested memory and speculation. I did not however consider that he was deliberately inventing this version of events.

689. It is common ground on the pleadings that, after the dismissal of Savills, Mr Layas sought assistance from the defendants in finding an alternative surveyor.

690. It is not clear on the evidence before me at precisely what time Mr Merry or Roger King came to understand that the LIA wished to find alternative surveyors. It is clear that they had that understanding by 18 June but it is unclear when they reached it. At 16:20 Mr Al-Agori emailed Mr Lock, copying in Mr Layas, saying to Mr Lock that "the LIA are ready to do the valuation for the land can we speak in the morning". Mr Lock understood that Mr Al-Agori was saying this on behalf of Mr Layas. As already noted, Savills had from the outset understood that Savills were to communicate with the LIA through Mr Al-Agori (as Mr Whitmey's contact).

691. Mr Al-Agori's email of 16:20 is again not easy to square with the claimants' case that Mr Layas, Mr Al-Agori, Mr Merry and Roger King had concocted a scheme earlier in the day to bury the bad news from Savills and make sure that Savills' views did not reach the LIA. It is another reason for thinking that the defendants had not come up with a scheme of relying on timing constraints – any such scheme would have had a quality of finality about it.

692. The 16:20 email suggests instead that things were still fluid late on the afternoon of 17 June 2010 and that Mr Layas had not reached a firm view on how to proceed. I find that he was still vacillating about whether to instruct Savills after all.

693. The email - which presupposes that Savills might still have been able to assist the LIA – also provides some support for the defendants' case that, when Roger King spoke to Savills the following morning about revised instructions, he was relaying the views of Mr Layas (see [699] below).

694. At 16:42 Mr Lock sent his email in response to Mr Al-Agori, reiterating that his advice on land values was sound and had been provided in a timely manner.

695. At 17:25 on 17 June 2010 Mr Al-Agori forwarded Mr Lock's email to Roger King. I accept that this shows that Mr Al-Agori was regularly communicating with Roger King

at this time. I do not however accept the inference urged by the claimants that it shows that Mr Al-Agori was telling Roger King everything he knew or was doing. That is going too far on the evidence: there are clear gaps in the evidence about the communications between Mr Al-Agori and Mr Layas and the court cannot reach such a broad inference.

696. As already mentioned, on 18 June 2010 at 09:17 Mr Merry emailed Hertford King commenting that "A hotel land value of £4 million gives an project IRR of 33%.....with everything else remaining unchanged". As I have already explained, I accept that Mr Merry did not agree with Savills' views on valuation. I also find that this email shows that Mr Merry had been concentrating on the metric of IRRs from the proposed hotel development.

697. On the same day, 18 June 2010, Roger King continued to communicate with Savills about the possibility of them giving advice on revised instructions.

698. Roger King sent a copy of the S&P 2009 letter and spoke with Mr Lock on the morning of 18 June 2010. I find on balance that it was during that conversation that he told him that the LIA was more concerned about returns on investment than site value. Mr King also sent Mr Lock a copy of a letter from IHG at 11:55.

699. Roger King also sent the email to Mr Lock at 12:54 referring to the possibility of revised instructions.

700. The claimants submitted that Roger King had no proper basis for referring to revised instructions or that the LIA was more interested in investment returns than site value. They submitted that these comments were dishonest.

701. Mr Merry was unable to remember what Mr Layas had said to Roger King about what the LIA wanted (and that he may not have known this at the time), but he said that they must have wanted to know about investment returns etc. because that is what he asked KS to provide and that was what KS did provide.

702. The claimants also submitted that Roger King appeared to think that Mr Al-Agori was in a position to arrange revised instructions and that this shows that he realised Mr Layas was not acting in the interests of the LIA.

703. The claimants have not satisfied me that Roger King was acting dishonestly when he told Savills what the LIA wanted and referred in his email to the possibility of obtaining revised instructions. I say this for the following main reasons:

    i) This allegation was advanced as part of the claimants' case that Roger King and Mr Merry had reached an arrangement with Mr Layas to conceal Savills' views. The claimants' case was that this arrangement was reached on 17 June 2010. It is to my mind inherently improbable if Roger King and the others were seeking to bury the bad news from Savills that he would have carried on trying to deal with Savills on 18 June 2010. It is more likely that he – along with the other parties to the alleged dishonest scheme – would have chosen to have no further dealings with Savills. They would have wanted to shut things down. For the same reason it is improbable that Roger King would have spelt out the change in instructions in an email to Savills (thereby leaving a possible incriminating paper trial). It is far more likely that he would have spoken on the phone.

ii) It is also unlikely that Roger King would have said that the LIA were more interested in investment returns etc. unless this is something that Mr Layas had agreed he should communicate. It would have been extremely risky for Roger King to say this to Savills if Mr Layas had not agreed it.

iii) The claimants have not persuaded me that Roger King thought that Mr Layas was acting contrary to the interests of the LIA in this regard. As far as Roger King was concerned Mr Layas was representing the LIA in progressing the transaction; and there is no evidence to support the conclusion that Roger King thought Mr Layas was motivated by anything than a genuine belief, on straightforward commercial grounds, that the joint venture would be a profitable one, which he, Mr Layas, was eager to consummate. The documents show that Roger King, like Mr Merry and Hertford King, was enthusiastic about the joint venture transaction and believed that it represented a compelling investment opportunity. They may have been optimistic (even over-optimistic) but I find that is what they thought. The LIA had agreed the transaction price in principle in May 2010 and had not sought to suggest that it was open to further negotiation in the light of their due diligence. The claimants indeed accepted in closing that from January 2010 onwards Mr Layas and the LIA thought that the investment would prove to be profitable.

iv) The claimants did not advance a case that the defendants believed that Mr Layas had any collateral motive for acting contrary to the interests of the LIA. They did not plead that Mr Layas and Mr Al-Agori had arranged to share Mr Al-Agori's introduction fee, still less that the defendants knew of any such arrangement. They did not put this suggestion to the defendants' witnesses in cross-examination.

v) As I have found earlier, IGL's representatives had been proceeding for some time on the basis that the hotel investment was best assessed by reference to investment returns. Mr Leppard had explained to Mr Merry in late 2009 that his clients were assessing proposals on the basis of investment proposals rather than Red Book valuations. Hertford King gave similar unchallenged evidence. The documents show that IGL's representatives emphasised the potential investment returns to the LIA. I find that there was nothing inherently surprising to them about an investor such as the LIA being more interested in the investment returns than in site valuations.

vi) As the claimants accepted, Mr Layas had himself decided to terminate the instruction of Savills, which was to produce site valuations, during his conversation with Mr Furze on 17 June 2010. This was before any involvement of the defendants in the process. This is important context for the later communications with Roger King and Mr Merry. It would not have been surprising if Mr Layas had then concluded that he wanted something different.

vii) Roger King forwarded his email about revised instructions to Mr Eakin at 13:09 on 18 June 2010. Mr Eakin was not asked about this in the course of the evidence. He was a well-known and respected mortgage broker and there is no challenge to his integrity. It appears to me improbable that Mr King would have forwarded the email to him if he had been engaged in a dishonest scheme to suppress and conceal Savills' opinion. It is more likely that he would have had no more dealings with Savills and would not have communicated what he was doing to outsiders.

viii) The claimants have not persuaded me on the balance of probabilities that the defendants knew that Mr Layas had not disclosed or would not disclose what Savills had said about value to others within the LIA (see also the fuller discussion at 715.ix)]ff below).

704. The claimants also relied on the further communications between Savills and Roger King on the afternoon of 18 June 2010 in which Savills explained that they had been unable to justify a higher land value or support the running yields or IRRs found in the S&P 2009 letter. The claimants say that the court should infer that the defendants realised from this that the joint venture was not worth anything like £21m to the LIA. This is part of their case on dishonest assistance and breach of the duty of honesty as an agent.

705. As to this, I have concluded that by the time of these communications on the afternoon of 18 June 2010 Mr Merry had already had a productive meeting with KS. I have also concluded that Roger King and Mr Merry disagreed with what Savills were saying and thought that they were badly wrong. I have already given my reasons for reaching this conclusion above.

706. I turn to the communications between Mr Merry and KS from 18-23 June 2010.

707. The claimants submitted that the manner and content of the instructions of KS established dishonesty by the defendants.

708. Their first allegation of dishonesty in this regard is that the defendants knew that KS were instructed as part of a plan in order to conceal Savills' preliminary views and replace them with a valuation for £21m.

709. For reasons already given I am not persuaded that there was such a plan. I have already addressed the events of 17 June 2010 and the communications between Roger King and Savills. To summarise my main reasons for this conclusions are these:

i) The claimants have not established that Roger King and Mr Merry were involved in the dismissal of Savills or the contents of the email of 14:05 on 17 June 2010.

ii) The claimants have not satisfied me that the defendants realised that it was dishonest of Mr Layas to want advice from surveyors on revised instructions about investment returns rather than a site valuation.

iii) The claimants have not satisfied me that the defendants realised that Mr Layas was acting contrary to the interests of the LIA. I find that the defendants believed that Mr Layas and the LIA more generally were enthusiastic about the deal on proper commercial grounds (i.e. the anticipated investment returns) and wanted to complete it. The claimants have not established that the defendants knew or suspected that Mr Layas was acting for improper reasons rather than genuinely seeking to progress the transaction to completion. Nor did they put to the defendants or their witnesses that they were aware that Mr Layas had been or might have been corrupted or had collateral reasons or acting against the LIA's interests.

iv) For similar reasons the claimants have not satisfied me that the defendants knew or suspected that Mr Layas would not pass on Savills' views to others within the LIA.

As far as they were concerned that was a matter between Mr Layas and the LIA's lawyers and deal team.

710. The claimants' next allegation was that the defendants knew or must have realised that Mr Layas was in breach of duty in leaving it to them to liaise with KS and have no involvement in the process. They also submitted that the manner in which the instructions were given – with a two stage process of reporting first to BIL and only once that had been done, readdressing the report to the LIA – was done in order to enable the defendants to maintain control of the process and suppress the results if they did not like them. They also submitted that the defendants must have realised that it was contrary to the interests of the LIA for the defendants to be able to revise the draft of the KS report and suggest changes which made it more persuasive. They also contended that if the defendants had believed that Mr Layas genuinely wanted a development appraisal he could and would have instructed another firm to do this himself. The claimants submitted that these were badges of dishonesty.

711. The claimants also alleged that there were deliberate falsehoods in Roger King's letter of instruction to KS dated 22 June 2010 (see RRAPOC [50.4]).

712. The claimants also alleged that there was no honest reason why a company in the IG would guarantee payment of KS's fees if the LIA did not pay it.

713. As to the two-stage manner in which KS was to report, the claimants contended that this was inherently dishonest. It gave the IG control in the event that KS did not come up with the goods; and enabled the IG to deny any involvement in that event.

714. Counsel for the defendants accepted in closing that the two-stage process by which KS was instructed was indeed very unusual. The defendants emphasised that the claims were framed in terms of dishonesty rather than breach of a duty of care or by reference to conflicts of interest and duty and that the defendants acted honestly throughout.

715. I have concluded on this point that the claimants have failed to establish that the defendants were dishonest in these respects (again applying the objective test of dishonesty). My main reasons for this conclusion are as follows.

    i) I find that Mr Merry and Roger King believed that Mr Layas genuinely wanted the deal to complete on proper commercial grounds (based on the potential returns from the investment) and that they regarded him as acting in the LIA's interests in this regard. I have addressed this above.

    ii) By 18 June 2010 Mr Merry and Roger King believed that the LIA wanted a development appraisal from KS and that Mr Merry believed it was his role to assist in achieving this. I also find that Mr Merry and Roger King did not believe that KS would say anything in their report which they did not genuinely believe to be justified as an expression of their opinion.

    iii) As to the statement in the KS letter about the enterprise value of £21m being appropriate, that was a statement of KS's opinion and Mr Merry believed that KS would only state it if they believed it to be justified. I have also found that the defendants (including Mr Merry) in fact believed that the joint venture enterprise was worth no less than £21m to investors, based on the anticipated returns.

iv) I agree with the claimants that the manner in which the instructions were presented to KS was highly unusual. This was indeed accepted by counsel for the defendants. The claim against the defendants is however a case of dishonesty. I do not consider that they were dishonest in doing so. I accept their case that they believed that the LIA (through Mr Layas, its main contact) was keen to complete the deal on sound commercial grounds and that they were seeking to assist him in achieving this. I accept the evidence of Mr Merry in this regard that there were still time pressures and that the report needed to be prepared quickly. I also accept his evidence that he believed that it was always going to be up to KS, as a professional firm, to decide what changes to accept or reject – and that they did not accept all of his suggested amendments.

v) KS ultimately addressed their report to the LIA. KS also knew about the two-stage process. KS also knew that Mr Merry was acting for Beeson Investments. KS did not apparently regard the two-stage instructions as improper or dishonest. Given this it is hard to see why Mr Merry or Roger King should have thought that what they were doing was improper.

vi) I have found that the defendants did not know what other information Mr Layas was providing to the LIA and (specifically) whether he had communicated the preliminary views of Savills internally.

vii) I do not consider that Mr Merry and Roger King acted dishonestly in putting the S&P 2007 Report and the S&P 2009 letter before KS without also referring to Savills' preliminary opinion. The instructions to KS were to produce a development appraisal, not a formal market valuation. KS were asked to review the reasonableness and viability of the various cashflows. They were asked to give an overall view of the reasonableness of the overall proposed investment of £21m. Savills had given a brief statement of their preliminary views about market value. I do not consider that the defendants dishonestly withheld the views of Savills – Savills had been given a different task and had given an informal view. Moreover, as far as the defendants were concerned Mr Layas had terminated Savills' retainer. From the defendants' perspective, it was for Mr Layas and others to decide what if anything to make of the preliminary views of Savills. As to the specific documents which were provided to KS, the S&P 2007 Report not only gave a valuation but it also provided a good deal of information about the hotel development in a helpfully digested form. It therefore made sense to give it to KS. KS would immediately have seen that it was stale and would have known that the market had changed since 2007. The S&P letter was a development appraisal of the kind that KS was instructed to produce.

viii) As to the content of the letter of instructions from Roger King to KS, I do not accept that the contents of the letter establish dishonesty. I accept that the letter is very poorly expressed, indeed muddled. The parties had not yet "agreed to form a Joint Venture Partnership" since there was no binding agreement. The parties had not mutually agreed the "value" of the partnership at £21m, at least if value is to be read as saying anything about market value. The statement about the commencing or starting value "for 21.0m" is also wrong if it suggests a market value.

ix) On the other hand, I do not think that the letter was knowingly or deliberately misleading. The parties had indeed reached agreement in principle on a price of

£10.5 for 50% of the joint venture; hence it could have been said that they had agreed to form a partnership. That may not be how a lawyer would have expressed things, but Roger King was a businessman. I also consider that Roger King could honestly have regarded the agreement in principle as putting a "value" of £21m on the joint venture. I do not think he was talking about a formal market valuation. The same is true of the reference to a commencing or starting value. Moreover, the letter did not ask KS to provide a present valuation of the properties: the reference to the estimated future capital value of the hotel was part of the instructions concerning investment returns. I conclude that the letter cannot be regarded as a badge of dishonesty.

x) I do not consider the guarantee of KS's fees to be a sign of dishonesty. It is certainly unusual but it is consistent with Roger King wanting to expedite the production of the report. It is consistent with his usual approach to business which was to want to get things done immediately.

716. The claimants also submitted that the defendants' reaction to Mr Leppard's email of 24 June 2010 was telling. In that email Mr Leppard said that S&P had not valued the Hotel Site at £18m. The claimants submitted that the key conclusion of the KS letter was therefore shown to be based on a falsehood and that Mr Merry's silence in the face of Mr Leppard's email was dishonest. I am unable to accept this submission. My main reasons are these.

i) The allegation of dishonesty is not pleaded. That is sufficient to dispose of the point.

ii) But in any event, the message conveyed by Mr Leppard's email was that S&P had not carried out a valuation. The KS letter referred to the S&P 2009 letter. A reader of the S&P 2009 letter would have been able to see that it did not contain a valuation of the land, but was based on an assumption. Mr Merry knew that the LIA had a copy of the S&P 2009 letter and would have expected the LIA to read it in the light of the KS letter. I do not consider that Mr Merry was dishonest in failing specifically to raise this point with the LIA.

717. In reaching these conclusions I have considered:

i) The claimants' submissions based on Mr Merry's email of 23 July 2013 and his involvement in the misleading letters written by Stephenson Harwood in 2014 on his instructions. In each case Mr Merry gave misleading information about the way in which KS had been instructed. I also concluded in relation to both episodes that his evidence was evasive. I have (in short) concluded in relation to the 2013 and 2014 communications that Mr Merry was hoping to forestall further investigations in the hope that the issue would go away (see [433]-[450] above) and that they do not amount to evidence of guilt. I have reached the same conclusion about his evasive evidence which arose because of his inability to give a sensible account of his earlier false statements. His evasive answers led me to conclude that his evidence was unreliable in some respects. They do not however lead me to draw an inference that he acted dishonestly at the time. I have taken these matters into account as part of the overall fact finding exercise along with all the other evidence.

ii) The claimants' reference to an email chain from Mr Al-Agori to Roger King of 20 May 2014 in which Mr King requested that Mr Al-Agori repay an advance and Mr Al-Agori sought to justify himself. Mr Al-Agori said, "I get you 10m net for the land on top of that was fees in that deal which the 10m that was more than what's site worth it you know that at the time we did the deal between us with help of some people help do it do it as hotel business deal not in land deal [sic]". The claimants submitted that this supported their case that there was a dishonest agreement with Mr Layas. I do not think the court can place any significant weight on the email. Its meaning is unclear: the claimants' counsel described it as garbled. It is self-serving. It is also consistent with the idea that the defendants promoted the hotel venture by emphasising the investment returns (a "hotel business deal") rather than its current site value. The "some people" (notably in the plural) are not identified and could indeed include the professional advisers. There is no suggestion that anything untoward happened. There are too many loose ends about for the court to give this evidence any real weight.

(vii) The allegation that the defendants knew that Savills' opinions about value were being concealed and agreed this with Mr Layas

718. As already explained, the key factual conclusion the claimants invite the court to reach for the purposes of the agency and dishonest assistance claims is that the defendants knew that Mr Layas was intending to conceal Savills' preliminary views on valuation as communicated on 17/18 June 2020 and that they combined with him in finding a way of concealing those views. It is therefore helpful to express my factual findings on this issue separately.

719. This was indeed the foundation of the way that they put their case on causation in their closing submissions: they said that had the defendants performed their duties as agents or had Mr Layas performed his fiduciary duties by communicating Savills' views to others in the LIA the deal would not have proceeded, at least on the terms it did.

720. The claimants have not satisfied me that the defendants knew or suspected that Mr Layas was intending to conceal Savills' preliminary views from the LIA. I have reached this conclusion for several reasons. Some have already been given, but it is helpful to collect the main ones here.

i) From January 2010 onwards the parties believed that the joint venture would be profitable. From January 2010 onwards the defendants were entitled to suppose that Mr Layas wanted to do the deal. After 12 May 2010 they believed the commercial deal was agreed and that the parties were engaged in agreeing the contractual terms. The defendants knew that this was subject to approval by the LIA board but thought this would be achieved.

ii) As already explained the defendants had no reason before 17 June 2010 to consider that Mr Layas was anything other than an honest and diligent representative of LIA UK. He was the defendants' main contact on the commercial aspects and negotiation of the deal.

iii) The claimants have not advanced a case that the defendants thought or suspected that Mr Layas had any dishonest financial or other collateral motive for acting contrary to the interests of the LIA.

iv) The defendants were not involved in the decision to dismiss Savills. Mr Merry did not know that this had happened when he sent his email at 13:11.

v) Nor is there any evidence to show that they understood that Mr Layas had taken a unilateral decision to dismiss Savills, without consulting with anyone else at the LIA. It was not suggested to Mr Merry or Hertford King in the course of their evidence that they were aware that Mr Layas had acted alone in deciding to terminate the retainer of Savills. I find that as far as the defendants were concerned he could have done this after discussions with others within the LIA.

vi) The claimants have not established that Mr Layas or Mr Al-Agori spoke to Roger King or Mr Merry before they received the email of 14:05 on 17 June 2010 or that the defendants discussed the idea that Mr Layas would refer to timing constraints before it was sent.

vii) I have found that Mr Merry took the email of 14:05 dismissing Savills at face value when it spoke of timing constraints. I find that Roger King had no reason to think differently.

viii) I have also found that there were then discussions involving Mr Layas, Mr Al-Agori, Roger King and Mr Merry in the course of which Roger King and Mr Merry came to understand that Mr Layas wanted the transaction to proceed if possible. The claimants have not established on the balance of probabilities that Mr Merry or Roger King thought that Mr Layas was acting against the interests of the LIA in continuing to wish to complete the deal.

ix) The email of 16:20 on 17 June from Mr Al-Agori is (as explained above) hard to reconcile with the claimants' case that the defendants and Mr Layas had already agreed that Savills and their opinion would be buried from the LIA. It appears that at that stage there may still have been an intention to seek something from Savills.

x) This is consistent with Roger King's communications with Savills the following day. I have found that by 18 June 2010 Roger King believed that Mr Layas was more interested in investment returns than a land valuation and that he thought that Savills might be able to provide a development appraisal.

xi) I have rejected the claimants' allegation that his email of 12:45 on 18 June 2010 indicates that he was acting dishonestly. On the contrary it appears to me more consistent with a genuine belief.

xii) But of particular importance in the present context is that the continuing communications with Savills tend to suggest (on balance) that Roger King was not party to a plan or plot to bury the involvement of Savills. If there had been such a plot involving the defendants, it is more likely that they would have shut down all communications with Savills at once.

xiii) Moreover Roger King was openly referring to a possible change of instructions. That would have been risky for someone involved in a secret scheme: there would have been an obvious risk of Savills speaking to someone else in the LIA, or indeed their lawyers, to check that this was wanted.

xiv) Roger King and Mr Merry (as well as others within the IG) had for some months thought that the best way of assessing the investment was by reference to investment returns rather than valuation. That was a good reason for seeking a development appraisal – which would review the reasonableness of the various projected revenues and costs. The claimants have not persuaded me that this was not their genuinely held view as to how best to assess the proposed investment. It follows that the change of approach adopted by Mr Layas (from formal market valuation to development appraisal) would not have appeared to them to be contrary to the LIA's interests.

xv) Nor have the claimants satisfied me that the defendants would have deduced from this change of approach that he was going to conceal Savills' preliminary opinions from others within the LIA. If, as I have found, they had previously considered him to be an honest representative of the LIA, negotiating on its behalf, it would not have been inherently likely that he would now conceal information from others on his side of the deal.

xvi) I find that, from the defendants' perspective, Mr Layas could have discussed the preliminary views of Savills within the LIA – indeed he could already have done so even before he terminated their retainer, consistently with agreeing that a different exercise should be conducted by another firm of surveyors.

xvii) I have also noted that Roger King forwarded his email about the possible revised instructions to Savills to Mr Eakin. It is unlikely he would have done this if the plan had simply been to bury the opinions and involvement of Savills.

xviii) For reasons already given, I do not consider that the subsequent dealings between the defendants and KS (detailed above) over the period 18-23 June 2010 establish that Mr Merry or Roger King knew that Mr Layas had decided to conceal the preliminary views of Savills from others within the LIA. There is no inconsistency between the defendants thinking that they were assisting Mr Layas in obtaining a report from KS and them thinking that it was a matter for Mr Layas what he told the LIA about the preliminary views of Savills. The manner in which the defendants communicated the instructions of KS does not materially affect that issue.

xix) As already explained I do not think that any significant weight can be attached to the email from Mr Al-Agori to Mr King of 20 May 2014.

721. In reaching these conclusions I have again taken account of Mr Merry's false statements about the defendants' involvement in the instruction of KS and whether his evasive evidence about them demonstrates guilty knowledge on his part. I have addressed this in [717] above. For the reasons given there I concluded that they do not amount to a decisive argument against Mr Merry or the other defendants, but I have taken these matters into account as part of my assessment of his witness evidence - and as an important element in the overall fact finding exercise, along with all the other evidence in the case.

Analysis of the agency duty claims

722. I now turn to analyse the elements of the agency claims advanced by the claimants.

Existence of agency

723. The claimants allege that the defendants (through Roger King and Mr Merry) constituted themselves agents of the claimants for the purposes of arranging the instruction of KS.

724. The defendants deny the alleged agency. They submitted that the parties were arms' length counterparties, negotiating a contract, and that the imposition of an agency relationship containing fiduciary duties would be inimical to their respective positions.

725. I have already set out the facts. I have concluded that Mr Merry and Roger King constituted themselves agents of LIA UK for the purposes of arranging the instruction of KS. My main reasons are these:

    i) It is common ground that Roger King and Mr Merry agreed with Mr Layas, a director of LIA UK, that they would assist the claimants in finding alternative surveyors.

    ii) The defendants then emailed KS and asked for a meeting with KS with a view to KS acting on behalf of the LIA. KS then met Mr Merry in order to discuss a report for the LIA.

    iii) Roger King sent the instructions to KS which (albeit using the unusual two-stage process) were ultimately directed to obtaining a report to be addressed to Mr Layas at LIA UK. On the defendants' own case that can only have been done because Mr Layas had asked the defendants to do that.

    iv) Mr Merry then provided information and made comments to advance the production of the KS letter which he knew was going to be addressed to Mr Layas at LIA UK.

    v) Mr Merry and Roger King in fact knew that Mr Layas had no involvement in giving instructions to KS before the production of the KS letter and that they carried out the entire process of giving instructions and providing information.

726. I am not persuaded by the defendants' submission that there can have been no agency because they were on the other side of the proposed joint venture transaction. It was always open to them to refuse to assist Mr Layas in seeking a report from KS, but they chose to assist him and they actively obtained the KS letter.

727. The defendants also submitted that the various emails to KS did not refer in terms to the defendants acting for the LIA; instead they asked KS to act for the LIA in providing their report. I do not consider there to be anything in this point. Mr Merry and Roger King gave the instructions to KS to report to LIA UK and thereby purported to act for LIA UK in that regard. On their own case they did so at the behest of Mr Layas, a director (and therefore agent) of the LIA UK. They must, on their own case, have believed that he had properly authorised them to give instructions to KS. I also note that the defendants purported to commit LIA UK to the payment of fees and thereby purported to enter a legal commitment on its behalf. The fact that Mr Merry told KS that he was acting for Beeson does not make any difference: in instructing KS to address their report to LIA UK he was acting for LIA UK and KS acted on those instructions.

728. I have concluded that Mr Merry and Roger King constituted themselves as agents in giving instructions to KS on behalf of LIA UK.

The duties owed by Mr Merry and Roger King as agents

729. As explained above, the scope and content of the duty of an agent depends on the terms and nature of the agency.

730. The claimants allege that the defendants owed a duty to act honestly: i.e., not accepting dishonest instructions from Mr Layas; giving honest instructions to KS; and forwarding to the claimants anything that came to their notice which cast doubt on the instructions given to KS.

731. I conclude that a duty of honesty was owed by Mr Merry and Roger King in giving instructions to KS. They were also bound not to accept dishonest instructions from Mr Layas.

732. There is no allegation that Mr Merry and Roger King owed the claimants a duty of care.

733. I shall consider the scope and content of the duty of honesty (and the obligation to disclose specific bits of information to LIA UK or KS) when addressing the specific allegations of breach.

Alleged breaches of the duty by the defendants

734. I have set out the pleaded allegations of breach above.

735. To summarise, the claimants allege first that Mr Merry and Roger King breached the duty of honesty by knowingly accepting dishonest instructions from Mr Layas.

736. I have concluded that the claimants have failed to establish this breach. On my factual findings, the claimants have failed to establish that Mr Merry and Roger King believed or suspected that Mr Layas was acting dishonestly or contrary to the interests of the LIA. In short, Mr Merry and Roger King believed that Mr Layas was acting as the LIA's representative; and had been acting as such in the negotiations since the end of 2009. They had no reason to believe that he had a personal or collateral motive for acting otherwise. They did not know what discussions he had had within the LIA about Savills' preliminary advice. They believed that he and others in the LIA wanted to proceed with the joint venture transaction, which they all anticipated would be profitable. They discussed with Mr Layas the possibility of obtaining an appraisal of the proposed developments from another firm and they agreed to assist him with the instruction of KS. The defendants did not reach an agreement with Mr Layas that Savills' advice would be concealed from the LIA – as far as the defendants were concerned Mr Layas was acting for the LIA and it was for him to decide what to share with others within the LIA.

737. Though the manner in which Roger King then instructed KS and the manner in which Mr Merry commented on the drafts was highly unusual, it was not dishonest, and it did not cause the defendants to believe that Mr Layas was acting dishonestly. The defendants also considered that KS, as professionals, would only be prepared to express their genuine opinions. This was confirmed by the drafting process.

738. The next allegation is that Roger King and Mr Merry acted dishonestly in that they gave instructions to KS which they knew to be false and misleading. I have already addressed the contents of the letter of instructions above and concluded that the defendants were not dishonest in that regard. Nor were they dishonest in the selection of the information they provided to KS.

739. The claimants allege next that Roger King and Mr Merry acted dishonestly in that they failed to inform the LIA and LIA UK of Savills' opinion but instead ensured that that opinion was concealed from the LIA and LIA UK and MHICL. It is also said that Roger King attempted to suborn Savills. That is a reference to the possibility of giving revised instructions to Savills on 18 June 2010.

740. The claimants have failed to establish this breach. I have found that these defendants did not know or suspect that Mr Layas would conceal the opinions of Savills from others within the LIA. They believed that Mr Layas was a genuine and diligent representative of the LIA. I have rejected the allegation that these defendants knew or suspected that Mr Layas was acting contrary to the interests of the LIA UK or the LIA. Mr Layas knew of the views of Savills and, as far as the defendants saw things, it was for him and others in the LIA to decide how they should take those opinions into account. On my findings of fact there was no attempt by Roger King to suborn Savills. His communications with them were based on his conversations with Mr Layas and he had no reason to think that Mr Layas was acting dishonestly or in breach of duty in thinking that the LIA wanted an alternative kind of advice.

741. The claimants allege next that these defendants dishonestly requested KS to change its draft letter with the intention that this would persuade the LIA and MHICL that the latter should enter into the JV agreement. On my findings of fact this allegation is not established. Mr Merry did suggest various changes to the draft letter. He believed that it was a matter for KS in the exercise of their professional opinion whether to accept the changes. He knew that it would be their letter and they would know that the final version was going to be addressed to the LIA. He believed that they would only express their genuinely held views and that they did so in the final version of the letter.

742. It was accepted by counsel for the defendants that the course the defendants took in instructing KS and commenting on the draft was highly unusual. I agree. I do not however consider that they were dishonest in doing so. I have accepted the evidence of Mr Merry that there were time pressures and that the report needed to be prepared quickly. I also accept his evidence that he believed that it was always going to be up to KS, as a professional firm, to decide what changes to accept or reject – and that they did not accept all of his suggested amendments.

743. The claimants also allege that these defendants deceived the claimants in the respects already addressed under the deceit claims. For the reasons given in the section on deceit, this part of the claim fails.

744. For these reasons the agency duty claims are not established.

745. In case I am wrong I should consider the issue of causation. It is convenient to do that after assessing the dishonest assistance claims.

Analysis of the dishonest assistance claims

Breach of fiduciary duty

746. There is no dispute that Mr Layas owed fiduciary duties to LIA UK.

747. On my findings of fact I conclude that Mr Layas was in breach of his fiduciary duties by failing to inform Mr Rhazali and others in the LIA's deal team about Savills' preliminary views. I also consider that he was in breach of duty in providing a misleading explanation for the disinstruction of Savills.

748. The claimants also rely on breaches of agency duty by the defendants themselves. I have already decided that those claims fail so no more need be said here about them.

Dishonest assistance

749. Mr Merry and Roger King contacted and instructed KS to produce a surveyors' report for the LIA. I have found that Mr Layas in fact concealed Savills' preliminary views and that this was a breach of duty. I find that the steps taken by Mr Merry and Roger King in instructing KS to produce their report in fact assisted Mr Layas in his breach of duty in concealing the preliminary views of Savills from others within the LIA.

750. I turn to the question of dishonesty. This is to be assessed objectively. On my findings of fact set out in detail earlier, the claimants have failed to establish that the defendants were dishonest. I shall not repeat those findings at length but, in very short summary, I have concluded that Mr Merry and Roger King believed that Mr Layas (who they saw as a diligent representative of the LIA) was eager to consummate the investment and he had agreed with them that they should assist in obtaining a development appraisal from KS to present to the board of the LIA on the basis that the LIA was more interested in the returns from the venture than site value. The defendants believed that they were assisting Mr Layas to obtain a genuine development appraisal. They believed that Mr Layas was acting in the interests of the LIA in doing this. They also believed that KS would express their own genuinely held professional views and that it would be for the LIA itself to assess the KS letter once produced.

751. The claimants have not established that: (a) Mr Merry or Roger King reached an arrangement or understanding with Mr Layas that he would conceal the preliminary opinions expressed by Savills on 17 June 2010 or (b) Mr Layas agreed that these defendants should instruct KS in order to achieve this. I have also rejected the claimants' allegations that the manner in which the defendants instructed and communicated with KS was dishonest.

752. For these reasons the claimants have not established dishonest assistance.

Causation

753. In case my conclusions about the agency duty and dishonest assistance claims are wrong, I address the question of causation (which is common to both).

754. The causation case advanced by the claimants in closing in respect of these claims was that had Mr Layas acted in accordance with his fiduciary duties, or had the defendants acted honestly as agents, the views of Savills about the market value of the two sites would have been communicated to the LIA, i.e., to those acting in the transaction other

than Mr Layas and the LIA would not have proceeded with the transaction, at least on the terms it did.

755. In this regard the claimants relied in particular on: (i) the fact that a decision had been taken to obtain market valuations of the two sites as part of the LIA's due diligence; (ii) the fact that Mr Layas appears to have thought he needed to give a false explanation to Mr Rhazali for his decision to disinstruct Savills; and (iii) the events in 2013 when Savills provided a formal Red Book valuation of the Hotel Site to the LIA and the LIA decided to put the joint venture on ice.

756. I am not persuaded that the later conduct of the LIA in 2013 throws any significant light on what would have happened in 2010. By 2013 different people were in charge at the LIA and the LIA was investigating a serious of earlier transactions, including with banking counterparties.

757. I have concluded however that if Mr Layas had provided Savills' opinions to others within the LIA and there had been no KS letter or similar advice (this being part of the counterfactual), on the balance of probabilities the claimants would not have proceeded with the transaction, at least on the terms in fact agreed. I conclude that it is probable that the LIA would at least have required Savills to produce their executive summary and that this would have given a market value for the two sites at around £5-6m. I also conclude that at that point it is probable that the LIA would either not have proceeded with the transaction or would have sought to renegotiate the price.

Unlawful means conspiracy

The pleaded case

758. In [74] of the RRAPOC the claimants allege that Roger King and Mr Merry and/or the other defendants conspired with one another and with Mr Layas to injure the LIA and MHICL by unlawful means.

759. The agreement or unlawful combination is that pleaded in [29] and [30], namely, to conceal from the claimants Savills' opinion that the two sites were worth much less than £21m and to find an alternative surveyor in order to conceal Savills' opinion and "furnish the LIA with a valuation in the sum of £21m".

760. The alleged unlawful means were the deceit alleged to have been practiced on the claimants; the breach of fiduciary duty by Mr Layas; and the breaches by the defendants of their breaches of duty.

Legal principles

761. The basic elements of the cause of action in the tort conspiring to injure by unlawful means are set out in *Kuwait Oil Tanker Co SAK v Al Bader (No. 3)* [2002] 2 All ER (Comm) 271 (CA), per Nourse LJ at [108]:

> "A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons

to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so."

762. In addition, the following principles apply:

i) A claimant must establish on the available evidence that there was an agreement or combination with the common design to cause injury to them. This is a question of fact.

ii) Formal agreement is not required and it is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end: (*Kuwait Oil Tanker* at [111])

iii) In most cases it will be necessary to scrutinise the facts to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy. In many contexts it will be necessary in order to prove intention to ask the court to infer the relevant intention from the primary facts: *Kuwait Oil Tanker* at [112] and [120].

iv) Nevertheless, it must be shown that the alleged conspirators were sufficiently aware of the relevant circumstances, and had a sufficiently similar objective, before it can be inferred that they were acting in combination: (*Kuwait Oil Tanker* at [111]).

763. As to the requirement of intention to harm the parties agreed that the principles are set out in *OBG Ltd v Allan* [2008] 1 AC 1 at [164]-[167]:

i) A defendant may intend to harm the claimant's business either as an end in itself or as a means to an end.

ii) Intentional harm inflicted against a claimant in either of these circumstances satisfies the mental ingredient of this tort, even if the defendant does not wish to harm the claimant in the sense that he would prefer that the claimant were not standing in his way.

iii) Lesser states of mind do not suffice: to establish liability, a high degree of blameworthiness is called for because intention serves as the factor which justifies imposing liability on the defendant for loss caused by a wrong otherwise not actionable by the claimant against the defendant, and the defendant's conduct must be deliberate.

iv) Foresight that conduct may or will probably result in damage to the claimant cannot be equated with intention and this intent must be a cause of the defendant's conduct. The defendant must intend to injure the claimant. This intent must be a cause of the defendant's conduct.

v) If a defendant seeks to advance his own business by pursuing a course of conduct which he knows will, in the very nature of things, necessarily be injurious to the claimant (i.e. the loss to the claimant is the obverse side of the coin from gain to the defendants and the two are, to the defendant's knowledge, inseparably linked and the defendant cannot obtain the one without bringing about the other).

764. As to unlawful means and knowledge:

i) The claimant must establish that: (a) the alleged acts were "unlawful" and (b) that they were in fact the means by which injury was inflicted upon them *Digicel (St Lucia) Ltd v Cable & Wireless Plc* [2010] EWHC 774 (Ch) at Annex I [3]).

ii) The defendant must have knowledge of all of the facts which make the means unlawful: *The Racing Partnership Ltd v Sports Information Services Ltd* [2020] EWCA Civ 1300; [2021] Ch 233 at [141].

iii) By a majority decision it has been accepted that knowledge of the unlawfulness of the means employed is not required: see *The Racing Partnership Ltd* at [139] and [171].

iv) The requirement of knowledge is satisfied where the defendant has "blind-eye" knowledge: *The Racing Partnership Ltd* at [159]. That requires a suspicion that certain facts may exist, and a conscious decision to refrain from taking any step to confirm their existence.

v) As to blind eye knowledge see *Group Seven & Ors v Nasir* [2019] EWCA Civ 614: [2020] Ch 129, [59]-[60]:

   a) it is not enough that the defendant merely suspects something to be the case, or that he negligently refrains from making further inquiries;

   b) the suspicion must be firmly grounded and targeted on specific facts;

   c) the existence of the suspicion is to be judged subjectively by reference to the beliefs of the relevant person; and

   d) the beliefs of the relevant person, and the decision to avoid obtaining confirmation must be deliberate.

vi) To be "unlawful", the actions need not themselves be actionable civil wrongs: *Revenue and Customs Commissioners v Total Network SL* [2008] 1 AC 1174.

vii) Deceit may constitute the necessary unlawful action (*ERED* at [381]), as may a breach of fiduciary duty (*Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm) at [69]).

viii) It may be a defence for the defendant to prove that he believed that the means in question were lawful: obiter, in *The Racing Partnership*, Arnold LJ at [146].

Analysis of the conspiracy claims

765. It will be seen that the factual allegations underlying these claims overlap considerably with the dishonest assistance claims. In the light of my earlier conclusions, I am able to address these claims fairly briefly. I have already set out my findings of fact in detail above. In the light of those findings (which I shall not repeat) the conspiracy claims are not established for the following main reasons.

766. First, on my findings of fact the claimants have failed to establish that there was an agreement or combination between Mr Layas and the defendants to conceal the views of Savills from the LIA. In brief summary, the defendants believed that Mr Layas was acting

genuinely as the representative of the LIA and that he was acting in the LIA's interests. They believed that he and the LIA were more interested in the investment returns than the market value of the land. As far as the defendants were concerned it was for Mr Layas to communicate the views of Savills within the LIA. They were not involved in that and did not know what he had done with the information. The reason for instructing an alternative firm to produce a development appraisal was that (following discussions on 17 June 2010) the defendants believed this to be what Mr Layas wanted. It was not done to conceal the views of Savills.

767. Second, the claimants have failed to establish that the defendants intended to damage the claimants. I have found that the defendants believed that the joint venture would be profitable and that the LIA was keen to proceed with it.

768. Third, I have also found that the defendants did not know or suspect that Mr Layas was acting contrary to the interests of the LIA. They did not know or suspect that he had a collateral or corrupt motive for acting in his own interests. They therefore did not know facts which constituted his breaches of fiduciary duty.

769. Fourth, I have also dismissed the claims for breach of the agency duties by the defendants.

770. The claimants have therefore failed to establish the conspiracy claims.

771. In case I am wrong about this, I consider the issue of causation. For the reasons given in [757]) above, I conclude that, but for the wrongs committed by the defendants, the LIA would not have proceeded with the joint venture transaction at least on the terms it did.

Conclusion

772. The claims are dismissed.