Neutral Citation Number: [2021] EWHC 171 (Ch)

Case No: FL-2020-000023
Case No: CR-2020-003605

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
FINANCIAL LIST

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

Date: 03/02/2021

Before :

MR JUSTICE MILES

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Between :

(1) BUSINESS MORTGAGE FINANCE 4 PLC
(2) BUSINESS MORTGAGE FINANCE 5 PLC
(3) BUSINESS MORTGAGE FINANCE 6 PLC
(4) BUSINESS MORTGAGE FINANCE 7 PLC **Claimants**

- and -

(1) RIZWAN HUSSAIN
(2) ALFRED OLUTAYO OYEKOYA
(3) RAJNISH KALIA
(4) ELIZABETH KIRBY
(5) JAI SINGH
(6) MOHAMMED OSMAN
(7) CALLON SHARED EQUITY LIMITED
(8) CALLON CAPITAL MANAGEMENT LIMITED
(9) HIGHBURY INVESTMENTS LIMITED
(10) GOVERNOR OF HER MAJESTY'S PRISON WANDSWORTH **Defendants**

And between :

(1) BMF HOLDINGS LIMITED
(2) BUSINESS MORTGAGE FINANCE 4 PLC
(3) BUSINESS MORTGAGE FINANCE 5 PLC
(4) BUSINESS MORTGAGE FINANCE 6 PLC
(5) BUSINESS MORTGAGE FINANCE 7 PLC **Claimants**

-and-

(1) RIZWAN HUSSAIN
(2) ALFRED OLUTAYO OYEKOYA
(3) RAJNISH KALIA
(4) ELIZABETH KIRBY
(5) JAI SINGH
(6) CALLON SHARED EQUITY LIMITED
(7) CALLON CAPITAL MANAGEMENT LIMITED
(8) THE REGISTRAR OF COMPANIES **Defendants**
(9) GOVERNOR OF HER MAJESTY'S PRISON WANDSWORTH

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Alexander Riddiford (instructed by **Simmons and Simmons LLP**) for the **Claimants**
Rizwan Hussain as a **litigant in Person** for part of the hearing.
The **other Defendants** did not appear and were not represented.

Hearing dates: 18 and 19 January 2021
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JUDGMENT

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10:30 on 3 February 2021.

Mr Justice Miles :

Introduction

1. I have heard the trial of two closely related Part 8 claims: FL-2020-000023 ("the Injunctions Claim") and CR-2020-003605 ("the BMFH Claim"). In very broad terms the Claimants say that there has been a sustained and determined assault by the principal Defendants on a group of securitisation structures in which the Claimants are the issuers of publicly traded notes. They say that the Defendants have purported since early 2019 to assume various roles and offices in relation to those structures (as directors, trustees, receivers and otherwise) and have usurped the existing office holders. The Defendants have used those assumed positions to interfere with the business of the Claimants: they have purported to change the registered offices, sell the underlying securitised assets, sought to change bank account mandates, forfeit and sell the Issuers' shareholdings, make filings at Companies House, and make regulatory news service announcements to the capital markets. The Claimants say that the Defendants have done all this without any right or basis – they say indeed that the Defendants are strangers to the securitisation structures. They say that the Defendants have done this in the teeth of the Claimants' protests and repeated legal proceedings designed to halt the Defendants' conduct.

2. The Claimants have sought and obtained numerous earlier rulings and orders of other judges (including Zacaroli J, Nugee J and Birss J) each of whom have found that the Defendants or parties associated with them had none of the rights or offices they had assumed. Some of those courts have granted final injunctive relief. The Claimants have been successful in all of the litigation to date and have been awarded their costs (mostly on the indemnity basis). But they are some £2.4 million out of pocket, a loss which will ultimately fall on the noteholders under the securitisations. The Claimants hoped that these rulings would halt the Defendants' campaign against the structures and their assets. But that did not happen. The Claimants have therefore brought the Injunctions Claim to seek declarations and wide-ranging injunctions with a view to creating a more effective protective barrier. In the BMFH Claim they seek orders to rectify filings made by the Defendants at Companies House which they say were made falsely and without authority.

3. The trial was conducted fully remotely. The only Defendant who appeared at the trial was Mr Hussain (the first Defendant in both Claims). He is currently serving a sentence of imprisonment for contempt of court at HMP Hollesley Bay. The prison authorities made an appropriate laptop available and he was able to participate over the Cloud Video Platform. At the start of the trial he applied for it to be adjourned on the grounds that he could not have a fair hearing. I refused that application and said that I would continue to monitor the fairness of the process as the trial progressed and the specific heads of relief were addressed. I gave reasons for my ruling at the time (and I give fuller ones below). Mr Hussain then decided to play no further part in the trial, even as an observer.

Factual background

Structure of the BMFH Securitisations

4. The four Claimants in the Injunctions Claim ("BMF4", "BMF5", "BMF6," and "BMF7"; together "the Issuers") are the issuers of notes issued as securitisations of various portfolios of commercial mortgages relating to property in the UK which are owned by the Issuers (the "BMFH Securitisations").

5. The structure of the BMFH Securitisations is in broad terms that the noteholders, as a class, are represented by, and act through a note trustee, which in the case of each Issuer is BNY Mellon Corporate Trustee Services Limited ("BNY" or "the Trustee"). The notes are constituted by Trust Deeds entered into by each of the Issuers and the Trustee dated 12 April 2006, 18 October 2006, 18 May 2007 and 23 November 2007 respectively. The terms and conditions of the notes are appended to the Trust Deed.

6. The notes are currently held in global form entrusted to a common depository on behalf of Clearstream and Euroclear and the interests of noteholders are recorded electronically in the books and records of Clearstream and Euroclear.

7. The Issuers' obligations under the notes are secured in favour of the Trustee (for itself and on trust for the other secured creditors) by security granted under the terms of Deeds of Charge between, amongst others, each of the Issuers and the Trustee. The income stream to fund the Issuers' obligations under the notes is derived from the portfolio of commercial mortgages.

8. The Deeds of Charge grant various first fixed charges and security over the Issuers' interests in the commercial mortgages which are the subject of the BMFH Securitisations, and a floating charge over all the Issuers' assets and undertakings.

9. The transaction documents entered into in connection with the BMFH Securitisations also include framework agreements known as the Master Securitisation Agreements and Master Definition Schedules (the "MDSs").

10. Target Servicing Limited ("Target") assumed the role of Special Servicer and Cash/Bond Administrator in relation to the BMFH Securitisations on 29 November 2016. The role was formerly held by Commercial First Mortgages Limited, which was dissolved on 7 December 2019.

Parties

11. The Claimants in the BMFH Claim comprise the Issuers and BMF Holdings Limited ("BMFH"). BMFH is (or at least was until the contested events of June and July 2020 referred to below) the majority shareholder of each of the Issuers (holding 99.99 per cent) (with Sanne Group Nominees 1 (UK) Limited ("Sanne Group Nominees") holding the remainder in each case). As I shall explain below I am satisfied that BMFH has in fact been the majority shareholder throughout.

12. The directors of BMFH are Ms Bidel, Mr Speight and Mr Surnam. They are employed by a corporate administration provider, Sanne Group plc. For convenience I shall refer to them as "the Original Directors".

13. The Original Directors are (or at least were until the contested events of June 2020 referred to below) also the directors of each of the Issuers.

14. The individual Defendants to the Injunctions Claim are as follows (the "Injunctions Claim Defendants"):

    i) Mr Hussain, a former investment banker. He is associated with a number of individuals or entities which are themselves either Defendants to the Injunctions Claim or have previously taken actions in respect of the BMFH Securitisations as set out further below.

    ii) Mr Oyekoya, who has held himself out as a finance professional. He is currently bankrupt (as a result of non-payment of costs orders made in proceedings concerning the Issuers) and who appears from publicly available sources to be a model and actor. Mr Oyekoya is or has been a company director of various entities which have taken actions in respect of the BMFH Securitisations as set out further below.

    iii) Mr Kalia, who is or has been a company director of various entities which have taken actions in respect of the BMFH Securitisations as set out further below.

    iv) Ms Kirby, whose name has been used in various of the actions set out below. Her existence is unconfirmed.

    v) Mr Osman, whose name has also been used in various of the actions set out below. His existence is unconfirmed.

    vi) Mr Singh. Again his name has been used in various of the actions affecting the BMFH Securitisations. His existence is unconfirmed.

15. The corporate Defendants to the Injunctions Claim are:

    i) Callon Capital Management Limited ("Callon Capital"), an English company incorporated on 18 November 2015, whose current directors appear, according to the information available at Companies House, to be Mr Hussain and Mr Kalia, and whose former directors include Mr Oyekoya. Mr Hussain said in his oral submissions at the start of the trial that he was authorised to act on its behalf.

    ii) Callon Shared Equity Limited ("CSEL"), a dormant company incorporated in England on 4 August 2016, whose current directors are Callon Capital and Mr Kalia, and former directors were Mr Oyekoya and Mr Hussain. Mr Hussain again said that he was authorised to act on its behalf.

    iii) Highbury Investments Limited ("Highbury"), a company registered in the Marshall Islands and incorporated in January 2018. I shall return to the connections between this company and the individual Defendants.

16. In respect of the BMFH Claim, the Defendants comprise those listed above other than Highbury and Mr Osman. The Registrar of Companies is also a Defendant to the BMFH Claim, to ensure that he is duly informed as to the status of the claim so as to be able to take any steps which may be required as a result of the determination of the BMFH Claim.

Narrative of events

17. Since early 2019 various actions have been taken in respect of the BMFH Securitisations by multiple entities and individuals, including most of the Defendants.

18. On 25 January 2019 Greencoat Investment Limited ("GIL") an Isle of Man company announced to the market a tender offer for the notes in the Issuers.

19. GIL claimed as a result of this offer to have acquired an unspecified beneficial interest in the notes. It has never provided any evidence to corroborate its assertion that it had received acceptances of its tender offer or that it had paid any amounts under the offer.

20. On 10 April 2019 GIL issued an administration application against BMF6 ("the Administration Application"). This was struck out on 28 June 2019 on the basis that GIL had failed to pay security for costs. However, in a judgment given on 31 July 2019 in later proceedings (see below), Zacaroli J concluded that the Administration Application had been "doomed to fail due to lack of standing on the part of GIL".

21. GIL has since been wound up in the Isle of Man. In a report to the Isle of Man Court dated 14 July 2020 the liquidator of GIL (and its holding company, Greencoat Holding Limited ("GHL")) stated that he had been hampered in his enquiries into the affairs of the companies by a lack of response from the directors. The directors or former directors included Mr Hussain and Mr Kalia. The liquidator stated that he believed that Mr Hussain was the main person involved in the promotion of the two companies.

22. Having failed in the Administration Application, GIL sought to take control of the BMFH securitisation structures more directly, including by appointing additional note trustees and receivers, removing the Trustee and replacing the Original Directors, purporting to sell the underlying assets, and announcing an intention to redeem the notes. GIL purported to take these steps as a holder of notes acquired under the tender offer of January 2019.

23. The first step was on 20 June 2019 when GIL purported to instruct BNY as Trustee of the notes to appoint a company called Portfolio Logistics Limited ("PLL") as the Trustee's agent. PLL was a company controlled by (at least) Mr Kalia. At the same time GIL purported to instruct BNY as Trustee to appoint PLL and GHL as additional note trustees. GIL did this in its claimed capacity as owning a beneficial interest in the notes.

24. On 24 June 2019 GIL purported to direct BNY as Trustee to issue an Enforcement Notice declaring all notes immediately due and payable on the basis of an alleged Event of Default which was materially prejudicial to the interests of the noteholders of any class.

25. On 27 June 2019 GHL and PLL purported (i) to appoint Mr Oyekoya and a Mr Fitzsimons as receivers of the assets of BMF6; (ii) to relieve the existing directors and corporate secretary/administrator of their roles and appoint replacements; and (iii) to serve an Enforcement Notice on BMF6 declaring that an Event of Default had

occurred and purporting to accelerate the notes and declare that the security under the Deed of Charge was immediately enforceable.

26. Also on 27 June 2019 GIL (claiming to be a Noteholder (as defined in the securitisation documentation)) purported to direct or resolve that BNY be removed as Trustee.

27. On 28 June 2019 Mr Oyekoya (purportedly as receiver of BMF6's assets) purported to sell the underlying loan portfolio of the Issuer (in respect of which GHL and PLL had sought to appoint him as receiver) to a British Virgin Islands registered company, Roundstone Technologies Limited ("Roundstone") under an SPA. The stated consideration was £237 million but all but £1 was deferred. The SPA also provided that the obligations of Roundstone should be non-recourse and limited to the assets in its hands.

28. Roundstone had corporate directors. But, as I shall explain below, the statutory records of Roundstone in the BVI recorded that Mr Hussain was its ultimate beneficial owner or "UBO". This was not known to the Issuers or the Original Directors at the time but came to their attention in a report made on 23 July 2020 to the BVI courts by the liquidator of Roundstone (which was wound up on 25 May 2020).

29. On 1 July 2019 Mr Oyekoya purported to instruct Target to issue a notice of redemption to noteholders of BMF6. On the same day (and on other occasions) he held himself out as a director of BMF6.

30. On 3 July 2019 GHL purported to terminate Target's appointment as Cash/Bond Administrator and Special Servicer of BMF6.

31. On 4 July 2019 BMF6 issued a claim under CPR Part 8 for injunctions and declarations in respect of the actions of GIL, GHL, PLL, Mr Oyekoya and another purported receiver and purported director ("the GIL Claim"). Zacaroli J granted an interim injunction on 11 July 2019 against GIL and the other defendants. He ordered an expedited trial which took place on 25 July 2019. On 31 July 2019 he gave a judgment and made an order, by which he granted declarations and final injunctions.

32. In those proceedings Mr Kalia, a director of GIL, provided witness statements on its behalf. Mr Oyekoya also provided a witness statement in which he exhibited the SPA dated 28 June 2019 with Roundstone. The SPA was signed on behalf of BMF6 by Mr Oyekoya "as receiver". Mr Oyekoya said that Roundstone was not a "connected party". However there was evidence that showed that a letter from the Claimants' solicitors, Simmons & Simmons ("S&S") had been forwarded by Roundstone's administrator, Trident Trust Company, to someone who had, in turn, forwarded it on to Mr Hussain, Mr Kalia and Mr Oyekoya, seeking instructions. Mr Hussain also served a witness statement in which he denied having any ownership interest in GIL, GHL or PLL.

33. At the hearing on 25 July 2019 counsel for the defendants indicated that they did not oppose most of the declarations sought. Counsel also accepted that GIL was not a Noteholder (as defined in the securitisation documentation) at the time of any of the relevant steps. The defendants opposed the grant of the injunctions sought. Despite

the concessions of counsel, Zacaroli J considered the arguments in detail, first, to be satisfied that the declarations were appropriate and, secondly, to decide whether to grant the injunctions.

34. One of the principal issues was whether GIL had become an "Instrumentholder" as defined in the MDS. The relevant definition said that "references to Instrumentholders shall be deemed to include references to the holders of the beneficial interests in such Instruments as relevant".

35. The notes were (and are) held in global form so that the only holder of the notes is BNY as common depository. Zacaroli J concluded that (whatever interest GIL may have claimed in the notes under the tender offer) the term "beneficial owner" of the notes within the contractual definitions went no further than someone recorded as the holder of notes in an account in the books of Euroclear or Clearstream.

36. Zacaroli J concluded that GIL therefore had lacked the power to pass any of the resolutions or give the directions to the Trustee or others in relation to BMF6. The order of 31 July 2019 declared that each of the steps purportedly taken by the defendants to the claim was invalid and of no effect, and granted final injunctions restraining the defendants from acting in the various purported (but invalid) capacities. He ordered the defendants to pay indemnity costs, with an interim payment of £294,548.82 to be paid by 14 August 2019. That order remains wholly unpaid.

37. BMF6 pursued the respondents to that costs order. On 18 October 2019 BMF6 presented a bankruptcy petition against Mr Oyekoya, and a winding up petition against PLL. On 23 October 2019 BMF6 presented winding up petitions against GIL and GHL in the Isle of Man. GIL and GHL were both wound-up on 28 February 2020. Mr Oyekoya was adjudged bankrupt on 29 June 2020. PLL was wound up on 9 July 2020.

38. It might have been supposed that the final injunctions granted by Zacaroli J on 31 July 2019 would have put an end to the steps taken against BMF6. Not so. The following day, 1 August 2019, Mr Oyekoya sent an email to BMF6 on behalf of an adviser to Roundstone saying Roundstone had obtained good title to BMF6's assets pursuant to the SPA of 28 June 2019.

39. On 22 August 2019 BMF6 issued a claim against Roundstone under CPR Part 8 seeking relief in relation to its purported acquisition of BMF6's assets ("the Roundstone Claim"). The trial was heard by Nugee J on 22 October 2019. In his judgment Nugee J concluded (a) that GHL and PLL were never validly appointed as trustees and Mr Oyekoya was never validly appointed as receiver; (b) that the SPA was not binding on BMF6 because Roundstone had not established that Mr Oyekoya had either actual or ostensible authority to act on behalf of BMF6 and sell its assets; and (c) that it was therefore not possible for Roundstone to establish that it was a bona fide purchaser of the assets. He also concluded that, under the terms of the SPA, had Roundstone acquired anything it would only have acquired a beneficial interest in the underlying loan portfolio of the BMFH Securitisations and would not have acquired the legal estate.

40. At the time of the hearing before Nugee J, BMF6 was not aware that Mr Hussain was recorded in the BVI statutory records as the UBO of Roundstone. Mr Hussain

attended the hearing and gave instructions to counsel, but Roundstone was presented as independent of the defendants to the GIL Claim.

41. Nugee J granted a declaration and permanent injunction restraining Roundstone from holding itself out as having acquired any beneficial or legal right, interest, or title in BMF6's assets. He ordered Roundstone to pay the costs, with an order to pay £160,000 by 5 November 2019. This amount remains outstanding. Roundstone applied for permission to appeal but this was refused by the Court of Appeal on 14 January 2020.

42. On 6 April 2020 BMF6 filed a petition to wind up Roundstone for the unpaid costs, and a winding up order was granted on 25 May 2020. The liquidator made the report to the BVI court on 23 July 2020 to which I have already referred.

43. Returning to the events of 2019, on 31 October 2019 GIL issued a notice of indemnity to BMF6 in respect of the costs orders against GIL, requiring that those costs be paid out of the BMFH Securitisations pursuant to the Deed of Charge. In the letter, GIL described itself as a "secured creditor". This was presumably on the basis that "secured creditor" is defined in the transaction documents to include a Noteholder. Its position is hard to follow as Zacaroli J had decided that it was not a Noteholder as that term is used in the transaction documentation.

44. On 22 November 2019 CSEL issued a claim against Target under CPR Part 8 for a declaration that Target was in breach of its obligations under the terms and conditions of the notes ("the CSEL Claim"). CSEL claimed it had standing to issue the claim on the basis that it had a 24.99 per cent. beneficial interest in notes in which GIL had a beneficial interest. This was a re-run of issues already decided by Zacaroli J in the GIL Claim.

45. On 11 January 2020 Target applied for security for costs in the CSEL Claim.

46. On 22 January 2020 Mr Oyekoya wrote to the Issuers claiming that he had "with immediate effect, assumed the position of trustee" with respect to the Charged Property of each Issuer. Allen & Overy, as solicitors for BNY, wrote to him on 29 January 2020 rejecting his purported assumption of the roles of trustee as invalid and without any basis.

47. On 5 March 2020 Mr Oyekoya issued an application seeking (i) to join himself and each of the Issuers as parties to the CSEL Claim, and (ii) a declaration that on 22 January 2020 Mr Oyekoya had assumed the position of trustee in relation to the charged property. That application was dismissed on 6 April 2020. Master Shuman said that: "there is material currently before me that indicates that this claim is a sham and is not *bona fide*…it appears that the claimant is a stranger to the BMF Securitisations and there is no evidence to support how it could possibly have standing to bring the claim it currently brings against the defendant". Master Shuman ordered CSEL to provide security for Target's costs in the sum of £269,958.49 by 4 May 2020. On 4 May 2020 the CSEL claim was automatically struck out for CSEL's failure to put up the security for costs.

48. Meanwhile, on 30 March 2020, an Isle of Man company called Fairhold Investments Limited wrote to the liquidator of GIL and GHL (appointed as a result of the

successful winding up petitions against GIL and GHL presented by BMF6). The correspondence stated that GIL's interests in the tender offer made on 25 January 2019 had been transferred to Fairhold Investments Limited before 28 February 2020. This was at odds with the evidence of Mr Oyekoya in the CSEL Claim that CSEL had a 24.99 per cent. beneficial interest in GIL's interest.

49. As already mentioned, on 22 January 2020 Mr Oyekoya claimed to have assumed the position of trustee. Though this had been rebuffed by BNY's solicitors, on 7 April 2020 Mr Oyekoya issued yet another claim under CPR Part 8 against the Issuers seeking a declaration that he had assumed the position of trustee ("the Issuers' Claim"). On 4 May 2020 Mr Oyekoya sought to join the directors of the Issuers to that claim.

50. Mr Oyekoya's appetite for litigation did not abate. He issued further claims in April and May 2020:

    i) On 27 April 2020, purportedly as "trustee of the Issuers," he issued a Part 8 claim against Target claiming disclosure of the details of the fees and expenses paid by the Issuers since February 2019 ("the Target 1 Claim").

    ii) On 11 May 2020, again purportedly as "trustee of the Issuers," he issued a Part 7 claim against Target ("the Target 2 Claim").

    iii) On 13 May 2020, again purportedly as "trustee of the Issuers," he issued a Part 7 claim in the Commercial Court against S&S and one of its partners claiming damages and restitution of £2,350,000 for alleged negligence and breach of duty ("the S&S Claim").

51. As will be seen below most of these claims (and some others) were struck out by Birss J on 13 July 2020. However, before turning to his judgment I should refer to a number of further steps taken by the Injunctions Claim Defendants in relation to the Issuers from May 2020 onwards. These steps are at the heart of the present trial.

52. On 14 May 2020 Mr Oyekoya wrote to the Issuers "as trustee," inviting the Original Directors to accept (among other things) that a Mr Robert Palache be appointed chairman of the Issuers and that the winding up petitions and bankruptcy petitions presented by BMF6 against Mr Oyekoya and associated companies be discontinued. Mr Oyekoya had already been informed by Allen & Overy that he had no right to hold himself out as trustee and that BNY was the only validly appointed trustee of the notes.

53. On 25 May 2020 Mr Oyekoya emailed the directors of the Issuers stating that "until we find a permanent chairman, I will act as one".

54. On 2 June 2020 Mr Hussain sent "agendas for board meetings" of each of the Issuers to their company secretaries. The agendas stated that the board meetings were to take place the following day on 3 June 2020. He had no position or role entitling him to call such meetings.

55. On 3 June 2020 Mr Hussain sent to the Original Directors purported board minutes of a meeting said to have taken place that day of each of the Issuers. These minutes

stated that resolutions had been passed to: (i) seek the formal consent of the trustees to replace Target with Callon Capital as Special Servicer and Cash/Bond Administrator; (ii) authorise Mr Hussain to act "or continue to act" as chairman of the Issuers; (iii) discontinue BMF6's pending bankruptcy and winding-up petitions following the GIL claim; and (iv) make a members' capital call on the Issuers' majority shareholder, BMFH.

56. The board minutes (other than for BMF6) listed Mr Hussain, Mr Kalia, Mr Oyekoya, Mr Singh, CSEL and PLL as directors. The minutes referred to the Original Directors as being directors but not in attendance. The board minutes for BMF6 did not include Mr Oyekoya as a director, doubtless because that that would have breached the order of Zacaroli J (which only concerned BMF6). Nor was Mr Kalia listed, but Ms Kirby was.

57. On the same day Mr Hussain sent purported "Notices of Members' Calls" from the purported new directors of the Issuers to BMFH.

58. The Issuers, acting by the Original Directors, immediately wrote to Mr Hussain and the other Injunctions Claim Defendants saying that they had no authority to hold themselves out as directors. But the Defendants carried on with their attempted coup.

59. On 9 June 2020 Mr Hussain sent further purported board minutes to the Original Directors purporting to record that the Injunctions Claim Defendants (as directors of the Issuers) had passed resolutions (i) appointing Mr Oyekoya and Talisman Granular Holdings Limited ("Talisman") as trustees; (ii) resolving that no payments would be made by each of the Issuers to the Sanne Group or Target without approval of Mr Hussain and BNY; and (iii) resolving that CSEL be appointed as financial adviser to the Issuers.

60. The Issuers acting by the Original Directors again immediately protested that the Injunctions Claim Defendants had not been appointed as directors of the Issuers and that they had no authority to hold themselves out as such. Again, without effect.

61. On 17 June 2020 Mr Oyekoya and Talisman (as purported trustees) sent notices to Target purporting to terminate its role as Special Servicer and Cash/Bond Administrator in respect of each of the Issuers and to replace it with Callon Capital.

62. On the same day Mr Oyekoya and Talisman wrote to Barclays Bank Plc stating that the appointment of Target had been terminated and that the bank should henceforth comply with instructions given by Callon Capital.

63. On 23 June 2020 Mr Hussain sent more purported board minutes to the directors of the Issuers which stated that the Injunctions Claim Defendants had purported to resolve, among other things: (i) to remove the Issuers' directors (i.e. the Original Directors); (ii) to replace the company secretary; (iii) to change the Issuers' registered office; and (iv) to send to the Issuers' majority shareholder "Notices of Unpaid Members' Call" in respect of each Issuer. Such notices were sent on the same day and demanded payment by 9 July 2020 in respect of the members' calls dated 3 June 2020, failing which the majority shareholder's shares (i.e. BMFH's shares) would be forfeited.

64. On 24 June 2020 and 10 July 2020 Callon Capital Management Limited issued RNS (Regulatory News Service) notices on Euronext Dublin purporting to be made on behalf of each Issuer. The notices stated that: (i) the Issuers' directors had been removed and replaced; (ii) Mr Hussain was Chairman of the Issuers; (iii) Callon Capital had replaced Target as Special Servicer and Cash/Bond Administrator; and (iv) CSEL had been appointed as financial adviser to the Issuers. The RNS notices stated that the Issuers were seeking to implement a full redemption of the notes as soon as possible. RNS is the means by which formal announcements are made to holders of securities traded on official stock exchanges. It is therefore likely that at least some investors would have considered this to be a formal communication from the Issuers regarding their notes.

65. On 26 June 2020 Mr Surnam, one of the Original Directors, provided a witness statement in BMF6's bankruptcy petition against Mr Oyekoya, which confirmed the identity of its directors (i.e. the Original Directors) and solicitors (i.e. S&S). Mr Oyekoya later alleged that by saying this Mr Surnam was in contempt of court (see further below).

66. As I have said, the Issuers did not take things lying down. The Original Directors and S&S wrote a number of carefully reasoned letters asking for the legal basis of the purported appointment of the new directors of the Issuers. Mr Hussain took the lead in responding. As part of the correspondence, on 28 June 2020 Mr Hussain sent a copy of a resolution of BMF6 (but not the other Issuers) dated 22 May 2020. The resolution referred to Article 70 of BMF6's Articles of Association and was signed by Mr Oyekoya purportedly as the duly authorised attorney of noteholders (and not of its shareholders).

67. The Defendants brought still more proceedings. On 29 June 2020 Mr Kalia issued a Part 7 claim against the Original Directors seeking declarations: (i) that they were not valid or effective directors following their removal on 23 June 2020 (and nor could they hold themselves out as directors); and (ii) that acts done by them in that capacity were void and no effect ("the Directors Claim").

68. On 1 July 2020, in proceedings in the Central London County Court, Mr Hussain was found to be in contempt of court for breaching undertakings he had given to the court.

69. On 6 July 2020 Mr Hussain signed and delivered various filing to Companies House in respect of the Issuers, purporting to record the various terminations and appointments of directors and the company secretary (as described above) and changing the registered office of each Issuer to an address associated with Mr Hussain and the other Defendants. Mr Hussain made further filings with Companies House on 21 and 22 July 2020 in respect of the Issuers regarding the directors, the company secretary and persons with significant control ("PSC"). These latter filings were made after the decision of Birss J on 13 July 2020 (see below) which made it clear that the various events reflected in those filings were invalid and of no effect.

70. On 7 July 2020 Mr Oyekoya discontinued the Target 1 Claim.

71. On 9 July 2020 General Civil Restraint Orders ("GCROs") were made against Mr Hussain and Mr Oyekoya by David Halpern QC, sitting as a Deputy High Court Judge, in proceedings concerning another securitisation structure.

72. On 10 July 2020 Mr Hussain sent purported forfeiture notices to the Issuers' majority shareholder, BMFH, stating that its holdings in each of the Issuers had been forfeited (for non-payment under the earlier call notices) and would be sold to an (unnamed) third party. On the same day the Issuers (acting by the Injunctions Claim Defendants) purported to sell BMFH's shares in the Issuers to Highbury, a company incorporated in the Marshall Islands, for a total stated consideration of £19.2 million. There is no evidence of any amounts actually being paid or received.

73. On the same day Mr Kalia signed a series of statutory declarations (in his purported position as director of each of the Issuers) purporting to confirm the forfeiture of BMFH's shares in the Issuers.

74. Also on the same day Highbury (in its purported role as shareholder of the Issuers) purported to pass a members' resolution ratifying the activities of Mr Hussain, Mr Singh, Mr Kalia and CSEL for the period 23 January 2020 to 9 July 2020.

75. On 13 July 2020 Birss J heard a number of strike-out applications relating to several of the actions referred to above. He refused applications by Mr Oyekoya and Mr Kalia for an adjournment of the hearing. He struck out the Issuers Claim, the Directors Claim, the Target 2 Claim and the application to commit Mr Surnam for contempt of court. He declared each of these claims to be totally without merit and ordered Mr Oyekoya and Mr Kalia to pay indemnity costs. These remain unpaid.

76. Birss J said this at [17]:

> "This is the latest in a very long-running series of what are on the face of it entirely unmeritorious actions by Mr Oyekoya, Mr Kalia and Mr Hussain, whereby they purport to be involved with these securitisation companies, but in fact have no proper rights to be involved at all. I am quite satisfied that the people involved, that is Mr Kalia, Mr Oyekoya and Mr Hussain are involved with each other."

77. As to the specific issues, Birss J held, first, that Mr Oyekoya's purported "assumption" of the position of trustee was invalid. Mr Oyekoya had relied on clause 21.2 of the Deed of Charge which provides: "Any person appointed as, or assuming the position of, trustee in relation to the Charged Property pursuant to the terms of this Deed shall have all the rights, powers and benefits which are vested in the Trustee pursuant to the terms of this Deed." Mr Oyekoya was contending that he had "assumed" that position. Birss J pointed out that Nugee J had already held in his 2019 decision that this did not allow a stranger to assume the position. Birss J came to the same conclusion and decided that Mr Oyekoya had never been appointed as trustee. This decision is binding on Mr Oyekoya. To the extent that it may not bind the other Defendants, I agree with the reasoning of Nugee J and Birss J on the point.

78. Birss J held, secondly, since Mr Oyekoya did not have the status of trustee, he had no power to bring the Target 2 Claim. Birss J therefore struck it out.

79. Birss J said, thirdly, as to the Directors Claim (which concerned the status of the Original Directors as directors of the Issuers) that the key question was whether the Injunctions Claim Defendants had ever become directors of the Issuers. He recorded that the sole justification that had been advanced to support this suggestion was the

purported resolution of 22 May 2020 concerning BMF6. That resolution purported to be one of the noteholders. He cited Article 70 of the Articles of Association:

> "Subject to the articles, the Company may by ordinary resolution appoint a person who is willing to act to be a director, either to fill a vacancy or as an addition to the board, but the total number of directors may not exceed any maximum number fixed in accordance with the articles."

80. At [49] Birss J held that this permits directors to be appointed by ordinary resolution of the shareholders, not of the noteholders. At [50] he held that the resolution recorded in the purported board minutes of 23 June 2020 was void and of no legal effect. Again I entirely agree with that reasoning and, to the extent that the decision is not binding on any of the Injunction Claim Defendants as *res judicata*, I follow it and reach the same determination.

81. Birss J held, fourthly, that the application to commit Mr Surnam for contempt was hopeless and should be struck out. Mr Surnam had said in his affidavit that the Original Directors were the true directors. Birss J held that that was true.

82. In reaching the view that the claims were totally without merit, Birss J said:

> "This is part of a long-running, absurd series of actions by Mr Hussain, Mr Oyekoya and their associates, relating to the Issuers. It appears to have no merit at all and to have caused an enormous amount of cost and trouble to the defendants. I gather that a very large amount of costs have been rung up dealing with these individuals, none of which has been paid."

83. Again in a world of reason one might have expected that Birss J's judgment would have put an end to the conduct of the Injunctions Claim Defendants concerning the BMFH Securitisations. Again that was not to be.

84. On 15 July 2020 the Original Directors received notification of the various Companies House filings made in respect of the Issuers on 6 July 2020. They immediately wrote to Companies House asking it not to accept any further unauthorised filings. On 17 July 2020 S&S sent Companies House the relevant forms to rectify the register in respect of those filings.

85. Mr Hussain was undaunted by the judgment of 13 July 2020. He sent further filings to Companies House on 21 and 22 July 2020 in respect of the directors, secretary and persons with significant control over the Issuers. He could only have done so on the footing that the appointments of new directors in June and July 2020 were valid. Birss J had found the opposite.

86. On about 27 July 2020 Mr Hussain contacted Barclays in relation to the Issuers' bank accounts in an attempt to seek to give instructions in relation to payments to noteholders on the interest payment date of 15 August 2020.

87. On 28 July 2020 S&S sent Companies House the further forms to rectify the register in respect of the filings made on 21 July 2020. Between 29 July and 1 August 2020 Companies House acknowledged receipt of the rectification forms and confirmed that the BMF6's company register would be automatically rectified if no objections were

received within 28 days. In the event, such objections were received within that period. The only reasonable inference is that the objections were made by Mr Hussain or others associated with him.

88. On 30 July 2020 Mr Hussain was sentenced to 12 months' imprisonment for contempt (of which he must serve 6 months).

89. On 3 August 2020 another filing was processed by Companies House in respect of the noteholder resolution concerning BMF6 on 22 May 2020. As already mentioned Birss J had ruled on 13 July 2020 that the resolution was of no legal effect.

90. It was therefore clear to the Claimants that, legally absurd though it was, the Defendants' assault on the Issuers had not ended. On 11 August 2020 S&S wrote to the Injunctions Claim Defendants. The letter identified the various steps or actions taken by or in the name of those people in relation to the Issuer and the other BMFH Securitisation parties and spelt out the Issuers' reasons for saying that those steps or actions were invalid or unauthorised. The letter sought undertakings, in the absence of which an application would be made to the court. None of the addressees responded.

91. On 24 August 2020 yet another claim was issued by Mr Singh (in a purported capacity as a director of the Issuers) against Target, Sanne and S&S. It sought an order restraining the company secretary of the Issuers, Target and S&S taking any further steps in relation to the Issuers. A notice of discontinuance was filed on 29 September 2020. The claim was struck out by Birss J on 30 September 2020.

92. On 28 August 2020 the Issuers issued the Injunctions Claim and the BMFH Claim.

93. On 9 September 2020 Mr Hussain was arrested and committed to HMP Pentonville. On 22 September 2020 he was transferred to HMP Wandsworth. He was transferred to HMP Hollesley Bay on 13 November 2020 and continues to reside there. He is to be released on about 9 March 2021.

Relevant procedural history

94. On 14 October 2020 Marcus Smith J conducted an interim hearing. The Claimants explained that S&S had sought to send documents and correspondence to Mr Hussain but that HMP Wandsworth had declined to confirm that he had received them. The judge confirmed that the Claimants were at liberty to make an application on paper to join the Governor of HMP Wandsworth as a party to the proceedings to seek his co-operation. The judge made such an order on 23 October 2020. He did not have the benefit of submissions from the GLD on behalf of the Governor.

95. On 4 December 2020 the Claimants applied for an order joining the Governors of HMP Pentonville and Hollesley Bay in order to seek specific measures to assist Mr Hussain in participating in the proceedings. At that point the trial was listed for an expedited hearing in a window ending on 21 December 2020. The Claimants sought an adjournment of that window, to be relisted on an expedited basis in January 2021, to ensure that Mr Hussain was able to take part.

96. On 9 December 2020 the Government Legal Department ("GLD") indicated that it would resist the joinder of the prison governors as defendants to the Claims.

97. There was then a hearing before me on 10 December 2020 at which I heard submissions from the Claimants and the GLD. I had the benefit of full submissions from counsel instructed by the GLD and concluded that it would be inappropriate to join the governors as defendants. I did however issue a formal request to the Governor of HMP Hollesley Bay asking that, if Mr Hussain sought facilities to assist him in preparing his evidence and written submissions, the Governor would consider his requests in the light of any existing guidance, the trial timetable and any other relevant matters. I also directed that the Governor should provide a brief statement on 31 December 2020 to confirm what requests Mr Hussain had made, and their outcome. I also required Mr Hussain to submit any witness statement in answer to the Claims, or a summary of his evidence, by 31 December 2020. I directed an expedited trial with a time estimate of two days to take place in January 2021.

98. The Governor of HMP Hollesley Bay provided the brief summary on 31 December 2020. It recorded that Mr Hussain had sought release on temporary licence but that his request had not been granted. This was in part because of the need for a review process and in part owing to the Covid-19 pandemic. It appears that Mr Hussain also sought the use of an electronic typewriter and that his request was granted. The prison also made available to Mr Hussain a laptop facility which allowed him to participate in the trial (which took place fully remotely).

99. Mr Hussain has not served a witness statement or a written summary of his evidence. As I explain below, he says that he sent a written summary on 21 or 22 December 2020 to S&S but it has not been received. I shall address this further below.

100. The court received a letter from Mr Hussain dated 12 January 2021 in which he requested an adjournment of the trial until an unspecified date after Mr Hussain's release from prison. The letter refers to another letter sent on 8 January 2021 which has not been received by the court.

Position of the Defendants other than Mr Hussain

101. The Claimants have set out the steps they have taken to effect service on the Defendants. I am satisfied on the basis of that evidence that the Defendants were served in accordance with the CPR.

102. I should specifically address the position of the corporate Defendants. By an email of 8 October 2020 from Mr Kalia's email address, Mr Kalia and Mr Oyekoya and Mr Singh accepted that Mr Kalia, as a director of CSEL and Callon Capital agreed to accept service on behalf of those companies by email to an address at "Clifden group". That is the name used by the various Defendants, most notably Mr Hussain. The same email confirmed that Mr Oyekoya was authorised to accept service on behalf of Highbury at a specified email address, and that he was a director of Highbury.

103. Another email of the same date from Mr Kalia (copied to Mr Oyekoya and others) confirmed that Mr Oyekoya was the sole director of Highbury (and that Mr Osman had never been a director). The same email confirmed that none of Mr Kalia, Mr Oyekoya, Mr Singh, CSEL, Callon Capital or Highbury objected to the relief sought in the BMFH Claim.

104. I should note that in his adjournment application Mr Hussain claimed to act on behalf of Highbury. He said he was one of several directors but said that he could not name any of the others. He did not provide any evidence that he was a director of Highbury or of any authorisation to act for it. Absent any evidence of authority from Highbury I do not place any weight on his unspecific assertions.

105. As I have said none of these Defendants has acknowledged service. None of them have served any evidence or participated in the proceedings. They have been invited to submit to appropriate orders but have failed to do so.

106. I am satisfied that these Defendants have had every opportunity to participate in the proceedings and that their failure to do so is voluntary. I am also clear that it is appropriate to proceed with this trial in their absence. The conduct of these Defendants (if established) has been very seriously prejudicial to the Claimants. If the Claimants are right the Defendants have conducted an unwarranted assault on the BMFH Securitisation structures, have falsely held themselves out as having various roles in those BMFH Securitisations, have made false statements to the markets, have sought to interfere with the banking arrangements, have made false filings at Companies House and have caused the structures to incur over £2.4m of irrecoverable costs. There remain false filings at Companies House. The relief sought by the Claimants is therefore urgent and there is no justification for the trial to be postponed because of the voluntary absence of the Defendants: to do so would be a denial of justice to the Claimants.

The position of Mr Hussain

107. Mr Hussain is in prison. At the start of the trial he sought an adjournment of the entire trial until a date after his release. I refused that application and gave brief reasons before continuing with the trial. I give fuller reasons here.

108. Mr Hussain said that he was not in a position properly to represent himself. His first point concerned the trial documents. He accepted that he had some of the documents, but not all of them. The various witness statements have been sent to him in prison as and when they have been produced. He said that he was however missing some of the trial bundle. He said specifically that he did not have a complete version of the main bundle (and said that half the pages were missing). He had the first supplemental bundle but did not have the second supplemental bundle (though this was in fact hand delivered to him during the hearing). He said that he had received the incomplete main bundle on 14 January 2021 and had tried to contact S&S on 15 January 2021 about this.

109. He said, secondly, that he had not had access to his emails or files and that he would have wished to put forward evidence about a number of matters but had not been able to do this. He did not however identify any specific documents that might be relevant to the legal issues raised in the proceedings.

110. He said, thirdly, that he had sent a summary of his evidence to S&S on 22 December 2020 by placing it in the prison's postal service (with a stamp). There is no record of it arriving at S&S. Mr Hussain gave me an outline of the subject matter he would wish to cover in evidence. He said (among other things) that he would wish to contend that the Original Directors had not been properly appointed in 2016 or 2018;

that Mr Barbour of Target had received secret commissions in connection with Target's appointment as Special Servicer; that the Original Directors were incompetent; that since August 2020 people other than the Injunctions Claim Defendants had been appointed as directors of the Issuers – though he was unable to name them; and that since August 2020 there had been further sales of the shares in the Issuers (though he was unable to identify the buyers or provide any other details).

111. Mr Hussain said, fourthly, that the Claimants would not be prejudiced by an adjournment. The only hard deadline was the need for one of the Issuers to file an Annual Return on 9 February 2021. Mr Hussain contended that that could be done by the Original Directors.

112. Mr Hussain said that the whole trial should therefore be adjourned and that there should be no further consideration of the evidence or submissions.

113. There are a number of features of the case to emphasise when assessing these submissions.

114. First, as counsel for the Claimants observed, any adjournment on the grounds sought by Mr Hussain would in practice have to extend well beyond 9 March 2021 as part of his argument was that he required access to emails and other documents before he could complete the work he said was necessary for his case.

115. Second, I am satisfied that Mr Hussain is fully aware of the central issues. In this regard:

i) Since the proceedings were commenced in August 2020 the Claimants have taken all possible steps to serve the supporting evidence. Though he said that he did not have the entire trial bundle Mr Hussain did not suggest that he had not received the various witness statements.

ii) In any event, as explained above, the complaints of the Claimants in these proceedings arise from the steps taken by Mr Hussain and his associates from May 2020 onwards to assume various offices in relation to the BMFH Securitisation structures: including as "trustees" of the notes, directors of the Issuers, Special Servicers, and corporate secretary. The key step was the Defendants' purported appointment as directors of the Issuers. Having taken that step they then purported to remove the Original Directors, make calls on the shares in the Issuers, forfeit and sell those shares, change the registered office and make corporate filings.

iii) The Defendants' assumption of office as purported directors (and each of the other contested steps) was the subject of extensive correspondence with the Issuers from June 2020 onwards. Mr Hussain was the main correspondent on behalf of the various Defendants at that time. He defended the appointments and other steps taken and advanced the Defendants' reasons. In the end this came down to a simple point, viz. reliance on the purported resolution of 22 May 2020. That was the subject of the decision of Birss J on 13 July 2020. I have no doubt at all that Mr Hussain understands the point and knows of the ruling of Birss J.

iv) Moreover, the Claimants' solicitors sent their detailed letter before claim on 11 August 2020. This set out each of the contested steps and the reasons advanced for their invalidity. It also referred to the various Court judgments and orders concerning the BMFH Securitisations (including those of Zacaroli J, Nugee J and Birss J). It said that the Claimants intended to seek injunctive and declaratory relief. It invited the addressees to provide appropriate undertakings. The letter suggested that the addressees should seek independent legal advice. The letter was sent about a month before Mr Hussain was arrested and imprisoned. I am satisfied that Mr Hussain had full notice of the grounds and basis for the relief sought. Mr Hussain chose not to respond to it. Instead he continued to take steps in relation to the structures on the basis that he was a properly appointed director.

v) Mr Hussain is clearly an intelligent man. I am satisfied that he has a good understanding of the arguments about those appointments. To the extent that their validity turns on questions of law and the interpretation of the constitutional documents of the Issuers and the BMFH Securitisations I am satisfied that Mr Hussain is in a position to advance submissions and defend his position.

116. Third, there was nothing of any substance in Mr Hussain's summary of the evidence he would wish to provide if given an adjournment. It is fanciful to suppose that he would have any ground for upsetting the historical appointment of the Original Directors. There have already been repeated decisions of the Courts confirming their status as directors. The other matters he raised appeared to me attempts to muddy the issues. What Mr Hussain did not offer was anything new or different to justify the steps taken by him and his associates between May 2020 and July 2020.

117. Fourth, the Claimants have taken reasonable steps to accommodate Mr Hussain's difficulties and enable him (so far as possible) to participate in the proceedings. I have referred to the history above. In particular, on 10 December 2020 I made an order - at the Claimants' request - for an adjournment of the proceedings to enable Mr Hussain a further opportunity to participate in them. I gave Mr Hussain more time, until 31 December, to give a witness statement or summary of any evidence he intended to rely on at the hearing by 31 December 2020. I also made the request to the Governor of HMP Hollesley Bay to enable Mr Hussain to participate as far as possible in the proceedings. After that order Mr Hussain made a number of requests for release on temporary licence which were not allowed. It appears that at some point he asked for and was given access to an electric typewriter. He was also allowed the use of a laptop to enable him to take part in the hearing itself.

118. Fifth, despite the Claimants' efforts to accommodate Mr Hussain's situation, he did not provide a witness statement or summary of his evidence as required by the order of 10 December 2020. As explained above, he said that he had sent a summary in the post on 21 or 22 December 2020 but there is no record of it arriving. He did not keep a copy. I have grave doubts about his claims that he sent a summary to the Claimants' solicitors. But in any event he did not take any steps to provide a further summary after being informed by the Claimants' solicitors in early January 2021 that nothing had arrived in the post. He explained this on the basis that he summarised his evidence to the Claimants' solicitors over the phone on 7 January 2021. But that is no substitute for a written summary of his evidence. Mr Hussain would have understood

that my order required him to provide a witness statement or a written summary of his evidence. I am satisfied that he made a deliberate decision not to put forward a written statement or summary for the hearing of the trial, but to take his chances on an adjournment. I am also satisfied that Mr Hussain does not appear to have done very much during December 2020 (since my order was made) to further his defence of the claim. His efforts appeared to be focused on obtaining release on temporary licence even though it was made clear to him that that would not be possible without a review. It was in any case highly unlikely that he could be released on licence given the Covid-19 pandemic and the restrictions arising from it.

119. Sixth, Mr Hussain's contentions about the trial bundle have to be considered in the light of the entire history. For the reasons I have already given I am satisfied that he fully understands the case being advanced at trial. He was involved in the relevant steps – indeed brought them about. He was party to the correspondence about those steps at the time or shortly after they occurred. He received the long letter before claim on 11 August 2020. He has been provided with the copies of the supporting evidence as it has been served. HMP Hollesley Bay received the main trial bundle on 14 January 2021 by courier and Mr Hussain says he received it that day. I have doubts about Mr Hussain's contention that some of the pages were missing. He told me that he had telephoned S&S the following day to let them know and says that he left a message with reception for the relevant partner. But there is no record of any call from Mr Hussain after 14 January 2021. The first time he raised any concern about the bundles was during his application for an adjournment. I also note that Mr Hussain said that he had received a skeleton argument from the Claimants but had not received a bundle of authorities. However they were sent to him as a single package. I reached the view that Mr Hussain was using his complaints about the bundles as a pretext to seek an adjournment and that he was not in fact prejudiced.

120. Seventh, I reject Mr Hussain's submission that an adjournment would not prejudice the Claimants. I consider that an adjournment would in fact be seriously and significantly detrimental to the Claimants. There are several points here:

    i) the filings at Companies House are public documents. They provide details about the directors of the Issuers and its registered office. If the Claimants are correct this information is false and misleading. The change of the registered office is particularly troubling: it is possible that notices or other communications have been sent to the wrong registered office of which the Original Directors are wholly ignorant;

    ii) BMF4 is required to serve an Annual Return by 9 February 2021. The Issuers require certainty about the identity of their directors in order to comply with this obligation. Mr Hussain was wrong to suggest that it can be done before the case is resolved, as the Original Directors are required to provide what is called a confirmation statement. They can only do that if they are confirmed as the directors;

    iii) any lengthening of the proceedings will lead to yet more costs. The Claimants have already spent more than £2.4m of irrecoverable costs. These costs will in the end fall on the noteholders; and

iv) as the Claimants submitted, the longer the Defendants are held out as directors and other office holders (which will carry on until the Companies House filings are corrected) the more credible their contentions that they have these roles in relation to the structures. The impression that they have these roles has been amplified by the RNS releases made to noteholders in 2020. As the Claimants say, the longer the position goes uncorrected the greater the risk to the BMFH Securitisation structures.

121. For these various reasons I was not prepared to halt the trial at the threshold. I should also stress that in deciding to proceed with the trial it was on the basis that Mr Hussain might be able to satisfy me that he was unable fairly to address particular parts of the case against him, or specific aspects of the relief claimed. That would include the case where Mr Hussain did not understand the legal issues on a specific point or that he could not address the point fairly because of a lack of documents. I was therefore prepared to entertain specific arguments about the fairness of the process on the particular issues as the trial progressed. What I was not prepared to do was adjourn the entire trial without hearing the parties' submissions. I considered that that would deny justice to the Claimants. After I had ruled that I would allow the trial to continue on these terms, Mr Hussain decided to take no further part in the trial, even as an observer. I am entirely satisfied that, in all the circumstances I have set out above, it was fair and appropriate for the trial to continue in his absence.

Summary of the relief sought by the Claimants and the key issue

122. In broad terms, the Claimants in the Injunctions Claim seek, first, declarations that the various steps taken by the Defendants were invalid and of no effect; and that the Defendants do not have the statuses or positions they have assumed in relation to the Issuers. They seek, second, injunctions restraining the Defendants from holding themselves out as having those statuses or positions and from taking steps in respect of the Issuers.

123. In the BMFH Claim the Claimants seek orders for the removal of various entries registered at Companies House in respect of the Issuers.

124. There is a common question at the heart of both Claims: have the Defendants been validly appointed as directors of the Issuers? This was the key step on the basis of which the Defendants took nearly all the other actions or steps in issue in the present claims. It was as purported directors that the Defendants purported to remove the Original Directors; to make calls on BMFH; to forfeit the shares held by BMFH in the Issuers; to sell those shares to Highbury; to swear the statutory declaration in support of that forfeiture and sale; to make the various filings at Companies House; to issue the RNS announcements; to contact Barclays Bank about the banking arrangements; to dismiss S&S as lawyers; to appoint CSEL financial advisers to the Issuers; and to take proceedings in the name of the Issuers.

125. The answer to the question is plain: the Defendants were not appointed as directors of the Issuers. There are two methods of appointment: by ordinary resolution of the shareholders of the Issuers under Article 70 of their Articles of Association, or by the directors under Article 71. The Original Directors did not exercise their power under Article 71. Nor was there a resolution of the shareholders of the Issuers (BMFH) under Article 70. Mr Hussain has provided only one purported resolution – that of 22

May 2020 concerning BMF6 (which purported to be passed by noteholders, not shareholders). No resolutions have been produced for the other Issuers. This question was addressed by Birss J in his judgment of 13 July 2020 (see [49]-[50]). He concluded that Mr Hussain and his associates had never been appointed as directors of the Issuers. I agree with his reasoning and conclusions.

126. I also agree with the reasoning and conclusions of Birss J at [44] to [50] where he held that there can have been no valid or effective termination of the Original Directors' appointments as the Issuers' directors, since the Defendants (who by resolutions recorded in the 23 June Board Minutes purported to effect this termination) had no authority to do so.

The BMFH Claim

Legal principles

127. I start by setting out the applicable statutory framework.

128. Section 1096 of the Companies Act ("the Act") provides relevantly as follows:

> "(1) The registrar shall remove from the register any material–
>
> > (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the company, or
> >
> > (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged, and that the court directs should be removed from the register.
>
> (2) The court order must specify what is to be removed from the register and indicate where on the register it is.
>
> (3) The court must not make an order for the removal from the register of anything the registration of which had legal consequences as mentioned in section 1094(3) unless satisfied –
>
> > (a) that the presence of the material on the register has caused, or may cause, damage to the company, and
> >
> > (b) that the company's interest in removing the material outweighs any interest of other persons in the material continuing to appear on the register.
>
> (4) Where in such a case the court does make an order for removal, it may make such consequential orders as appear just with respect to the legal effect (if any) to be accorded to the material by virtue of its having appeared on the register.
>
> (5) A copy of the court's order must be sent to the registrar for registration."

129. Section 1096(3) refers to material on the register which has had "legal consequences" as mentioned in section 1094(3) and imposes specific conditions before an order may

be made for the removal of such material from the register. One of the legal consequences mentioned in section 1094(3) is "a change of registered office".

130. It is clear that damage has been or may be caused to the Issuers from having the wrong registered office recorded. It is the place where formal documents are likely to be served. The evidence indeed shows that there have already been cases where important correspondence has been sent to the Issuers to the Shelton Street address (i.e. the address the Defendants caused to be registered with the Registrar of Companies at Companies House). There is a serious risk that other such cases will continue to occur. I am satisfied that none of the Defendants (and indeed no other persons) has any legitimate interest in the unauthorised material continuing to appear on the register for the purpose of section 1096(3).

131. There is a separate claim in respect of the entries in the register concerning persons with significant control (referred to in the Act as "the company's PSC register").

132. Section 790V of the Act provides relevantly as follows:

> "(1) If—
>
> (a) the name of any person is, without sufficient cause, entered in or omitted from a company's PSC register as a registrable person or registrable relevant legal entity, or
>
> (b) default is made or unnecessary delay takes place in entering on the PSC register the fact that a person has ceased to be a registrable person or registrable relevant legal entity,
>
> the person aggrieved or any other interested party may apply to the court for rectification of the register.
>
> (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.
>
> (3) On such an application, the court may—
>
> (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the register, and
>
> (b) more generally, decide any question necessary or expedient to be decided for rectification of the register.
>
> [….]
>
> (5) The reference in this section to "any other interested party" is to—
>
> (a) any member of the company, and
>
> (b) any other person who is a registrable person or a registrable relevant legal entity in relation to the company."

133. BMFH claims to be a shareholder of each of the Issuers and would in any event a "person aggrieved" for the purposes of section 790V(1)) and therefore to have standing to make the application for relief under section 790V. The Claimants claim that Highbury's name has been included on the Issuers' registers as a PSC (and a "relevant legal entity" for the purposes of section 790V(1)) "without sufficient cause", and BMFH's name has been removed as a PSC of each of the Issuers similarly "without sufficient cause", and that the Court should therefore order that these registers be rectified.

134. The Registrar of Companies has been added as a Defendant to the BMFH Claim, in light of the guidance in the White Book at note 2G-46.0. As that note explains this enables those acting for the Registrar of Companies to have early sight of the application and to ensure that any order sought under s.1096 is of appropriate scope and is set out in workable terms. A s.1096 order must set out what information is to be removed and where it appears on the register; joinder of the Registrar of Companies as a respondent to the application will ensure that the information and its location are correctly described in the order, saving time and costs. The draft final order before me reflected input from the Registrar.

The relief sought

135. I shall consider each of the various heads of relief sought in the draft order and set out my decisions point-by-point.

(i) Paragraph 1(1) – the change of registered office

136. This seeks an order under section 1096(1) that the Registrar "shall remove from the register the following material which was … filed without the authority of the Issuers and was false and inaccurate:… the change of registered office to 71-75 Shelton Street, Covent Garden, London WC2H 9JQ, as registered on 15 July 2020 for each of the Issuers (and in respect of BMF7, as re-registered on 13 August 2020)."

137. The evidence shows that on 15 July 2020 the Directors received notification that AD01 forms (the relevant form of filing) had been received by Companies House on 6 July 2020 purporting to register registered offices for each of the Issuers as the "Shelton Street" address. This is an office habitually used by Mr Hussain and his associates. The forms had been made on paper and signed by Mr Hussain purportedly on behalf of the Issuers.

138. As already explained, neither Mr Hussain nor any of the other Defendants has ever been duly appointed as a director of any of the Issuers. It follows that none of them had authority to change the Issuers' registered addresses or to file AD01 forms to that effect at Companies House.

139. It also follows that the AD01 forms registering the purported new "Shelton Street" address were invalid and ineffective and filed without the Issuers' authority, and/or were factually inaccurate and/or deriving from something that was factually inaccurate (for the purposes of section 1096(1)).

140. As already noted, section 1096(3) is engaged in the present context. I am satisfied for the reasons already given that (a) the presence of this material on the register has

caused, or may cause, damage to each of the Issuers, and (b) the Issuers' interests in removing the material outweighs any interest of other persons in the material continuing to appear on the register.

141. It is therefore appropriate to grant the relief set out at paragraph 1(1), requiring the Registrar to remove the relevant material from the Issuers' registers.

(ii) Paragraph 1(2) and (3) – the Issuers' company secretary

142. These paragraphs contain proposed orders under section 1096(1) that the Registrar "shall remove from the register the following material which was … filed without the authority of the Issuers and was false and inaccurate:… (2) the termination of appointment of Sanne Group Secretaries (UK) Limited as a secretary, as registered on 15 July 2020 (in respect of BMF6) and 21 July 2020 (in respect of BMF4, BMF5 and BMF7); (3) the appointment of Callon Capital as a secretary, as registered on 15 July 2020 (in respect of BMF6) and 21 July 2020 (in respect of BMF4, BMF5 and BMF7)."

143. The evidence shows that the relevant changes to the register were the result of TM02 and AP04 forms signed by Mr Hussain.

144. Neither Mr Hussain nor the other Defendants had any authority to make these filings on behalf of the Issuers (see above). Nor did they have any authority to change the Issuers' company secretaries or appoint Callon Capital in their place.

145. I am satisfied that these TM02 forms and AP04 forms were invalid and ineffective and filed without the Issuers' authority, and/or were factually inaccurate and/or deriving from something that was factually inaccurate (for the purposes of section 1096(1) of the 2006 Act).

146. It is therefore appropriate to grant the relief at paragraphs 1(2) and 1(3), requiring the Registrar to remove the relevant material from the Issuers' registers.

(iii) Paragraphs 1(4) to 1(16) – the Issuers' directors

147. Paragraphs 1(4) to 1(6) are proposed orders under section 1096(1) that the Registrar "shall remove from the register the following material which was … filed without the authority of the Issuers and was false and inaccurate:… (4) the termination of appointment of Ms Coral Bidel as a director, as registered on 15 July 2020 (in respect of BMF6) and 21 July 2020 (in respect of BMF4, BMF5 and BMF7); (5) the termination of appointment of Mr Beejadhursingh Surnam as a director, as registered on 15 July 2020 (in respect of BMF6) and 21 July 2020 (in respect of BMF4, BMF5 and BMF7); (6) the termination of appointment of Mr Marc Speight as a director, as registered on 15 July 2020 (in respect of BMF6) and 21 July 2020 (in respect of BMF4, BMF5 and BMF7)…"

148. Paragraphs 1(7) to 1(13) are proposed orders under section 1096(1) that the Registrar shall remove from the Issuers' registers the appointments of the various Defendants (on various dates) as directors of the various Issuers, on the basis that the relevant AP01 and AP02 forms were filed without the Issuers' authority and those Defendants were never duly appointed as directors.

149. Paragraphs 1(14) to 1(16) are proposed orders under section 1096(1) that the Registrar shall remove from the Issuers' registers the purported terminations of Mr Oyekoya, PLL and Ms Kirby as directors of various of the Issuers, on the basis that they had never been validly appointed as directors in the first place (and, in any case, the Defendants lacked the authority to file the relevant forms on the Issuers' behalf at Companies House).

150. These proposed orders again turn on the purported appointment of the Defendants as directors. For the reasons already given, they were never appointed as directors of the Issuers; and could not terminate the appointment of the Original Directors. It follows that they also had no authority to file the relevant forms at Companies House to register their (invalid and ineffective) appointment as such; or register the (purported) termination of the appointments of the Original Directors.

151. It is therefore appropriate to declare that these various TM01, AP01 and AP02 forms were invalid and ineffective and filed without the Issuers' authority, and/or were factually inaccurate and/or deriving from something that was factually inaccurate (for the purposes of section 1096(1)).

152. It is also appropriate to grant the relief set out at paragraphs 1(4) and 1(16) requiring the Registrar to remove the relevant material from the Issuers' registers.

(iv) Paragraph 1(17) – the Purported Noteholders Resolutions for BMF6

153. Paragraph 1(17) sets out a proposed order under section 1096(1) that the Registrar "shall remove from the register the following material which was … filed without the authority of the Issuers and was false and inaccurate:…(16) the resolutions in respect of BMF6, as registered on 3 August 2020…"

154. This concerns the filing on 3 August 2020 in respect of BMF6 of the Purported Noteholder Resolutions dated 22 May 2020 signed by Mr Oyekoya in respect of BMF6.

155. This resolution had no effect for the reasons already given. But in any case the Defendants had no authority to file the resolution at Companies House on behalf of the Issuers. It is therefore appropriate to order that these materials be removed from the Issuers' registers pursuant to section 1096(1) Act.

(v) Paragraph 2 – PSC / relevant legal entity

156. Paragraph 2 is a proposed order under section 790V that the Registrar "shall rectify the PSC register of each of the Issuers to reflect that: (1) BMFH has not ceased being a PSC of any of the Issuers and should be entered as the only PSC of each of the Issuers; and (2) Highbury is not, and never has been, a PSC of any of the Issuers and should be omitted as such".

157. BMFH (the applicant for these purposes) contends that, for the purposes of section 790V, these details have been added to the Issuers' PSC registers "without sufficient cause". It submits that the Defendants had no authority to make filings at Companies House to register the cessation of BMFH as a PSC of each of the Issuers, or to register the notification of Highbury as a PSC / "relevant legal entity" in respect of each of the

Issuers, and that the details set out in the relevant PSC02 forms were false and inaccurate. I accept this submission.

158. Since the Defendants were never validly or effectively appointed as directors of the Issuers, none of the notices of unpaid members' calls, share forfeitures or the purported sale of the Issuers' shares to Highbury can have been valid or effective either. The last of these steps, the sale to Highbury, was carried out by the Defendants as purported directors. But because the purported call and forfeiture were invalid the shares remained in the ownership of BMFH. The Issuers (for whom the Defendants purported to act) had no property in the shares and therefore had nothing to sell to Highbury. Any purported sale was therefore a nullity.

159. But the matter goes further. Even supposing (contrary to the above) that the Issuers had some property in the shares, to show that it was a bona fide purchaser of the shares, Highbury would need to establish that the persons it dealt with (namely the Defendants) had actual or ostensible authority to deal with the shares. The Defendants had no actual authority for the reasons I have given. But nor was there any holding out by the Issuers of the Defendants as agents of the Issuers: the only validly appointed directors of the Issuers are the Original Directors and they have done nothing to hold out the Defendants as being entitled to act for the Issuers. For these reasons too Highbury's claim to have purchased the shares must fail.

160. I also note that the evidence I have set out above shows that Highbury is associated with the other Defendants. Mr Kalia has explained that its sole director was Mr Oyekoya.

161. Mr Hussain has suggested at various times (though not in evidence before the court) that Highbury retrospectively ratified the appointments or actions of the Defendants as purported directors of the Issuers. In this regard on 12 July 2020 Mr Hussain provided purported resolutions dated 10 July 2020 of Highbury purporting to ratify the Defendants' forfeiture of BMFH's shares in the Issuers and their sale to Highbury. This argument is hopeless. Highbury cannot establish title by pulling its own bootstraps: if the forfeiture of the shares and their sale to Highbury were invalid when they occurred Highbury cannot be a shareholder and therefore cannot pass resolutions purporting to ratify the earlier steps.

162. Mr Hussain also suggested in a telephone call to S&S on 7 January 2021 and in his submissions on the adjournment application that Highbury would be able to rely on the statutory declarations made by Mr Kalia on 10 July 2020 by which Mr Kalia confirmed that the shares had been validly forfeited. There is nothing in this point either. First, for the reasons already given, Mr Kalia has never been a director of any of the Issuers and therefore lacked actual authority to sign statutory declarations as a director. Second, Highbury would have the burden of showing that Mr Kalia had ostensible authority to make the declaration. But, as already explained, the Issuers never held out Mr Kalia as a director. Third, in any case, the evidence shows that Highbury was associated with the Defendants and was therefore actually on notice that Mr Kalia had no authority to make these statutory declarations.

163. It follows that Highbury never acquired any of the Issuers' shares and BMFH remains the majority shareholder of each of the Issuers. BMFH therefore remains a PSC in

respect of each of the Issuers and Highbury is not a PSC / "relevant legal entity" in respect of any of them.

164. I therefore order that the PSC registers be rectified pursuant to section 790V(1).

The Injunctions Claim

Legal principles

165. As CPR 40.20.1 states "the court's jurisdiction to make a declaration is not confined to cases in which the claimant has a complete and subsisting cause of action apart from the rule; thus, the court may make a declaration where no other relief is claimed or can be claimed." See also *Guaranty Trust Co of New York v Hannay* [1915] 2 K.B. 536.

166. The Claimants submit that the declarations they seek are intended to provide clarity from the Court as to who is in fact in control of the Issuers and their assets. They say it is vital to allay any misapprehensions there may be in the market or among the underlying borrowers (or elsewhere), as a result of the Defendants' conduct. I agree. I am conscious of course that the Defendants have not appeared to advance contrary arguments. However I consider that they have historically advanced their reasons for taking the actions that they have (through correspondence or in the earlier proceedings). The issues I have to decide are clear cut and there are no points of particular difficulty or complexity. The Defendants have also had the opportunity to participate in the proceedings and have chosen not to do so. I do not think that their absence should bar the court from granting declaratory relief which would otherwise be of real utility to the Claimants in seeking to sort out the confusion caused by the Defendants' actions. I also consider it is relevant that the declarations in this case are closely related to the injunctive relief being sought in the proceedings. The declarations go hand in hand with the injunctions. This is not a case where a party is seeking a declaration of right as to (for instance) the meaning of a contract or piece of legislation.

167. A number of declarations cover points on which other courts have already ruled (e.g. that Mr Oyekoya is not a trustee or that the Defendants are not directors of the Issuers). The Claimants say that it is important for these points to be included in declarations so that they will be binding on all the Defendants. They submit that the Defendants' modus operandi is to ignore judicial rulings to which they were not personally a party. For instance Mr Hussain himself was not a party to any of the proceedings before Birss J. And even after Birss J had ruled on the invalid appointments and acts of the purported directors Mr Hussain carried on acting as if he was a director of the Issuers (e.g. by making further filings at Companies House). I accept these submissions.

168. As to the injunctions, the Claimants rely on the Court's jurisdiction to grant a final injunction (i) where no actionable wrong has been committed, (ii) to prevent the occurrence of an actionable wrong, or (iii) to prevent repetition of an actionable wrong (see *Proctor v Bayley* (1889) 42 Ch. D. 390, 398; and *Gee on Commercial Injunctions (7th ed.)*, [2-045]).

169. The principles may be summarised in the following way:

i) The invocation of this jurisdiction requires proof that, unless the court intervenes by injunction, there is a real risk that an actionable wrong will be committed (see e.g. *Coflexip SA v Stolt Comex Seaway MS Ltd* [1999] 2 All E.R. 593, at [7]–[10]).

ii) There is no fixed or absolute standard for measuring the degree of apprehension of a wrong which must be shown in order to justify quia timet relief: see *Hooper v Rogers* [1975] Ch. 43 at 50. The more serious the consequences and the risk of wrongdoing, the more likely the court will be satisfied that relief is appropriate.

iii) If the court decides to grant a final injunction, the width of that injunction is a matter for the court's discretion and can be tailored according to the circumstances: see *Gee* [2-045], citing *Microsoft Corp v Plato Technology Ltd*, unreported, 15 July 1999). The court has a discretion to order mandatory steps to be taken for the purpose of avoiding the commission of any wrong and preventing any harm to the applicant, though this power will be exercised with caution: See *Gee* [2-046].

iv) Whether a case is an appropriate one for the grant of *quia timet* relief has to be considered in the light of all the relevant circumstances known at the time of the hearing of an application for an interim injunction, or at the time of trial: *Proctor v Bayley* (1889) 42 Ch D 390, 398 (injunction against infringement of a patent refused when the last infringement had been four years previously and there was no intention to infringe in the future).

v) The relevant factors include whether there is a threat of imminent wrongdoing, the seriousness of the damage which might be done imminently, whether the defendant is actively seeking to prevent wrongdoing, or is himself threatening to commit a wrong, and whether if damage were done, it would be rectifiable: see *Gee* [2-046].

The declarations and injunctions sought

170. I shall again consider the relief claimed in the draft order point-by-point.

(i) Paragraphs 5 and 6 – the Issuers' true directors

171. Paragraphs 5 and 6 seek declarations regarding the identity of the true directors of the various Issuers, in the following terms:

> "5. None of the Injunctions Claim Defendants is, or has at any time been, a director or chairman of any of the Issuers.
>
> 6. Since 14 December 2018, the only true directors of each of the Issuers have been and remain: (i) Ms Coral Suzanne Bidel (appointed on 14 December 2018); *(ii)* Mr Marc Speight (appointed on 24 April 2018); and (iii) Mr Beejadhursingh Surnam (appointed on 8 March 2016)."

172. The legal basis underlying these declarations has been addressed above and I shall not repeat it here. I consider that a grant of declarations in these terms would serve a

useful purpose. There is an obvious risk of investors and underlying borrowers (and indeed others) being confused about the identity of the Issuers' directors. This risk has been heightened by the unauthorised (and inaccurate) filings at Companies House and the RNS announcements. I also agree with the Claimants' submission that there is utility in making a declaration binding as many of the Defendants as possible. Some have not been parties to earlier proceedings in which this point has been determined.

173. I shall therefore make these declarations.

(ii) Paragraph 7 – the true trustee

174. Paragraph 7 seeks a declaration regarding the identity of the true trustee under the Issuers' various Trust Deeds and Deeds of Charge and Assignment, in the following terms:

> "7. As to the Trust Deeds and the Deeds of Charge and Assignment entered into by (inter alios) BMF4, BMF5, BMF6 and BMF7 on (respectively) 12 April 2006, 18 October 2006, 18 May 2007 and 23 November 2007 (the "Trust Deeds", the "Deeds of Charge and Assignment"):
>
> (1) Mr Alfred Olutayo Oyekoya is not, and has not at any time been, a trustee under the terms of any of these Trust Deeds or Deeds of Charge and Assignment; and
>
> (2) The only trustee under the terms of any of these Trust Deeds or Deeds of Charge and Assignment is (and has been at all times since the various Deeds were first entered into) Bank of New York Mellon Corporate Trustee Services Limited ("BNY")."

175. For the reasons already explained I am satisfied that BNY is the duly appointed Trustee under the terms of the Issuers' Trust Deeds and Deeds of Charge and Assignment and is and has always been the only one. Mr Oyekoya has held himself out as trustee under the terms of the Issuers' Trust Deeds and Deeds of Charge and Assignment from time to time. Birss J ruled on 13 July 2020 (at [23] and [39]) that he had no authority to do so. He held that it was not open to Mr Oyekoya unilaterally to assume the position of trustee. I entirely agree with his reasoning and conclusions on this point.

176. I consider that a declaration would have utility (for the same reasons as given above in relation to paragraphs 5 and 6). I shall make this declaration.

(iii) Paragraphs 8 and 9 – the Issuers' company secretary

177. Paragraphs 8 and 9 seek declarations regarding the identity of the company secretary of the various Issuers, in the following terms:

> "8. Callon Capital is not, and has at no material time been, a company secretary of any of the Issuers.
>
> 9. Since 1 June 2013, the only company secretary of each of the Issuers has been and remains Sanne Group Secretaries (UK) Limited."

178. I have already explained why the propositions set out in these declarations are correct and shall not repeat those reasons. I was provided with evidence showing the dates of appointment of Sanne Group Secretaries (UK) Limited as company secretary. There is utility in granting these declarations for the same reasons as given above in relation to paragraphs 5 and 6 of the draft order. I shall make these declarations.

(iv) Paragraphs 10 and 11 – the Special Servicer and Cash/Bond Administrator

179. Paragraphs 10 and 11 seek declarations regarding the identity of the true directors of the various Issuers, in the following terms:

> "10. Callon Capital is not, and has at no material time been, the Special Servicer or Cash/Bond Administrator of any of the Issuers.
>
> 11. Since 29 November 2016, the only Special Servicer and Cash/Bond Administrator of each of the Issuers has been and remains Target."

180. As already explained, on 17 June 2020 Mr Oyekoya and Talisman sent purported notices to Target, purporting to terminate its role as Special Servicer and Cash/Bond Administrator in respect of each of the Issuers and to replace it with Callon Capital. These were sent on by Mr Oyekoya and Talisman in their purported (but non-existent) capacity as trustees under the Issuers' Trust Deeds and/or Deeds of Charge and Assignment. The purported termination notices to Target were therefore invalid and of no effect.

181. The evidence showed the dates of Target's appointment as Special Servicer and Cash/Bond Administrator as set out in paragraph 11.

182. The declarations would have utility (for the reasons already given) and I shall grant them.

(v) Paragraphs 12 and 13 – Highbury/BMFH

183. Paragraphs 12 and 13 seek declarations regarding the identity of the true shareholders of the various Issuers, in the following terms:

> "12. Highbury is not, and has at no material time been, a shareholder of any of the Issuers or a PSC over any of the Issuers.
>
> 13. Since 1 June 2013, the only shareholders of the Issuers have been and remain BMFH and Sanne Group Nominees 1 (UK) Limited and the only PSC over the Issuers has been and remains BMFH."

184. I have addressed the position of Highbury above. For the reasons given there I am satisfied that BMFH and Sanne Group Nominees are the shareholders of the Issuer and that Highbury has never become a shareholder of the Issuers.

185. The court was provided with evidence showing the date when BMFH and Sanne Group Nominees became the only shareholders of the Issuers.

186. I consider again that these declarations would have utility (for the same reasons as above) and that it is appropriate to make these declarations.

(vi) Paragraph 14 – the Issuers' registered office

187. Paragraph 14 seeks declarations regarding the identity of the registered offices of the various Issuers, in the following terms:

> "14. The AD01 forms filed at Companies House recording a change of the registered office of each Issuer to 71-75 Shelton Street, Covent Garden, London WC2H 9JQ (as registered on 15 July 2020 for each of the Issuers and, in respect of BMF7, as re-registered on 13 August 2020) were filed without the Issuers' authority and were false and inaccurate."

188. As already explained, the filings at Companies House which purported to register a change of registered office for each of the Issuers to 71-75 Shelton Street were all made without the Issuers' authority and were factually inaccurate and false.

189. There is utility in making this declaration (for the reasons already given) and I shall grant it.

(vii) Paragraph 15 – the acts of the Injunctions Claim Defendants

190. Paragraph 15 seeks declarations regarding the invalidity of steps taken by the Defendants in the following terms:

> "15. Each and every act purportedly done by the various Injunctions Claim Defendants in the various purported capacities referred to at paragraphs 5, 7, 8, 10 and 12 above was done without authority and is invalid and of no effect."

191. This declaration seeks an order concerning the various steps taken by the Defendants in their various capacities as directors, chairman, trustees, shareholders and so forth.

192. For the reasons already given I am satisfied that none of the Defendants had the capacities they have claimed to have. It follows that the acts they have purported to carry out in those various capacities were invalid and can have had no legal effect. I consider that there is utility in this further declaration. As I have already explained the claims of the Defendants to have occupied positions as directors, trustees, shareholders etc. and the acts they have purported to take in those capacities have been calculated to cause damage to the Issuers and sow confusion among investors, borrowers and other parties involved in the BMFH Securitisation structures. The Defendants have acted wrongfully and abusively in taking these various steps. They have done so in the teeth of the Claimants' reasoned protests and the earlier decisions of the courts. The declaration sought will assist the Issuers in sorting out the confusion created by the Defendants. I shall therefore make this declaration.

The injunctions: general

193. The Issuers seek various injunctions on the basis that there is a real and substantial risk of damage of an imminent kind resulting from further unlawful interference in their affairs.

194. I start with some general observations. I am satisfied in the light of the history set out above that there is a real and substantial risk that the Defendants will, unless restrained, continue to assert that they are entitled to be involved in the affairs of the

Issuers. This is confirmed by Mr Hussain's recent conversations with S&S in which he made new allegations concerning the Issuers. These included claims that there were further changes to the directors of the Issuers in August or September 2020 and that there were further dealings in the shares in the Issuers at about the same time. Mr Hussain has also recently said (for the first time) that the Original Directors and Target were not properly appointed to their positions (being appointments which pre-dated by some years the first involvement of Mr Hussain and his associates). I have concluded that there is no substance to any of these points, but they suggest that Mr Hussain intends to continue to assert that he and his associates have some legally valid status or position in relation to the Issuers.

195. The Claimants also observe that whilst some of the other Defendants have made overtures to the Issuers apparently seeking to settle this matter by consent, the sincerity of those overtures is doubtful given their failure to respond to S&S's request, in a letter dated 2 December 2020 that they sign relevant consent orders (and their complete silence since then). I accept this submission.

196. I am also satisfied that if Mr Hussain and his associates are allowed to continue falsely holding themselves out as having some legally relevant status or position in or regarding the Issuers there will be uncompensable damage to the Issuers and others involved in the BMFH Securitisations. There will be further confusion for investors, borrowers and others. The Issuers will also be required to take yet further proceedings at substantial cost. The Issuers are already some £2.4m out of pocket for unrecovered and unrecoverable legal costs, a loss which will fall ultimately on noteholders. These resources should be protected from further depletion. There is also the question of the court's resources and the impact on other court users. The history shows that numerous courts have been occupied in dealing with the Defendants' actions in relation to the Issuers and the BMFH Securitisations. These earlier decisions have been ignored or side-stepped by the Defendants. So, for instance, by far the most important question at this trial (going to the great bulk of the other issues) is whether the Defendants were ever appointed as directors of the Issuers. Birss J decided that question in the clearest terms in July 2020, but Mr Hussain continued falsely to hold himself out as a director. The Court should seek as far as possible to draw a line under the wrongful conduct of the Defendants, and thereby seek to restrain further abuses and wasteful litigation.

197. The Defendants' approach has also been protean. A good example is the Defendants' response to the order of Zacaroli J, declaring that the purported receivers had no power to enter the sale to Roundstone. The day after his order, Roundstone (which was not a party to the claim) asserted that it was not bound by the order. That necessitated the further set of proceedings and the decision of Nugee J. I also note that Roundstone presented itself in that action as independent, it has since emerged that Mr Hussain was shown in the statutory records as its UBO. It is reasonable to assume that the Defendants, unless restrained, will seek to use similar stratagems to circumvent court orders. The Claimants submit, and I agree, that this justifies reasonably broad orders which prevent the Defendants from holding themselves out as agents or officers of the Issuers or occupying other roles concerning the BMFH Securitisations. This is supported by the principle that the relief granted by any injunction should be effective.

198. I am satisfied in the present case that unless the relief granted is sufficiently broad it will not be fully effective. In particular, it is appropriate for the Court to grant final injunctive relief restraining the Defendants from holding themselves out as having (or acting as if they have) a wide range of positions in relation to the Issuers and their assets.

199. With this in mind I turn to the relief sought in paragraphs 16 and 17 of the draft order (where the proposed injunctions are set out).

(i) Preamble to paragraph 16

200. The preamble to paragraph 16 is as follows:

> "16. Each of the Defendants to the Injunctions Claim (including, in the case of those Defendants which are corporate persons rather than natural persons, whether acting by their directors, servants, employees or agents) SHALL NOT (whether acting alone, or in combination with any other individual or entity): …"

201. In the light of the history and the way the Defendants have acted in concert with one another, I am satisfied that it is appropriate to restrain the Defendants both from acting alone and in combination with others.

202. Most of the specific provisions of paragraph 16 include language which not only restrains the Defendants from taking specified steps, but also restrains them from causing, procuring or permitting others to take those steps.

203. I am satisfied that it is appropriate to restrain the Defendants from causing or procuring others to act. The history shows the Defendants using various corporate entities (e.g. GIL, GHL, Highbury, Roundstone, Fairhold, etc.) as well as individuals associated with Mr Hussain (e.g. Ms Kirby, Mr Osman, etc.) in relation to various steps. As to the suggested restraint on the Defendants permitting another person to take the relevant steps, this should be expressly restricted to the case where the relevant Defendant is in a position to prevent that other person from so acting. With this qualification I think that the order should extend to such a case: if the relevant Defendants are able to prevent the relevant conduct by others they should be required to do so.

(ii) Paragraphs 16(1) and 16(2) – holding out as "director", etc.

204. Paragraphs 16(1) and 16(2), if granted, would provide that the Defendants shall not:

> "(1) hold themselves out or act as if they are a director or other officer of or any kind of advisor to any of the Issuers, or as having any authority whatsoever to act on the Issuers' behalf and/or as having any authority to dispose or otherwise deal with the Issuers' assets (whether as receivers, agents, attorneys or otherwise), or cause, procure or permit any other person to hold them out as such;
>
> (2) hold out any person other than those persons identified at paragraph 6 above as being the directors of the Issuers…"

205. I am satisfied (for the reasons already given) that there is a clear threat that the Defendants will continue to hold themselves out, without a lawful basis, as directors

of the Issuers if not restrained. Moreover, as explained above, Mr Hussain recently asserted in his conversation with the Claimants' solicitors on 7 January 2021 that yet further (unnamed) directors had been appointed. He said this notwithstanding the judgment of Birss J which spelt out the true legal position.

206. The Defendants' unwillingness to abide by decisions of the Court is also shown by the fact that Zacaroli J decided as long ago as July 2019 that Mr Oyekoya had not been appointed as a director of BMF6 and granted injunctive relief restraining him from holding himself out as a director of BMF6 or a receiver of its assets. Yet, until he was adjudged bankrupt on 29 June 2020, Mr Oyekoya continued to hold himself out as a director of the three other Issuers (BMF4, BMF5 and BMF7). I am therefore satisfied that an injunction in the broad terms sought is appropriate.

207. I am also satisfied that the Issuers have the reasonable apprehension that one or more of the Defendants may go on to hold themselves out in other similar capacities: Mr Oyekoya and another of Mr Hussain's associates held themselves out (unlawfully) as the receivers over BMF6's assets. CSEL is currently holding itself out as a "Financial Advisor" to the Issuers and has announced to the market by RNS announcement that it has this function. Callon Capital currently holds itself out (with no lawful basis) as the Issuers' company secretary. For these reasons it is appropriate to restrain the Defendants from acting as if they had these other positions or as having any authority to act on the Issuers' behalf.

208. I am also satisfied that there is a realistic apprehension that the Defendants will cause, procure or permit (in the sense discussed above) others to hold themselves out in this way, or that the Defendants will hold out people or entities (other than the Original Directors) as directors of the Issuers and that it is appropriate to restrain such conduct.

209. I am therefore satisfied that it is appropriate to grant this relief.

(iii) Paragraphs 16(3) to 16(5) – holding out as "trustee", etc.

210. Paragraphs 16(3) to 16(5) would provide that the Defendants shall not:

> "(3) hold out any person other than Target, BNY, Simmons & Simmons LLP or those persons identified at paragraph 6 above (or cause, procure or permit any other person to do so), as having any authority whatsoever to act on the Issuers' behalf and/or as having any authority to dispose of or otherwise deal with the Issuers' assets (whether as receivers, agents, attorneys or otherwise);
>
> (4) hold themselves out as (or cause, procure or permit any other person to hold them out as):
>
> a) a trustee under the terms of any of the Trust Deeds or Deeds of Charge and Assignment; or
>
> b) having any other rights, powers or authorities whatsoever arising from any of the Trust Deeds or Deeds of Charge and Assignment (or as having any authority to act on behalf of the trustee);

(5) hold out any person other than BNY as (or cause, procure or permit any other person to be held out as):

a) a trustee under the terms of any of the Trust Deeds or Deeds of Charge and Assignment; or

b) having any other rights, powers or authorities whatsoever arising from any of the Trust Deeds or Deeds of Charge and Assignment (or as having any authority to act on behalf of the trustee)."

211. For the reasons given above I consider that BNY is the only validly appointed Trustee under the terms of the Trust Deeds and Deeds of Charge and Assignment; and that only the Original Directors, Target, BNY and S&S have any authority to act on the Issuers' behalf and/or as having any authority to dispose of or otherwise deal with the Issuers' assets.

212. As already explained, until he was adjudged bankrupt on 29 June 2020 Mr Oyekoya held himself out (with no lawful basis) as a trustee under the terms of the Trust Deeds and Deeds of Charge and Assignment. So did Talisman, a Guernsey entity associated with Mr Hussain, until that entity was struck off the Guernsey companies register on 17 August 2020. As noted above Birss J ruled at [23] and [39] against Mr Oyekoya in this regard.

213. The point was also decided in the GIL Claim and the Roundstone Claim.

214. I am satisfied that there is, accordingly, a reasonable apprehension that one or more of the Defendants (or one or more of their associates) will hold themselves out, or be held out by one of the Defendants, as trustee in the future. I am satisfied that it is appropriate for paragraphs 16(3) to 16(5) to cover holding out by the Defendants of persons other than BNY, as well as causing, procuring or permitting others to engage in such holding out.

215. I also consider in the light of the protean nature of the Defendants' efforts to circumvent earlier orders it is appropriate to include the wider language proposed so as restrain similar "holding out" as "having any other rights, powers or authorities whatsoever arising from any of the Trust Deeds or Deeds of Charge and Assignment (or as having any authority to act on behalf of the trustee)". I consider it appropriate to grant this relief.

(iv) Paragraphs 16(6) and 16(7) – holding out as "Noteholders", etc.

216. Paragraphs 16(6) to 16(7) would provide that the Defendants shall not:

"(6) hold themselves out or act as if (or cause or procure or permit any other person to hold them out as if):

a) they are Noteholders or Instrumentholders (in the sense defined in the transaction documents underpinning the Issuers' securitisations);

b) they have any kind of beneficial interest in any of the Issuers' Notes or other Instruments (again, as defined); or

c) they are authorised to act on behalf of any Noteholders or other Instrumentholders in any way whatsoever (including without limitation as a representative of any committee or other group of Noteholders),

without first obtaining the Court's permission to do so;

(7) hold out any other person as (or cause or procure or permit any other person to be held out as):

a) a Noteholder or Instrumentholder (in the sense defined in the transaction documents underpinning the Issuers' securitisations);

b) having any kind of beneficial interest in any of the Issuers' Notes or other Instruments (again, as defined); or

c) being authorised to act on behalf of any Noteholders or other Instrumentholders in any way whatsoever (including without limitation as a representative of any committee or other group of such persons),

without first obtaining the Court's permission to do so…"

217. I am satisfied that the Defendants and their associated companies have never been Noteholders or Instrumentholders as those terms are used in the securitisation documentation and in particular to the MDS. That issue was decided by Zacaroli J in July 2019 and I entirely agree with his reasoning. Some of the steps taken by the Defendants and their associates in relation to the BMFH Securitisations were based ostensibly on their position as Noteholders or Instrumentholders as so defined. For instance, it appears that Mr Oyekoya justified his self-appointment as a trustee for the noteholders partly on that basis. He also purported to sign the 22 May 2020 resolution as attorney for the noteholders.

218. I consider that it is appropriate to restrain the Defendants from seeking to take specified actions or steps in respect of the Issuers or other parties to the BMFH Securitisations on the basis that they are themselves Noteholders or Instrumentholders or that they act on behalf of or represent Noteholders or Instrumentholders without the prior permission of the Court. I consider that this is more appropriate than the parts of the current draft of paragraph 16(6) and (7) which would restrain them from holding themselves or others out as beneficial owners of notes in some more general sense. The general concept of what constitutes a "beneficial interest" in notes held through clearing systems is potentially contestable. It may be correct to tie it to the position of account holders (and that was the view of Zacaroli J when construing the terms Noteholder and Instrumentholder in the MDS). But there may be some other contexts where an ultimate noteholder may seek to contend that his interest is a beneficial one. I do not think it is appropriate to grant an injunction where the terminology is potentially up for grabs in this way. On the other hand, I think it is proper to grant an order restricting the Defendants from taking actions based on the contention that they have the status of Instrumentholders or Noteholders as set out in the securitisation documentation; and to extend this to actions taken on the basis that they are authorised by persons with such status. They will be able to apply to the Court in

advance in the very unlikely event that they are able to establish such status in the future.

219. The proviso about seeking the permission of the Court seems to me to strike a fair balance between the Issuers' reasonable apprehensions of further damage and the Defendants' ability to go into the market and acquire Notes in the future.

220. In this regard, in the GIL Claim Zacaroli J granted a similar injunction but made it subject to GIL obtaining the prior written consent of BNY (as Trustee under the BMF6 Trust Deed). The evidence shows that this led to repeated approaches by GIL to BNY seeking (without any evidential basis) its written consent under the terms of the 31 July 2019 Order, and making various baseless threats to sue BNY to compel it to consent. In these circumstances I consider that it would be preferable for any such permission to be supervised by the Court rather than placing the supervisory duty on BNY.

221. For these reasons I am prepared to grant parts of the injunctions sought but there needs to be some reformulation of the wording. I will consider the draft order further with counsel in due course.

(v) Paragraphs 16(8) and 16(9) – holding out as "Special Servicers or Cash/Bond Administrators"

222. These paragraphs would provide that the Defendants shall not:

> "(8) hold themselves out or act as if they are Special Servicers or Cash/Bond Administrators (as defined in the transaction documents underpinning the Issuers' securitisations), or as having any authority to act on behalf of the Special Servicer or Cash/Bond Administrator, or cause, procure or permit any other person to hold them out as such;
>
> (9) hold out any person other than Target as if they are Special Servicer or Cash/Bond Administrator (as defined in the transaction documents underpinning the Issuers' securitisations), or as having any authority to act on behalf of the Special Servicer or Cash/Bond Administrator, or cause, procure or permit any other person to do so…"

223. I have already addressed the history. Mr Oyekoya and Talisman (in their purported capacity as trustees) purported to terminate Target's role as Special Servicer and Cash/Bond Administrator by notices of 17 June 2020; and to replace Target in these roles with Callon Capital. The notices were of no effect since Mr Oyekoya and Talisman are not the Issuers' trustees.

224. There is in my view a reasonable apprehension that, unless restrained, the Defendants will continue with this conduct. These roles are very important in the functioning of the BMFH Securitisations. They also contain a power of attorney enabling Target to act on the Issuers' behalf.

225. There is also a real and substantial risk that if only Callon Capital is restrained, the other Defendants will step forward (invalidly) in their place. And if only the Defendants are restrained they will put forward another associated entity for the role.

For these reasons I consider that the comparatively broad wording of these paragraphs is justified and will make the order.

(vi) Paragraph 16(10) – holding out as other party to the transactions documents, etc.

226. Paragraph 16(10) would provide that the Defendants shall not:

> "(10) hold themselves out, or cause, procure or permit themselves to be held out (or hold out any other person, without the Issuers' prior written consent):
>
> a) as a party to any of the transaction documents underpinning the Issuers' securitisations;
>
> b) as if they have any other rights, powers or authority arising under the terms thereof; or
>
> c) as if they have any authority to act on behalf of any person who is a party to any of those transaction documents (or on behalf of any other person who has any rights, powers or authority arising from those transaction documents)."

227. The Claimants seek an order in these terms to seek to prevent circumvention of the earlier orders. I am satisfied in light of the protean response of the Defendants and their associates to earlier orders that some kind of anti-circumvention order is appropriate. However I think that the current wording is too broad in some respects. The concept of being a party to the documents underpinning the BMFH Securitisations is not sufficiently well defined. Again the notion of "any person who has any rights, powers or authority arising from those transaction documents" is potentially very wide indeed. I consider it would be preferable to spell out in more definite terms the various positions arising under the transaction documents which it is intended to restrain the Defendants from holding themselves out as having. I will discuss the drafting of such an injunction with counsel after this judgment has been handed down.

(vii) Paragraphs 16(11) and 16(12) – holding out as "shareholder", etc.

228. Paragraphs 16(11) to 16(12) would provide that the Defendants shall not:

> "(11) hold themselves out, or cause, procure or permit themselves to be held out (or hold out any other person, without the Issuers' prior written consent) as if they are a shareholder in or PSC over any of the Issuers or any other party to the transaction documents (or as having any interest, whether direct or indirect, in the shares in any of the Issuers or in any other party to the transaction documents);
>
> (12) without prejudice to the generality of subparagraph (11) above:
>
> (a) purport to call, forfeit, sell or otherwise deal with the shares of BMFH or Sanne Group Nominees 1 (UK) Limited in any of the Issuers;
>
> (b) cause, procure or permit any other person to purport to take any of the steps described at subparagraph (12)(a) above; or

(c) act as if such shares have been called, forfeited, sold or otherwise dealt with."

229. I have addressed the facts above. BMFH has at all material times been and remains the majority shareholder of the Issuers (with Sanne Group Nominees holding the remaining shares in each case). Neither Highbury nor any other person is (or has at any time been) a shareholder of the Issuers. Moreover, neither Highbury nor any other person is a PSC of the Issuers (whether through any direct or indirect equity position).

230. I am satisfied that there is a reasonable apprehension that the Defendants unless restrained will continue to contend that Highbury is a shareholder. There has already been the wrongful filing at Companies House in relation to the PSC register. Unless it is restrained it is likely that this conduct will cause further confusion. I will therefore grant this part of the relief.

231. Paragraph 16(12) seeks to prevent a repeat of the steps the Defendants and their associates took in June and July 2020 concerning the shares in the Issuers. I am prepared to grant this injunction.

(viii) Paragraphs 16(13) and 16(14) – purported terminations and appointments

232. Paragraphs 16(13) to 16(14) would provide that the Defendants shall not:

"(13) purport to terminate or to have terminated (or purport to cause, procure or permit any other person to terminate or to have terminated):

(a) the appointment of BNY as trustee under the Trust Deeds or Deeds of Charge and Assignment;

(b) the appointment of any directors, company secretaries, agents, receivers or other representatives of the Issuers or of any directors, agents, receivers or other representatives of any other party to any of the transaction documents; or

(c) the appointment of any person or entity carrying out any function pursuant to the terms of the transaction documents (such as, without limitation, the function of trustee under the terms of the Trust Deeds or Deeds of Charge and Assignment, or the functions of Special Servicer or Cash/Bond Administrator);

(14) purport to appoint or to have appointed (or purport to cause, procure or permit any other person to appoint or to have appointed):

(a) any director, company secretary, agent, receiver or other representative of any of the Issuers;

(b) any director, company secretary, agent, receiver or other representative of any other party to any of the transaction documents; or

(c) any person to carry out any function pursuant to the terms of the transaction documents (such as, without limitation, the function of

> trustee under the terms of the Trust Deeds or Deeds of Charge and Assignment, or the functions of Special Servicer or Cash/Bond Administrator), or to act on behalf of any person carrying out any such function."

233. The history of the steps taken by the Defendants shows their *modus operandi*: to purport (without authority or legal right) to make appointments or terminations of (for example) trustees, directors, receivers (etc.) which the Defendants had no standing to make. They have done this repeatedly since early 2019. It has caused continuing confusion and damage to the Issuers and (ultimately) the noteholders.

234. The Issuers have a real and reasonable apprehension that, unless restrained, the Defendants will carry on the same *modus operandi*, making appointments and terminating others, regardless of their obvious lack of standing to do so.

235. I am satisfied that it is appropriate to make the orders sought in paragraphs 16(13) to 16(14). As a small point of detail, the wording "(or purport to cause, procure or permit any other person to appoint or to have appointed)" seems to me inapt – the word "purport" appears in the wrong place in the phrase.

(ix) Paragraph 16(15) – interference with property

236. Paragraph 16(15) would provide that the Defendants shall not:

> "(15) hold themselves or any other person out as having obtained (by assignment or transfer or otherwise), or as having assigned or transferred or otherwise alienated, any asset, interest, right or power of the Issuers or of any other party to the transaction documents…"

237. I have described what happened in 2019 with the purported sale of the assets of BMF6 to Roundstone. Mr Oyekoya purported to sell all of BMF6's assets as receiver. The Defendants claimed in their evidence before the Court that Roundstone was unconnected. Even at the time of the hearing before Nugee J there were grounds for doubting this. It has since emerged that Mr Hussain was registered in the statutory records as the UBO. This conduct (and the other conduct set out above) establishes a real risk that the Defendants will claim, without legal right, in the future that they (or some other person associated with them) have obtained some or all of the Issuers' assets, interests, rights, etc.

238. I consider it is appropriate to restrain such conduct and will therefore grant this head of relief.

(x) Paragraph 16(16) – restraint of publication

239. Paragraph 16(16) would provide that the Defendants shall not:

> "(16) publish or attempt or threaten to publish (or cause, procure or permit any other person to publish), or take any steps preparatory to the publication of, any RNS announcement or any other announcement or public statement in relation to any of the Issuers or any other party to the transaction documents or BMFH or Sanne Group Nominees 1 (UK) Limited or Sanne Group Secretaries (UK)

> Limited or Sanne Group PLC or Homeloan Management Limited (or, in each case, their directors or other officers or advisors)…"

240. I have set out the relevant history above. The Defendants, or some of them, have already issued two unauthorised RNS announcements, purportedly on behalf of each Issuer on 24 June and 10 July 2020. The Issuers have been required to issue genuine RNS announcements in order to remove the confusion.

241. RNS announcements are important. They are the way issuers of notes and bonds communicate with investors. Investors may be expected to act on them. The two announcements issued by the Defendants contained material information which was capable of affecting investments decisions.

242. There is a reasonable and real basis for apprehending that, unless restrained, the Defendants will continue to make RNS or other public announcements. I am satisfied that this is an appropriate head of relief and shall grant it.

(xi) Paragraph 16(17) – unauthorised filings at Companies House

243. Paragraph 16(17) would provide that the Defendants shall not:

> "(17) make, or threaten or attempt to make (or cause, procure or permit any other person to make), any filing at Companies House in respect of any of the Issuers or any other party to the transaction documents…"

244. I have already addressed the unauthorised filings at Companies House in relation to the Issuers. The problem caused by the historical filings will be remedied by the relief I am granting in the BMFH Claim.

245. There is a real and reasonable apprehension that unless restrained the Defendants will continue to make unauthorised filings. In this regard I note that Mr Hussain continued to make unauthorised filings even after the judgment of Birss J on 13 July 2020.

246. It is important, in order to protect the Issuers and prevent further unwarranted confusion to stop this conduct happening again. I consider it is appropriate to grant this head of relief.

(xii) Paragraph 16(18) – interference with bank accounts

247. Paragraph 16(18) would provide that the Defendants shall not:

> "(18) take, or threaten or attempt to take, any step in relation to any of the Issuers' bank accounts or the bank accounts of any other party to the transaction documents …"

248. The background is explained above. On 17 June 2020 Mr Oyekoya and Talisman sent purported notices of change to Barclays purporting to give notice to Barclays that it was to comply with instructions from Callon Capital for each of the Issuers. Mr Kalia then issued two sets of proceedings against Barclays (since discontinued) seeking to force the issue.

249. However there is a reasonable and real apprehension that unless restrained the Defendants will seek to interfere with the proper conduct by Barclays of its roles in relation to the BMFH Securitisations. I consider that this head of relief is justified and shall grant it.

(xvii) Paragraph 17

250. By paragraph 17 the Claimants seek "liberty to apply to the Court on the papers for any variation of paragraph 16 above which may be necessary or desirable to deal with any further step which the Injunctions Claim Defendants (or their associates) may take, or may threaten to take, in relation to the Issuers (or their associates) or the Issuers' assets".

251. The Claimants argue that, in light of the protean conduct of the Defendants, they should have liberty to come back to the Court in these proceedings rather than having to commence yet another action. I am sympathetic to that submission. There have already been numerous proceedings concerning the relationship between the Defendants and the BMFH Securitisations. The Issuers have had to incur heavy costs in protecting themselves against the Defendants' actions. If the Defendants continue to assert rights in respect of the Issuers or the BMFH Securitisations (and their actions are sufficiently related to those covered by the present proceedings) it makes eminent sense that the Claimants should be allowed to return to court for a variation of the existing orders rather than having to go to the expense time and bother of starting yet another action. I will therefore give a permission to apply for appropriate variations. On the other hand I do not think the court should give a blanket advance permission for such applications to be made "on the papers". Whether that course is appropriate for a given application will depend on the particular facts at the relevant time. It will be for the court hearing any such application to decide whether a hearing is required.

Conclusions

252. The Defendants have targeted these securitisation structures relentlessly. One or other of them have pretended to occupy the roles of directors of the Issuers, trustees for the noteholders, receivers of the underlying assets, Servicers, advisers to the Issuers, and other positions. They purported (in their assumed role of directors) to forfeit the shares held by BMFH in the Issuers and sell them to Highbury. They managed to change important company filings at Companies House and made misleading announcements to investors over the RNS. None of this is legitimate. The Defendants have never occupied any of these roles. They are, for legal purposes, strangers to the Securitisations. The reasons they have given for their actions are spurious. The corporate assault has been going on for the best past of two years, in the teeth of earlier orders of the courts and the Claimants' reasoned protests. It must now stop. I shall grant relief in respect of both claims. This includes orders for the rectification of the Companies House registers for the Issuers, declarations and final injunctions. I have addressed and commented on each of the heads of relief sought above. Some amendments to the proposed order are required and I shall consider a further draft after this judgment has been delivered.