IN THE HIGH COURT OF JUSTICE **Claim No BL-2020-001003**

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES

BUSINESS LIST, FINANCIAL SERVICES AND REGULATORY SUB-LIST (ChD)

BETWEEN:

THE FINANCIAL CONDUCT AUTHORITY

(A Company Limited by Guarantee)

Claimant

-and-

(1) LONDON PROPERTY INVESTMENTS (U.K) LIMITED (TRADING AS LPI EMERGENCY PROPERTY FINANCE)

(2) NPI HOLDINGS LIMITED

(3) ANTHONY KAFETZIS (ALSO KNOWN AS ANTHONY STEVENS, TONY STEVENS, GEORGE STASIS, ANTHONY STEPHENS, ANTHONIO GEORGIOU AND ANDREAS GEORGIOU)

(4) DANEL STEVENS

Defendants

AUTHORITY'S SKELETON ARGUMENT FOR A TRIAL STARTING IN A WINDOW COMMENCING 3 MAY 2022

Reading list (time estimate, 2 days):

- Statements of case [CB/2-7].
- The orders of Deputy Master Nurse dated 23 February 2022 [HB/A2/7] and 25 March 2022 [HB/A2/9] and his judgment dated 25 March 2022 [HB/A2/10], and the order and judgment of Trower J dated 12 April 2022 [HB/A2/11-12].
- This Skeleton and any written submissions of the Defendants consistent with Trower J's order.
- Reporting witness statement of John Bulmer [CB/8].
- Witness statements from Affected Individuals [CB/9-24].
- Sample LPI website pages [HB/C1/15].
- Sample LPI legal/third party authorities, restriction entry consent, formal instruction and irrevocable fee agreement (Alfred) [HB/B8/3].
- Sample restriction application (Bowman) [HB/B2/7].
- Sample NPI tenancy agreement, sale agreement and transfer (Dann) [HB/B35/2/4153-4164].
- Application Notice and witness statement of Matthew Stone (to be filed and served shortly).

A. Introduction

1. This Skeleton relates to the trial of the Authority's claim alleging: (a) contraventions by the First Defendant ("**LPI**") and the Second Defendant ("**NPI**") of the 'general prohibition' imposed by section 19 of the Financial Services and Markets Act 2000 ("**the Act**") and the 'financial promotion restrictions' imposed by section 21 of the Act; and (b) that the Third Defendant ("**Tony Stevens**") and the Fourth Defendant ("**Daniel Stevens**") were 'knowingly concerned', within the meaning of sections 380 and 382 of the Act, in the said contraventions of the general prohibition.

2. Following a series of breaches of disclosure orders, by reason of a breach of an unless order dated 23 February 2022 [HB/A2/7] the Defendants' defence was struck out and they were debarred from defending the Authority's claim. Relief from sanctions was refused by Deputy Master Nurse on 25 March 2022 [HB/A2/9-10] and the Defendants' application at the Pre-Trial Review on 12 April 2022 to be permitted to participate in the present trial by cross examining the Authority's witnesses and making submissions on whether the Authority had proved its case was refused by Trower J [HB/A2/11-12].

3. The Authority makes three observations arising from the fact that the Defendants are debarred:

   3.1 First, the Authority accepts that it must discharge, on the evidence before the court, such burden of proof and persuasion as lies on it to obtain the relief it seeks: see the observations of Edwin Johnson QC (as he then was) in *Times Travel v Pakistan International Airlines Group* [2019] EWHC 7322 (Ch) at §55(5). The burden of proof is on the Authority to prove the elements of its claim on the balance of probabilities.

   3.2 Second, the Authority is approaching the trial of this matter on the footing that it has an obligation of fair presentation, and must draw to the attention of the court points, factual or legal, that might be to the benefit of the Defendants: see the summary of this obligation in relation to trials where the Defendant does not attend in *CMOC Sales and Marketing Limited v Persons Unknown* [2018] EWHC 2230 (Comm) at §14, cited in relation to a trial where a defence had been struck out in *MMD Mining Machinery Developments Limited & Onr v*

Lang [2021] EWHC 3264 (Comm) at §12. The Authority will meet that obligation in its oral submissions at trial.

3.3 Third, whilst the Defendants' defence has been struck out, the Defendants' pleadings can still be relied upon for the purposes of admissions and are still relevant for the purposes of understanding the scope of the proceedings: see *Thevarajah v Riordan & Ors* [2015] EWCA Civ 41 at §33 per Tomlinson LJ and *Times Travel* at §55(5).

B. The claim to be tried

4. LPI operated a business providing services to individuals facing eviction from their homes. LPI's services were given to individuals pursuant to agreements ("**the Service Agreements**") partially embodied in documents entitled "Irrevocable Fee Agreement", with restrictions being registered against the titles of homes of those individuals to ensure payment of LPI's fees. The Authority contends LPI carried on the regulated activities of arranging, and/or making arrangements with a view to, and advising on 'regulated mortgage contracts' ("**RMCs**") with third party lenders, and agreeing through the Service Agreements to carry on such regulated activities.

5. NPI operated, and continues to operate, a business acquiring and renting, largely residential, property. The Authority contends LPI carried on the regulated activities of arranging, and/or making arrangements with a view to, and advising on regulated sale and rent back arrangements ("**SRAs**"), under which the homes of individuals were transferred to NPI which then rented them back to those individuals. The regulated activities of NPI involved entering into the said SRAs as 'agreement provider' and administering the said agreements.

6. Pursuant to the order of Trower J made at the Pre-Trial Review on 12 April 2022 [HB/A2/11], the present trial is concerned only with the following issues:

6.1 whether the alleged contraventions of the general prohibition by LPI and NPI and of the financial promotion restrictions by LPI occurred, and whether declarations to that effect should be made;

6.2 whether Daniel and Tony Stevens were knowingly concerned in those contraventions;

6.3 whether the court should grant declarations that the relevant Service Agreements and the alleged SRAs are unenforceable under section 26 of the Act;

6.4 whether the court should grant a remedial order under section 380(2) of the Act requiring LPI to apply for restrictions it has registered against properties in relation to fees due under its Service Agreements to be removed from the register; and

6.5 whether the court should grant an order under section 380(1) of the Act restraining continued or repeated contravention of the general prohibition and the financial promotion restrictions.

7. Under Trower J's order of 12 April 2022 [HB/A2/11] it is envisaged that when judgment is handed down, directions will be given as to the disposal of the Authority's claims for a restitution order under section 382 of the Act in respect of any contraventions of the general prohibition found to have occurred and/or a remedial order under section 380(2) of the Act in relation to any SRAs found to have been entered into. Trower J also adjourned the application of the Defendants of 31 March 2022 for permission to participate fully in relation to questions of quantum relating to any restitution order to the date when judgment in the present trial is handed down.

8. As will be explained in the Authority's Application Notice and the witness statement of Matthew Stone, both to be filed and served shortly, the Authority is currently only able to evidence its claim in relation to a subset of 45 of the total of 138 individuals/properties referred to by the Defendants as potentially falling within the claim ("**the Affected Individuals**"). That leaves a substantial number of individuals/properties in relation to whom the Authority is currently unable to evidence its claim ("**the Potentially Affected Individuals**"). The Authority intends to apply for an order that its claim in relation to the Potentially Affected Individuals be adjourned to any trial in respect of the disposal of the Authority's claim for a restitution order in relation to RMCs and SRAs and remedial order in relation to SRAs, in case any further evidence emerges which shows that liability can be established in relation to any of the Potentially Affected Individuals. The Authority does not object to the Defendants' Counsel assisting the court in relation to any points relating the scope of the claim arising from this intended application.

The Authority respectfully invites the court to determine the application as part of its judgment following the present trial.

9. The remainder of this Skeleton outlines the essential legal and evidential planks of the Authority's case regarding the Affected Individuals as follows:

9.1 The law relating to the general prohibition (Section C).

9.2 Case for contraventions of the general prohibition by LPI and NPI (Section D).

9.3 Law relating to remedies under the Act and knowing concern (Section E).

9.4 Case for Tony Stevens and Daniel Stevens being knowingly concerned in the contraventions of the general prohibition (Section F).

9.5 Law relating to the financial promotion restrictions (Section G).

9.6 Case for contravention of financial promotion restrictions by LPI (Section H).

9.7 Conclusion (Section I).

C. General prohibition

10. The general prohibition in section 19(1) of the Act, provides as follows:

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

11. Under section 31 of the Act an authorised person is one who has permission from the Authority under Part 4A of the Act to carry on regulated activities. So far as relevant, persons qualify as exempt by being appointed representatives of authorised persons under section 39 of the Act.

12. The concept of 'regulated activity' is defined in section 22(1) of the Act:

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

13. Section 22(5) of the Act provides that "Specified" means specified in an order made by the Treasury. The order in question is the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544 ("**RAO**"). The key relevant provisions from the RAO are set out in the sections which follow.

14. The concept of an activity being 'by way of business' has generally been left by Parliament to the courts to interpret. However, section 419 of the Act confers power on the Treasury to make provision by order as to circumstances in which a person who would not otherwise be regarded as carrying on a regulated activity by way of business is to be regarded as doing so and the converse. The Treasury exercised this power in the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001/1177 ("**CRAWBO**"). The key relevant provisions from CRAWBO are set out in the sections which follow.

15. The court should also note section 26(1) and (3) of the Act sets out a key consequence of making an agreement the making or performance of which is a contravention of the general prohibition:

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

<u>RMCs: specified investment</u>

16. Article 88 of the RAO provides that RMCs are a specified investment. Article 61(3)(a) of the RAO sets out conditions which must be met for a contract to qualify as an RMC. At the material times, it provided as follows:

> *a contract is a "regulated mortgage contract" if, at the time it is entered into, the following conditions are met—*
> *(i) the contract is one under which a person ("the lender") provides credit*[2] *to an individual or to trustees ("the borrower");*
> *(ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the EEA;*
> *(iii) at least 40% of that land is used, or is intended to be used—*
> *(aa) in the case of credit provided to an individual, as or in connection with a dwelling; or*

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

[2] The term "credit" is defined in article 61(3)(c) of the RAO to "include…a cash loan".

(bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person;[3]

but such a contract is not a regulated mortgage contract if it falls within article 61A(1)….

17. If the carve outs specified by article 61A(1) of the RAO are ignored for a moment, it will be seen that the definition in article 61(3)(a) of the RAO is an expansive one which will cover a wide range of loan contracts secured on residential property. More specifically, a loan contract will be caught where, at the time it is entered into:

17.1 the loan is to an individual and is secured by residential property in the EEA, whether or not the individual resides there; or

17.2 the loan is to a trustee (individual or corporate) and is secured by residential property in the EEA which is occupied by an individual beneficiary of the trust or a member of their family.

18. There are various types of agreement specified in article 61A(1) of the RAO, which will not qualify as RMCs, even where the conditions in article 61(3)(a) of the RAO are otherwise met.[4] In particular, the carve outs relating to 'limited payment second charge bridging loans' (article 61A(1)(b)), 'second charge business loans' (article 61A(1)(c)), 'investment property loans' (article 61A(1)(d)) and 'exempt consumer buy-to-let mortgage contracts' are defined in article 61A(5) as follows:

"limited payment second charge bridging loan" is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—
(a) it is a borrower-lender-supplier agreement financing the purchase of land;
(b) it is used by the borrower as a temporary financing solution while transitioning to another financial arrangement for the land subject to the mortgage;
(c) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
(d) the number of payments to be made by the borrower under the contract is not more than four;

"investment property loan" is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—
(a) less than 40% of the land subject to the mortgage is used, or intended to be used, as or in connection with a dwelling by the borrower….; and
(b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

"second charge business loan" is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—
(a) the lender provides the borrower with credit exceeding £25,000;

[3] The term "related person" is defined in article 61(4)(c) of the RAO to include spouses, civil partners, others whose relationship has the characteristics of a husband or wife, parents, siblings, grandparents and children.
[4] Article 61A of the RAO was introduced as part of amendments intended to implement the so-called Mortgage Credit Directive (Directive 2014/17/EU): see, in particular, articles 3 and 4 thereof.

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

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

"exempt consumer buy-to-let mortgage contract" is a contract that, at the time it is entered into, is a consumer buy-to-let mortgage contract within the meaning of article 4 of the Mortgage Credit Directive Order 2015 and—

(a) is of a kind to which the mortgages directive does not apply by virtue of Article 3(2) of that directive; or

(b) is a bridging loan…[5]

In relation to the last definition, so far as relevant, a 'consumer buy-to-let mortgage contract' within the meaning of article 4 of the Mortgage Credit Directive Order 2015 is a mortgage contract which provides that land subject to the mortgage is to be occupied by a tenant and not the borrower and is not entered into by the borrower for the purposes of a business carried on by them.

19. The complexities in definitions of the various types of agreement specified as carve outs in article 61A(1) of the RAO will be explored in oral submissions. However, the crucial point for present purposes is that a remortgage by a borrower, not acting for the purposes of a business, secured by a first legal charge over a property they own and intend to live in will not be caught by those carve outs. Such a mortgage will obviously meet the conditions laid down in article 61(3)(a)(i) to (iii) of the RAO. In addition, for the following reasons, none of the carve outs from article 61A(1) set out above will or should apply:

19.1 There will be no limited payment second charge bridging loan (a) because the loan is a remortgage rather than a purchase mortgage and (b) because there is a first legal charge.

19.2 There will be no investment property loan (a) because the borrower intends to live at the property and (b) because the borrower is not acting for the purposes of their business.

19.3 There will be no second charge business loan (a) because there is a first legal charge and (b) because the borrower is not acting for the purposes of their business.

[5] There are also exemptions from RMCs in article 61A(1) in relation to 'limited payment second charge bridging loans' (art.61A(1)(b)) and 'equitable mortgage bridging loans' (art.61A(1)(f)). However, the definitions of these bridging loan exemptions in article 61A(5) limit them to loans to finance the purchase of land secured by a second charge (in the case of 'limited payment second charge bridging

19.4 There will, or should be, no exempt consumer-buy-to-let mortgage contract because the borrower intends to live at the property.

RMCs: specified activities

20. The relevant activities relating to RMCs specified in the RAO are as follows.

Arranging

21. Article 25A(1) and (2) of the RAO specifies arranging and making arrangements with a view to RMCs as follows:

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

22. As Sir Stanley Burnton commented in *Personal Touch Financial Services Ltd v Simplysure Ltd* [2016] EWCA Civ 461 at §26, in relation to the almost identically worded activity in article 25 of the RAO relating to securities, its "wording and therefore scope…is deliberately wide".

23. However, the activity of making arrangements for another person to enter an RMC as borrower specified by article 25A(1) of the RAO is subject to the following exclusion in article 26 of the RAO, which introduces a (notional or actual) causation test:

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

The Authority's guidance in PERG 4.5.4G suggests that an arrangement brings about or would bring about an RMC if its involvement in the chain of events leading to the transaction is of enough importance that without that involvement the transaction would not take place. In *Adams v Options Sipp UK LLP* [2020] EWHC 1229 (Ch) at §97 HHJ Dight CBE, sitting as a Deputy High Court Judge, held that more is required than simply a 'but for' cause and that the arrangements must be the positive or effective cause to escape the exclusion in article 26. However, as the use of the term "would" in article 26 shows, the causation test can be a notional one; arrangements which would bring about a transaction but do not in fact do so may still be caught by article 25A(1).

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loans') and loans which are secured by equitable mortgage (in the case of 'equitable mortgage bridging loans').

24. In *Re The Inertia Partnership* [2007] EWHC 539 (Ch) at §39, Jonathan Crow QC, sitting as a Deputy High Court Judge, made the following observations about article 25(1) and 26 of the RAO which can also be applied to article 25A(1):

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

25. The following are examples of activities which can amount to arrangements under article 25A(1) of the RAO, provided the causation test is met in the circumstances of the case:

25.1 Completing a fact-find where the purpose is for the client to buy the specified investment: *Simplysure* at §26.

25.2 Arranging for a person to conduct an interview for a fact-find where the purpose is for the client to buy a specified investment: *Simplysure* at §26.

25.3 Helping with completion of applications: PERG 4.5.2G and 4.15.4G.

25.4 Carrying on administration services designed to facilitate the transaction in question (such as receiving monies, distributing funds and sending out application forms): *Inertia Partnership* at §41 and §42.

26. Article 25A(2) of the RAO is importantly different from article 25A(1), because the inapplicability of the exclusion in article 26 and the words "with a view to" place the emphasis on purpose and entail that there is no causation test. The differences between article 25(1) and (2) of the RAO were recently commented upon by Popplewell LJ in *Financial Conduct Authority v Avacade Limited & Ors* [2021] EWCA Civ 1206 at §47 and §48, in terms which can also be applied to article 25A(1) and (2):

> *There are three relevant differences between articles 25(1) and 25(2) , each of which is concerned with "making arrangements" in relation to the buying and selling of securities (among other things). The first is that 25(1) applies to making arrangements "for" the*

buying and selling of securities, whereas 25(2) applies to making arrangements "with a view to" that activity. The second is that for article 25(1) the buying or selling may be conducted by anyone, whereas for article 25(2) it must involve a person who participates in the arrangements. I agree with the Trial Judge that both the language of the article ("a person") and the decision of this Court in SimplySure make clear that the relevant transactions contemplated need only involve one of the parties to the arrangements, not both. The third difference is that article 26 provides an exception to article 25(1) but not article 25(2) .

Article 26 excludes from the operation of article 25(1) arrangements which do not or would not bring about the transactions to which the arrangements relate. The words "would not" make clear that even article 25(1) is not concerned only with arrangements which successfully result in a relevant transaction; a person may contravene article 25(1) by making arrangements "for" such a transaction which does not in fact take place. Nevertheless article 26 introduces an actual or notional test of causation ("bring about") in relation to arrangements for the purposes of article 25(1) . In Adams the court held that the degree of causal potency required was that for arrangements to "bring about" a transaction they must play a role of significance but need not involve a direct connection (see [97]). Importantly, however, article 26 is expressly confined by its terms to article 25(1) and other articles; it does not apply to article 25(2) , as this court confirmed in SimplySure at [26]. There is no need to introduce any test of causation into 25(2) by reference to the language of the inapplicable article 26 because by using the words "with a view to", article 25(2) makes clear that it is concerned with the purpose of the arrangements. An intended purpose, an end in view, must be that a relevant transaction take place, but the arrangements do not need to bring it about by way of an actual or notional test of causation. These are wide words which suggest that all that is necessary is that a relevant transaction is part of the purpose of making the arrangements. A person may have a relevant transaction as an end in view where the arrangements do no more than create or facilitate a situation which provides the opportunity for it to take place. That may be an intended result notwithstanding that the arranger is powerless to ensure that it takes place or even influence the decision which leads to it taking place. You cannot make the proverbial horse drink, but taking it to water involves making arrangements with a view to it drinking.

27. So far as the activity of making arrangements with a view to a person who participates in the arrangements entering an RMC as borrower specified in article 25A(2) of the RAO is concerned, the Authority's guidance in PERG 4.5.3G suggests that, aside from activities of publishers, broadcasters and website operators, a person may be making arrangements with a view to a person who participates in the arrangements entering the RMC as borrower where they introduce potential borrowers to brokers or lenders.[6] It is also important to bear in mind, as the Court of Appeal found in *Simplysure* at §26 with regard to article 25 of the RAO, that an activity which qualifies as arranging under article 25A(1) of the RAO may also qualify as making arrangements with a view to under article 25A(2) (provided of course, the prospective borrower participates in the arrangements). So the arrangements under article 25A(1) of the RAO referred to in the paragraph 25 above might also qualify as arrangements under article 25A(2).

[6] The Court should note that in *Watersheds Ltd v DaCosta* [2009] EWHC 1299 (QB) Holroyde J held at §64 and §65, relying on guidance in PERG 2.7.7B G, that a mere introduction would not fall within article 25(2) of the RAO. It is respectfully submitted that this approach does not sit comfortably with the presence of exclusions in article 33 and 33A of the RAO specifically targeted at introductions which would otherwise fall within article 25A(2). The Authority has since revised the guidance relied on in *Watersheds*, and PERG 2.7.7BD G now suggests that decision should be "considered in the light of the case to which it relates".

28. The activities specified by article 25A(1) and (2) of the RAO are both subject to an exclusion under article 29 where the transaction is with an authorised person and the transaction is entered into on the advice of an authorised person or it is clear that the prospective borrower has not sought advice on the merits of the transaction. However, the exclusion under article 29 will not apply where the arranger receives a pecuniary reward or advantage from any third party for which he does not account to his client.[7]

29. The activity specified by article 25A(2) of the RAO (but not that specified by article 25A(1)) is subject to additional exclusions under articles 33 and 33A of the RAO where the arrangement in question consists in an introduction to another person who is authorised or exempt. Those exclusions are subject to limitations under which they will only apply where the introduction is with a view to the provision of independent advice (article 33) or where the introducer discloses any reward he receives from a third party arising out of the introduction (article 33A).[8]

Advising

30. Article 53A(1) of the RAO specifies advising on RMCs as follows:

> *Advising a person is a specified kind of activity if the advice–*
> *(a) is given to the person in his capacity as a borrower or potential borrower; and*
> *(b) is advice on the merits of his….*
> *(i) entering into a particular regulated mortgage contract*[9]

31. The Authority's guidance in PERG 4.6.5G suggests that the key question when applying article 53A(1) of the RAO is whether a recommendation is made to a customer which either explicitly or implicitly steers the customer to a particular RMC. What is required is a comment, value judgment or element of evaluation or persuasion, the presence or absence of which is

[7] There is a further exclusion under article 67 of the RAO applying to article 25A(1) and (2) where the activity is carried on in the course of carrying on a business which does not otherwise consist of the carrying on of regulated activities and may reasonably be regarded as a necessary part of other services provided in the course of that business. PERG 4.10.3G indicates that for arranging to be a necessary part of other services it must generally be the case that it is not possible for the other services to be provided unless the arranging is present. Furthermore, pursuant to articles 67(3) and 4(4B) of the RAO, the exclusion in article 67 will not apply where a person is acting as a 'credit intermediary' within the meaning of the Mortgage Credit Directive: see PERG 4.10.4A and 4.10A.

[8] There is a further exclusion under article 27 of the RAO applying to article 25A(2) where a person merely provides a means by which one party to a transaction is able to communicate with others. PERG 4.5.6G indicates that this exclusion is to be construed narrowly, applying, for example, to internet service providers.

[9] Article 53A is subject to the exclusion under article 67 of the RAO, which has similar limitations as when it applies to arranging, including the limitation suggested by PERG 4.10.3G and that imposed by articles 67(3) and 4(4B) of the RAO (in this case concerning advisory services caught by the Mortgage Credit Directive).

judged objectively by reference to the circumstances: *Rubenstein v HSBC Bank plc* [2011] EWHC 2304 (QB) at §80 to §86.

Agreeing

32. Article 64 of the RAO specifies agreeing to carry on a specified activity, as itself a specified activity. Accordingly, as explained in the Authority's guidance at PERG 4.9.1G, agreeing to carry on the specified activity of arranging (bringing about) or making arrangements with a view to RMCs, is also a specified activity.

Business test for specified activities relating to RMCs

33. Article 3A of CRAWBO prescribes that to be acting by way of business in relation to arranging, or advising on, RMCs a person must be carrying on the "business of" carrying on those activities.

34. As the Authority's guidance in PERG 4.3.6G explains, this is a narrower test than the standard by way of business test because it requires the activities to represent the carrying on of a business in their own right. PERG 4.3.7G explains that the principal factor that might cause an activity to satisfy the standard by way of business test but not the carrying on the business test is frequency or regularity; an activity will need to be carried on with some degree of regularity to meet the latter test. The Authority's guidance in this regard was quoted with approval by Newey J (as he then was) in *Helden v Strathmore* [2010] EWHC 2012 (Ch) at §84 and §85.

35. As for what circumstances will result in the business of test being met, PERG 4.3.8G refers to a situation where a person arranges or advises on RMCs, or does both, on a regular basis, and receives payment of some kind (whether from the borrower or another person) as one where the carrying on the business test would be likely to be met. In *Financial Conduct Authority v Avacade Limited* [2020] EWHC 1673 (Ch) at §188, Adam Johnson QC (as he then was) sitting as a High Court Judge, found that in circumstances where the arrangements in question were part of the defendants' business model and designed to generate income, it was beyond serious dispute that the test was met.

Regulated activities and SRAs

36. Article 88C of the RAO provides that SRAs are a specified investment. Article 63J(3)(a) of the RAO sets out conditions which must be met for a arrangement to be an SRA:

> *a "regulated sale and rent back agreement" is an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into—*
> *(ii) the arrangement is one under which a person (the "agreement provider") buys all or part of the qualifying interest in land[10](other than timeshare accommodation)[11] from an individual or trustees (the "agreement seller "); and*
> *(ii) the agreement seller (if the agreement seller is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person[12], is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so*

37. There are three points arising from this definition, which should be borne in mind:

37.1 First, the term "arrangement" is very wide and may encompass a number of agreements or instruments, not all of which are legally binding transactions: *cf*. *Inertia Partnership* at §39. For example, a series of oral exchanges followed by a sale and tenancy might together comprise an SRA, whether or not the oral exchanges were legally binding.

37.2 Second, the conditions laid down in article 63J(3)(a)(i) and (ii) of the RAO must be met at the time the arrangement is entered into. However, as the Authority's guidance at PERG 14.4A (Q37A) makes clear, an SRA may be comprised in several instruments, so the fact that a tenancy agreement is not completed at the same time as the sale agreement will not prevent there being an SRA.

37.3 Third, there is no indication in the wording relating to the right to occupy in article 63J(3)(a)(ii) of the RAO, that the right to occupy must be continuous or must be exercisable from the moment the arrangement comes into being. On the contrary, the fact that the draftsman saw the need to expressly exclude timeshare

[10] The term "qualifying interest in land" is defined in article 63J(4)(a)(i) to include a leasehold or freehold interest.
[11] The term "timeshare accommodation" is defined in article 63J(4)(b) as overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.
[12] The term "related person" has a comparable definition to that term in relation to RMCs: see article 63J(4)(c) of the RAO.

accommodation strongly suggests that a non-continuous right to occupy which is not exercisable the moment the arrangement comes into being is capable of giving rise to an SRA.

38. The relevant specified activities relating to SRAs, which are cast in the same terms as the comparable activities relating to RMCs, are as follows:

38.1 Making arrangements for another person to enter into an SRA as agreement seller, under article 25E(1) of the RAO.

38.2 Making arrangements with a view to a person who participates in the arrangements entering into an SRA as agreement seller, under article 25E(2) of the RAO.

38.3 Advising on SRAs under article 53D of the RAO.[13]

38.4 Entering an SRA as agreement provider, under article 63J(1) of the RAO.

38.5 Agreeing to enter an SRA as agreement provider, under article 64 of the RAO.

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

Business tests for specified activities relating to SRAs

39. CRAWBO prescribes how the by way of business test must be applied to regulated activities relating to SRAs as follows:

39.1 So far as the entry into SRAs is concerned, at the material times article 5 of CRAWBO provided that a person is to be regarded as carrying on the activity of entering an SRA by way of business if he carries on the activity of entering an SRA. Under this deeming

[13] Articles 25E and 53D are subject to the exclusion under article 67 of the RAO, subject to the limitation suggested by PERG 4.10.3G.

provision, the entry into a single SRA will result in the agreement provider acting by way of business.

39.2 Article 3D of CRAWBO provides that to be acting by way of business in relation to the arranging of SRAs and advising on SRAs, a person must be carrying on the business of carrying on those activities. This is the same test described at paragraphs 34 and 35 above.

D. Case for contraventions of the general prohibition

40. There is a substantial body of evidence painting a consistent picture of LPI and NPI carrying on regulated activities relating to RMCs and SRAs. The gist of the evidence and documentation is set out in the reporting statement of John Bulmer [CB/8]. The Authority will provide the court with a Note on the evidence after witness evidence is concluded at trial, which will enumerate the findings the Authority invites the court to make and the evidence in support.

41. However, the broad evidential position in relation to specified activities relating to RMCs and SRAs and the by way of business test are outlined in turn below.

RMCs

42. LPI has carried on the regulated activities of arranging RMCs, making arrangements with a view to RMCs, advising on RMCs and agreeing to arrange RMCs in relation to the Affected Individuals/properties detailed in Mr Bulmer's reporting witness statement [CB/8].

43. With regard to agreeing to arrange RMCs, the Irrevocable Fee Agreements, in which the Service Agreements are partially embodied, contain a clear commitment to carry on activities falling within the scope of article 25A of the RAO. Although there are some variants, the following wording from the Alfred case is typical [HB/B8/3]:

> *I/We….formally instruct [LPI] to represent us as consultants in sourcing financial networks and brokers in order to facilitate a refinance package in part or full against the above secured property….. I/We fully understand and agree that the above fees relate to LPI and all their professional consultancy services/sourcing/facilitating and coordinating financial networks, brokers, banks and specialised funders… Please note that by signing below, you are agreeing to pay the above fee to [LPI] whether LPI facilitates a new loan or you choose to proceed with your existing bridge loan/funding which has NOT been facilitated by [LPI]…*

44. The arranging activities of LPI include: (a) introducing Affected Individuals to loan brokers or lenders; and (b) assisting Affected Individuals with the loan application process itself, including through collection and onward provision by LPI via third party brokers of information required for the provision of a loan and assisting with the completion and onward transmission of essential documentation for the application.

45. The nature of the activities of LPI in this regard was admitted to at §4(b) of LPI's Defence to a set of proceedings brought by its former solicitors Edward Marshall [HB/C1/20] which states that the services of LPI involve:

> *completing and submitting non-status applications by Owners to specialist bridging lenders…*

46. The central evidence relied on by the Authority and further enumerated in Mr Bulmer's reporting statement at §48 to §434 [CB/8/66-157] is as follows:

46.1 Copies of documentation embodying Service Agreements between LPI and Affected Individuals and applications for restrictions against their properties.

46.2 Witness evidence and attendance notes from Affected Individuals confirming that the properties in question were their homes, that they were not acting for the purposes of a business and detailing interactions with LPI in relation to arranging a remortgage.

46.3 Mortgage application forms, mortgage agreements in respect of the properties, and associated email correspondence confirming LPI assisted with the completion of such documentation.

46.4 Office copy entries showing the ownership and subsequent re-mortgaging of properties.

46.5 FCA Register entries showing that, with one limited exception, the brokers LPI passed documentation and information to were unauthorised (and were not appointed representatives).

46.6 FCA Register entries showing that many, but not all of the lenders used, were unauthorised; even the authorised ones documented the loans in question as unregulated.

47. The Authority does not have all such items of evidence for each of the relevant Affected Individuals. But, as will be shown at trial, it has enough to prove regulated activity in each case.

48. The court's attention is drawn to the possible argument that the loans being arranged fell within one or other of the carve outs specified in article 61A of the RAO. However, the evidence shows that, for the reasons given at paragraph 19 above, these carve outs do not apply:

48.1 The loans were all remortgages, rather than purchase mortgages.

48.2 The loans were intended to be secured by first legal charges (not second charges).

48.3 The Affected Individuals resided in or intended to reside in the properties.

48.4 The individuals entering into the mortgages did not do so wholly or predominantly for the purposes of a business.

49. With regard to residence, the court is asked to note evidence of Affected Individuals providing proof of address referring to properties other than the property over which the mortgage was to be granted and informing third parties they do not reside there (see, e.g. the account in the witness statement of Lea at §12 and §13 [CB/10/224] with supporting emails [HB/B34/2/3985-3986]). However, the accounts given by Affected Individuals to the Authority shows a strikingly consistent pattern in which this behaviour was at the instigation of LPI and the individuals concerned have maintained to the Authority that they occupied or intended to occupy the property over which the mortgage is granted.

50. With regard to business purposes, in some cases the Affected Individuals signed declarations that they were entering into the mortgages for business purposes (see e.g. Alfred [HB/B8/19/1607]). Business purpose declarations from borrowers can be relied upon under article 61A(3) of the RAO, to

generate a presumption that a loan meets the business purpose condition for a second charge business loan or an investment property loan. However, the declarations in the present case were not technically valid under article 61A(3) of the RAO insofar as they failed to refer to the RMCs. More importantly, evidence shows a consistent pattern in which the Affected Individuals were in fact trying to save their homes, rather than acting for business purposes.

51. The crucial point with regard to residence and business purposes, is that, whatever the lenders may have legitimately believed on the basis of the documentation provided to them, the loan arranging activities of LPI in relation to the Affected Individuals were calibrated and focussed on circumstances which objectively would or should have given rise to RMCs.

52. In short, the evidence shows arranging activities falling within article 25A(1) and (2) of the RAO, in relation to intended RMCs. So far as the exclusions are concerned:

    52.1 Given the scale and significance of the 'arrangements' in question the causation test implied by article 26 for article 25A(1) is met.

    52.2 Article 29 does not apply because introductions were made in many cases to unauthorised and non-exempt brokers, and even where the lenders or (in one case) broker involved were authorised, the transactions were not entered into on the advice of an authorised person: see the summary of evidence in Mr Bulmer's reporting witness statement at §422 to §434 [CB/8/154-159]. Furthermore, there is evidence of commission paid to LPI, which was not accounted for to Affected Individuals [HB/C1/22-23].

    52.3 Articles 33 and 33A do not apply because (as already noted) introductions were made in many cases to unauthorised and non-exempt brokers, and even where the lenders or (in one case) broker involved were authorised the introduction was not with a view to the provision of independent advice (article 33) and rewards from a third parties arising out of introductions were not disclosed (article 33A). In any event, article 33 and 33A only apply to article 25A(2), and the activities in the present case extend to article 25A(1).

53. The evidence also shows advising activities falling within article 53A of the RAO in relation to intended RMCs, with the circumstances and actions of LPI indicating a clear evaluative or persuasive component, in which consumers at risk of losing their home approach LPI and are presented with a way to save their home by entering into a particular mortgage contract.[14]

SRAs

54. LPI has carried on the regulated activities of advising on and arranging SRAs in relation to 13 Affected Individuals/properties. The arranging activities consist in: (a) introducing Affected Individuals to NPI; and (b) assisting Affected Individuals with the process of setting the SRA up. NPI has carried on the regulated activity of entering into SRAs as agreement provider in all 13 cases.

55. The presence of an SRA has been admitted by the Defendants in relation to 11 of the 13 transactions: see the seventh column of Schedule 1 to the Defendants' Response to the Authority's Request for Further Information ([CB/6]). There is also strong evidence of an SRA in all 13 cases.

56. The central evidence relied on by the Authority and further enumerated in Mr Bulmer's reporting statement at §438 to §603 [CB/8/160-198] is as follows:

    56.1 Witness evidence and attendance notes from Affected Individuals confirming that they agreed to entered into arrangements with NPI at the instigation of LPI under which they sold their homes to NPI which then rented them back.

    56.2 Sale agreements, transfer forms and tenancy agreements, showing NPI buying properties from the Affected Individuals and granting tenancies in their favour.

    56.3 Office copy entries showing the change in ownership from the Affected Individuals to NPI.

[14] The further exclusion under article 67 of the RAO is also inapplicable because the arranging and advice given by LPI is not a necessary part of other services provided. This is underlined by the fact that LPI's website refers to the separate provision of mortgage-related services by "regulated brokers": see the similar line of reasoning in *Capital Alternatives* at §737. In addition, in some cases LPI will have been acting as a 'credit intermediary', or providing advisory services, within the meaning of the Mortgage Credit Directive, resulting in article 67 being disapplied in any event pursuant to article 4(4B).

56.4 Bank records showing payment of rent to NPI by the Affected Individuals.

56.5 Demands for and attempts to collect rent.

57. The Authority does not have all such items of evidence for each of the 13 cases. But, as will be shown at trial, it has enough to prove an SRA in each case even ignoring the Defendants' admissions.[15]

58. The Authority notes that the arrangements have often been documented so that the tenancy agreement is dated or expressed to take effect a number of days after the sale: see, e.g. Dann [HB/B35/4153-4164]. However, given the evidence that as part of the arrangements LPI would agree verbally in advance that the Affected Individuals could remain in the property after sale and given the legal points made at paragraph 37 above regarding the absence of any need for a simultaneous sale and tenancy agreement and a continuous and immediately exercisable right to occupy, these features of the arrangements would not prevent an SRA arising.

By way of business

59. For the following reasons, the regulated activities relating to RMCs and SRAs described above have been carried on by way of business:

59.1 So far as the entry by NPI into the transactions is concerned entry into a single SRA suffices.

59.2 The Authority maintains that the business of carrying on the other SRA and RMC related regulated activities was conducted. The intention was the generation of profits for LPI and NPI in relation to those activities. A significant number of SRAs and RMCs were arranged, advised upon and administered.

[15] With regard to the exclusion under article 67 of the RAO, again, the arranging and advice given by LPI is not a necessary part of other services its provided.

E. Remedies under the Act and knowing concern

60. Part 25 of the Act provides for the making of remedial orders and restitution orders against persons who breach the general prohibition and those who are knowingly concerned in such breaches.

61. Section 380(1) and (2) of the Act sets out powers of the court, to be exercised on the application of the Authority,[16] enabling the court to restrain further contraventions of the general prohibition[17] and unwind or partially unwind transactions which breach the general prohibition or arise from contraventions of the financial promotion restrictions, as follows:

> *(1) If, on the application of the appropriate regulator…., the court is satisfied–*
> *(a) that there is a reasonable likelihood that any person will contravene a relevant requirement, or*
> *(b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,*
> *the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.*
> *(2) If on the application of the appropriate regulator….the court is satisfied–*
> *(a) that any person has contravened a relevant requirement, and*
> *(b) that there are steps which could be taken for remedying the contravention,*
> *the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.*

62. Section 382(1) of the Act sets out powers of the court to be exercised on the application of the Authority,[18] enabling the court to make restitution orders where contraventions of the general prohibition[19] have occurred, as follows:

> *(1) The court may, on the application of the appropriate regulator…, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and–*
> *(a) that profits have accrued to him as a result of the contravention; or*
> *(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.*
> *(2) The court may order the person concerned to pay to the regulator concerned such sum as appears to the court to be just having regard–*
> *(a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;*
> *(b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;*
> *(c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.*

63. The threshold for accessory liability under section 380(2) and 382(1) of the Act is being 'knowingly concerned'.

64. A manager or director who is a 'moving light' behind a company, may be *concerned* in the contravention: *SIB v Pantell SA (No 2)* [1993] Ch 256

[16] As the "appropriate regulator": see sections 380(10) and 401(3B) of the Act.
[17] A "relevant requirement": see section 380(6)(a)(i) of the Act.
[18] As the "appropriate regulator": see sections 382(13) and 401(3B) of the Act.
[19] A "relevant requirement": see section 382(9)(a)(i) of the Act.

p.264D. However, a person involved at a lower level could also be concerned in a contravention as a result of their involvement: *Financial Conduct Authority v Capital Alternatives & Ors* [2018] 3 WLUK 623 at §801 (cited with approval by the Court of Appeal in *Avacade* at §454 and §455).

65. A person can be *knowingly* concerned where they know of the facts giving rise to the contravention, even if they erroneously think a breach of the law is not occurring: see *SIB v Scandex Capital Management A/S per* Millet LJ (as he then was) at p.720, a decision in relation to the predecessor to the Act. This principle has been repeatedly cited and applied in the authorities on the Act: *Financial Services Authority v Fradley* [2004] All ER (D) 297 at §38 to §40, *Financial Services Authority v Martin* [2004] EWHC 3255 (Ch), *Capital Alternatives* at §802 (cited with approval by the Court of Appeal in *Avacade* at §454 and §455) and *Adams* at §129 and §130. The principle was also referred to without being questioned by the Court of Appeal in the recent decision of *Financial Conduct Authority v Ferreira* [2022] EWCA Civ 397 at §18 and §19.

F. Case for Tony and Daniel Stevens being knowingly concern

66. There is a substantial body of evidence showing that Tony Stevens and Danial Stevens were knowingly concerned in the contraventions of the general prohibition relating to the Affected Individuals. The gist of the evidence and documentation is set out in the reporting statement of John Bulmer. The Authority's Note on the evidence at trial will also enumerate the findings the Authority invites the court to make and the evidence in support on this issue.

67. In relation to being concerned in the contraventions, on the basis of the evidence summarised in Mr Bulmer's reporting witness statement at §637 to §641 [CB/8/210-211]:

    67.1 Both Tony Stevens and Daniel Stevens are moving lights in relation to the intertwined businesses of LPI and NPI. Tony Stevens is the Head of New Business for LPI. Daniel Stevens is the shareholder and director of both companies.

    67.2 Both Tony Stevens and Daniel Stevens were heavily involved in the activities alleged to have contravened the general prohibition. The evidence suggests that Tony Stevens was the main point of contact

with Affected Individuals, meeting with them and communicating via email and text. There is also evidence Daniel Stevens had significant amounts of direct contact with Affected Individuals. However, Daniel Stevens also signed key documentation on behalf of LPI, such as applications for restrictions in favour of LPI in relation to Service Agreements, sale agreements and tenancy agreements embodying SRAs and documentation relating to mortgages from third party mortgage lenders used to finance the SRAs.

67.3 It should also be noted that the Defendants' Response to the Authority's Request for Further Information does not deny at §8(a) that Tony Stevens and Daniel Stevens were concerned in the alleged contraventions, focussing instead on the question of knowledge [CB/5/45].

68. In relation to being *knowingly* concerned in the transactions, the Defendants' Response to the Authority's Request for Further Information does not deny at §8(a) that Tony Stevens and Daniel Stevens had knowledge of the transactions and conduct alleged to amount to contraventions. Rather they maintained that they did not have knowledge of the legal status of those transactions and conduct, because they relied on advice from their former solicitors Edward Marshall that they were not contravening the Act or the RAO [CB/5/45].

69. There are two difficulties with this line of argument. First, as explained at paragraph 65 above, the authorities are clear that knowledge of the relevant activities will suffice, and that an erroneous belief there is no contravention of the law will not prevent a person being knowingly concerned.

70. Second, as summarised in Mr Bulmer's reporting witness statement at §642 to §646 [CB/8/211-212], there is a substantial body of evidence indicating that Tony Stevens and Daniel Stevens knew that the transactions and activities contravened the Act. In outline:

70.1 So far as RMC related activities are concerned, LPI corresponded through solicitors with the Authority back on 12 November 2017 [HB/C1/13], responding to a letter from the Authority to Daniel Stevens dated 9 October 2017 [HB/C1/12], and stating in an apparent reference to the exclusions in article 26, 29, 33 and/or 33A

of the RAO that all enquiries are passed on to regulated brokers. However, the reality was that the activities were largely conducted by LPI. Furthermore, the third party brokers involved were largely unauthorised. Tony and Daniel Stevens must have known that. Furthermore, the attempts to get Affected Individuals to produce evidence that they reside at a different address and to get them to sign business purpose declarations, are strongly suggestive of an awareness of the factors (present in relation to the Affected Individuals) which could give rise to RMCs.

70.2 So far as SRA related activities are concerned, it is notable that the service of arranging such deals is not referred to on LPI's website. It is also significant that there was often an apparent attempt in the documentation for the SRA's to create the (false) impression that the Affected Individuals were not occupying the property continuously from sale through to tenancy agreement. This is strongly suggestive of an attempt to create a (false) impression that there is no SRA.

G. Financial promotion restrictions

71. Section 21(1) of the Act imposes the financial promotion restrictions and section 21(2) sets out a circumstance where those restrictions are not engaged:

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

72. Engaging in investment activity is defined in section 21(8) and (9) of the Act, so far as relevant, as entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity, being an activities of a specified kind relating to a specified investment. Under section 21(15) of the Act "specified" means specified in an order made by the Treasury.

73. The relevant order is the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005/1529 ("**FPO**"). Paragraph 10 of Schedule 1 to the FPO provides that qualifying credit is credit provided pursuant to an agreement under which the lender is a person who carries on the regulated activity specified in article 61 of the RAO (entering into RMCs as lender) and

the obligation to repay the borrower is secured in whole or in part on land. Arranging qualifying credit is specified as a controlled activity by article 10A of Schedule 1 to the FPO.

74. Four key points regarding the communication of invitations or inducements to engage in investment activity are to be borne in mind.

74.1 First, to "communicate" includes causing a communication to be made: section 21(13) of the Act.

74.2 Second, "communications" may be addressed to a specific person, orally or in writing, or to persons generally (for example, via a website): article 6 of the FPO.

74.3 Third, an invitation or inducement must seek to persuade or incite a recipient to engage in investment activity: PERG 8.4.4G.

74.4 Fourth, to qualify an invitation or inducement does not necessarily need to pertain to the communicator. The invitation or inducement might be intended to encourage its recipient to engage in investment activity with a third party. So, for example, an introduction may be an inducement if the introducer is actively seeking to persuade or incite the person they are introducing to do business with the person to whom the introduction is made: PERG 8.4.22G(1).

H. Case for contraventions of the financial promotion restrictions

75. The case for contravention of the financial promotion restrictions is simple.

75.1 LPI has caused communications to be addressed to prospective customers on a website in its name.

75.2 The communications include content referring to "regulated brokers" who can "assist with raising immediate funding to save your home" or "process fast emergency loans" [HB/C1/15].

75.3 That content relates to the controlled activity of arranging qualifying credit.

75.4 The content is an invitation to use the services referred to, and contains elements of persuasion or incitement such as the references to speed and saving the prospective customers' home.

75.5 It makes no difference that the content of the website suggests that the controlled activity will be carried on by persons other than LPI.

75.6 Accordingly, the restrictions imposed by section 21(1) of the Act are engaged.

75.7 Furthermore, the exception in section 21(2) of the Act is not engaged as LPI is not an authorised person and there has been no suggestion that the content in the website has been approved by an authorised person.

I. Conclusion

76. The Authority invites the court to find that:

76.1 LPI contravened the general prohibition in the manner outlined above in relation to Affected Individuals, with the result that inter alia the Service Agreements are unenforceable under section 26 of the Act.

76.2 NPI contravened the general prohibition in the manner outlined above in relation to Affected Individuals, with the result that inter alia the transactions amounting to SRAs are unenforceable under section 26 of the Act.

76.3 Tony Stevens and Daniel Stevens were knowingly concerned in the said contraventions.

76.4 LPI breached the financial promotion restrictions in the manner outlined above.

77. The Authority seeks the following relief:

77.1 Declarations that: (a) LPI and NPI have contravened the general prohibition as alleged in relation to each of the Affected Individuals; and (b) the Service Agreements and transactions embodying SRAs

are unenforceable against the relevant Affected Individuals by reason of section 26 of the Act.

77.2 A remedial order under section 380(2) of the Act requiring LPI to remedy its contraventions of the general prohibition by applying to the Land Registry to remove restrictions registered against properties of Affected Individuals in respect of liabilities under the Service Agreements.

77.3 An injunction under section 380(1) of the Act restraining continued or repeated contraventions of the general prohibition and financial promotion restrictions by LPI and NPI.

78. The declarations sought reflect the legal position outlined in this Skeleton. The Court has power to grant them pursuant to section 19 of the Senior Courts Act 1981 and CPR r.40.20. Granting them would assist in providing legal clarity and certainty for the Affected Individuals, and, it might be added, LPI and NPI: see, further, the treatment of a comparable situation by Neuberger J (as he then was) in *Financial Services Authority v Rourke* [2002] CP Rep 14, applied in a review of the principles by HHJ Waksman QC (as he then was) in *Day & Ors v Barclays Bank* [2018] EWHC 394 (QB).

79. So far as the remedial order requiring D1 to apply to remove the restrictions is concerned, these restrictions were entered to enable LPI to ensure that it received sums due to it under the Service Agreements in relation to the arranging of RMCs. Since the entry into the Service Agreements itself amounted to a regulated activity, they are unenforceable against the Affected Individuals. It is just for the Court to ensure that LPI does not retain the *de facto* ability to force Affected Individuals into paying sums due under the Service Agreements by refusing to release restrictions until payment is made, frustrating the effect of section 26 of the Act.[20] The court is also asked to take into account in this regard that this limited exercise of its remedial powers will not prevent or inhibit a fuller examination on a subsequent occasion of whether and how the court's remedial and restitutionary powers should be exercised in this case. The court's remedial and restitutionary powers under the Act are not mutually exclusive:

[20] See the limited interpretation of the term "enforce" adopted by the Court in *McGuffick v Royal Bank of Scotland* [2009] EWHC 2386 (Comm) at §74 to §85, in the context of the Consumer Credit Act 1974.

Financial Services Authority v Martin [2005] EWCA Civ 1422 at §20. In addition, whilst decisions as to how the court should exercise its powers in cases where remedial and restitutionary relief are sought in combination or in the alternative can give rise to difficult questions, the relief sought in relation to restrictions is a relatively discrete matter, which will provide immediate assistance to vulnerable individuals.

80. So far as the injunction is concerned, LPI and NPI have contravened the general prohibition and LPI has contravened the financial promotion restriction. In the light of the business practices in evidence, involving attempts to create the impression the Act does not apply, and in the light of the Authority's previous unsuccessful attempt to engage with LPI back in 2017, there is a reasonable likelihood that they will continue to do so in the absence of injunctive relief.

81. Should the court rule in the Authority's favour, the Authority will make submissions when judgment is handed down as to appropriate directions to be made for disposal of the Authority's claims for restitution orders in relation to RMC and SRA-related activities regarding the Affected Individuals and/or remedial relief in relation to the SRA-related activities regarding Affected Individuals.

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26 April 2022

Claim No BL-2020-001003

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES

BUSINESS LIST, FINANCIAL SERVICES AND REGULATORY SUB-LIST (ChD)

BETWEEN:

THE FINANCIAL CONDUCT AUTHORITY

(A Company Limited by Guarantee)

Claimant

-and-

(1) LONDON PROPERTY INVESTMENTS (U.K) LIMITED (TRADING AS LPI EMERGENCY PROPERTY FINANCE)

(2) NPI HOLDINGS LIMITED

(3) ANTHONY KAFETZIS (ALSO KNOWN AS ANTHONY STEVENS, TONY STEVENS, GEORGE STASIS, ANTHONY STEPHENS, ANTHONIO GEORGIOU AND ANDREAS GEORGIOU)

(4) DANEL STEVENS

Defendants

SKELETON ARGUMENT FOR THE AUTHORITY

Financial Conduct Authority
Enforcement and Market Oversight
12 Endeavour Square
London
E20 1JN

Ref. ENF RE1094 / LLR / MS