In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal case reference	**:**	**CAM/26UH/HYI/2023/0003**
Property	**:**	**Vista Tower, Stevenage SG1 1AR**
Applicant	**:**	**Grey GR Limited Partnership**
Respondents	**:**	**Edgewater (Stevenage) Limited and the remaining respondents named in Schedule 1 to this decision**
Type of application	**:**	**Remediation contribution order**
Tribunal	**:**	**Judge David Wyatt** **Judge Andrew Sheftel** **Mr Matthew Williams MA MSc PgDipSurv MRICS**
Date	**:**	**24 January 2025**

DECISION

Main representatives

Alexander Hickey KC and **Jennie Gillies**, instructed by DAC Beachcroft LLP, for the Applicant.

Tom Morris, instructed by Teacher Stern LLP, for the First Respondent and the Third to Sixteenth Respondents (the "**TS Respondents**").

Marcus Birch of Bryan Cave Leighton Paisner for the Second Respondent.

Keith Knight, instructed by Greenwood & Co, for the Eighteenth to Twenty Fifth Respondents (the "**Greenwood Respondents**").

Mark Warwick KC, instructed by Bude Nathan Iwanier, for the Twenty Sixth to Ninety Fifth Respondents (excluding R29, R32, R44, R48, R58 and R63, as explained below) (the "**BNI Respondents**").

Abraham Oestreicher, a director, for the Forty Fourth Respondent, Gatepalm Ltd.

DECISION

The tribunal:

(1) makes the accompanying remediation contribution order(s) against the Respondents specified in the order(s);

(2) leaves the application in relation to the Seventeenth Respondent ("**R17**", Midwest Holding AG) to be considered in due course;

(3) decides not to make a remediation contribution order against the other Respondents;

(4) directs that by **31 January 2025** the Applicant shall send to each Respondent (other than R17) or their representative a copy of this decision and order to help ensure they receive them as soon as possible, preferably with details of the bank account to which the relevant Respondents may make the payments required by the order; and

(5) directs that the time for the Applicant to comply with paragraphs 1 and 3 of the directions given on 16 June 2023 in respect of R17 (service in Switzerland) is further extended to **1 December 2025**.

REASONS

Schedule 2 to this decision identifies key names which may help the reader.

Basic background

1. The building now known as Vista Tower was built from the early 1960s for Stevenage Development Corporation. It was used as offices and known as Southgate House.

2. In June 2014, promotional materials were circulated by Zalman Roth of "*The Edgewater Group*" for Jack Frankel and Jacob Dreyfuss, seeking investors for an "*opportunity to acquire a complete stand-alone 15 floor building in a strong town centre position to be converted into 73 x 2-bed flats*." These anticipated recladding the building "*to make it more attractive and to raise the values*", build costs of £4.65m or less and a 53-81% return on equity.

3. On 8 July 2014, the First Respondent, Edgewater (Stevenage) Limited ("**R1**"), was incorporated. Mr Dreyfuss was initially the sole director, joined on 30 January 2015 by Mr Frankel. On 17 July 2014, R1 purchased the freehold for (before the usual adjustments) a price of £3,950,000, plus SDLT and fees of about £215,000. R1 commissioned the conversion of the building, engaging Gould/George Baxter Associates ("**Gould**") to design and provide other services in relation to the works, various other professionals, and Procare Building Services Ltd ("**Procare**") as building contractor. During 2016/17, R1 granted leases of each flat for terms of about 250 years. Total premiums of £15,633,725 were paid for those leases.

4. In June 2018, the Applicant purchased the freehold from R1 for £587,650. This was one of 200 or more residential buildings acquired by the Applicant to form a portfolio of ground rent investments for the Railpen Group. That is a pension fund operated mainly for railway workers, with about 500,000 members. The Applicant became the landlord under the flat leases; there are no intermediate leases.

5. Vista Tower is 49.5 metres high. It has 16 storeys, including what is described as a mezzanine level in part of the double-height ground floor. The ground floor level includes two pedestrian entrances, a large open-sided car park area, plant rooms and bin storage. As proposed, there are 73 flats: four on the mezzanine level and five on each of the upper floors except the top floor, which has four flats.

6. The basic frame is composed of concrete floor slabs supported by columns. The building is rectangular in plan, with narrower north and south elevations. It has two staircases, one at each end. It had a sprinkler system in the flats, but this had not been commissioned. The surroundings are largely open, but a smaller building is to the west. There are car parks to the north and south. St George's Way, a main road, is to the east. Stevenage Fire Station is on the other side of that road.

7. The south, east and west elevations are glazed and had two main external wall types in alternating horizontal strips. During investigations and the remedial works the subject of these proceedings, the following features of these main wall types emerged:

> "**type 1**" is a cavity wall built above each floor slab. The external face was render applied to pre-existing concrete façade panels. The wall has a blockwork inner leaf. Where the wall enclosed a flat, foam insulation had been injected into the cavity through holes drilled in the blocks or the mortar between them;
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> "**type 2**" is a UPVC window frame system sitting above wall type 1, with glazing and intermittent blanking panels. The blanking panels were UPVC sheets either side of expanded polystyrene with an MDF core. Where the wall enclosed a flat, foil-faced insulation had been installed behind the blanking panels.

8. The Grenfell Tower tragedy on 14 June 2017 prompted investigations and widespread concern about fire safety in high residential buildings, particularly those constructed or converted in recent decades. The tragedy and the general background is described in Triathlon Homes LLP v Stratford Village Development Partnership & Ors [2024] UKFTT 26 (PC).

9. In December 2018, the Building (Amendment) Regulations 2018 came into force. These amended the Building Regulations 2010 (which had included provisions requiring such matters as adequate resistance of the spread of fire, as outlined below) to prohibit use of combustible materials in external walls of buildings at least 18 metres high. On 20

January 2020, the Consolidated Advice Note ("**CAN**") was published to combine 22 guidance notes produced since the Grenfell Tower tragedy. The CAN required removal of all combustible material, to comply with the new building regulations.

10. On 8 March 2019, Stevenage Borough Council wrote to the Applicant confirming the outcome of their inspection of Vista Tower "*with Hertfordshire Fire & Rescue Service*". They said the presence of PVC window/spandrel panels with a combustible filler had been assessed as a category 2 hazard. They said it was intended that no enforcement action would be taken based on the layout and existing fire precautions and the advice of the Fire & Rescue Service.

11. The Building Safety Fund ("**BSF**") opened for registrations from 1 June 2020, as explained in Triathlon at [189-190]. The Guidance published in July 2020 explained that the BSF would meet the cost of addressing relevant fire safety risks: "*…where building owners … are unwilling or unable to afford to do so*". As noted in Triathlon: "*Amongst the objects of the Fund identified in the Guidance were that fire safety risks associated with cladding should be addressed quickly and proportionately, and that "cost recovery from those responsible for the installation of cladding is maximised*".

12. In June 2020, the Applicant applied to the BSF for funding for remedial works based on the CAN. In December 2020, the BSF agreed pre-tender support of £327,195 in respect of the remediation of UPVC spandrel panels and curtain glazing. This was paid in January 2021. At that stage, it was understood that initially estimated costs of £10m (which had assumed glazing frames could be cut out and replaced) would not be sufficient because it appeared that the entire glazing system (i.e. wall type 2) would probably need to be replaced.

13. In July 2020, Tuffin Ferraby Taylor ("**TFT**"), property consultants, were approached about Vista Tower and other buildings in the Applicant's portfolio. In September 2020, TFT produced their proposed strategy to assess the relevant buildings for compliance and where deficiencies were discovered, endeavour to access the BSF and undertake all necessary upgrade works. Given the difficulty of specifying remedial work adequately in advance of full opening-up, they recommended a two-stage design and build procurement approach.

14. A follow-up technical survey by Wintech in September 2020 concluded there were combustible materials in the external walls and identified no cavity barriers/fire stops in the areas inspected. On 22 September 2020, the BSF notified the Respondent of eligibility for funding in respect of "*the remediation of the UPVC spandrel panels/curtain glazing*" but not other proposed remedial works. In October 2020, TFT put the first stage to procure remedial works out to tender. In November 2020, the successful tenderer, ADI Group Limited, was

selected to provide pre-construction services, producing a design and pricing schedule, all based on the CAN.

15. In a report dated 5 November 2020, Jeremy Gardner Associates assessed fire risks based on the Wintech report. This advised installation of a fire alarm system and, in the interim, a waking watch.

16. A waking watch was implemented from December 2020, when the Applicant applied for planning permission for removal and replacement of building facing materials. Conditional permission was granted on 8 February 2021. This included a condition for approval of materials and colour of the new cladding/render (the application for approval was ultimately made on 21 September 2023 and discharged on 20 October 2023).

17. On 18 December 2020, following earlier correspondence, Hertfordshire Fire & Rescue Service wrote to the Applicant's property manager with an action plan for measures to be taken out. These included compartmentation surveys, repair/maintenance of fire doors, maintenance of AOVs, emergency lighting for the rear staircase, a fire alarm system, testing of the dry riser, details of the sprinkler system and other matters, with ambitious compliance dates during January 2021. Following consultation and application to the Waking Watch Relief Fund, the fire alarm system was installed in June 2021.

18. In June and then (following opening up by ADI of identified areas) August 2021, internal compartmentation surveys were carried out by Tenos, who reported in September 2021 on the various fire safety defects they had identified.

19. On 5 March 2021, TFT provided updated estimated costs of over £14.5 million. Some of the increase in the estimate related to the additional glazing and other costs, but a substantial amount ("*…circa £1,764,450 (excluding prelims, overheads & profit and risk) which includes a provisional cost of £710,400 for decanting residents…*") related to works to replace combustible insulation and plywood said to have been discovered in the inner sections of other external walls. On 24 March 2021, the Respondent appealed to the BSF highlighting the other works considered to be necessary based on the CAN, for which funding eligibility had not been confirmed. The appeal was ultimately decided on 10 November 2021, when it was rejected.

20. On 10 January 2022, the Government withdrew the CAN. In an explanatory speech that day, the Secretary of State said (amongst other things): "*We must also restore common sense to the assessment of building safety overall … There must be far greater use of sensible mitigations, such as sprinklers and fire alarms, in place of unnecessary and costly remediation work. To achieve that, today I am withdrawing the Government's consolidated advice note. It has been wrongly interpreted and has driven a cautious approach to*

building safety in buildings that are safe that goes beyond what we consider necessary…"

21. On 31 January 2022, the BSI published building safety standard PAS 9980:2022, a new code of practice for appraising the fire risk of external wall construction/cladding on blocks of flats. As noted in Triathlon at [98], this new standard offers (or was intended to offer): "*…a more nuanced appraisal of fire risks and enables the justification of alternative remedial solutions short of replacing all combustible materials, components and systems. A satisfactory remedy for the purpose of these building safety standards may, therefore, include leaving combustible components in place while adopting a pragmatic solution which overcomes the risks posed by their presence…*".

22. It took time to procure suitable fire safety engineers to carry out investigations and assessments under the new PAS9980 standard. In June 2022, CHPK was instructed to do so for the Respondent.

23. In July 2022, TFT prepared a specification for the internal compartmentation works and this was issued to potential contractors. In September 2022, they recommended Miller Knight for these works.

24. On 1 August 2022, reports prepared under the PAS9980 standard were sent to the BSF for several properties, including Vista Tower. On 17 August 2022, the BSF responded asking for application forms for each of the relevant properties to transition from the CAN to PAS standard.

25. On 11 October 2022, TFT advised that the internal compartmentation works be instructed as a separate package, rather than attempting to procure them with the cladding remediation work. The Applicant instructed TFT to proceed with Miller Knight. Following a letter of intent dated 8 November 2022 the internal compartmentation and fire stopping works started on 14 November 2022 and a formal building contract was signed in January 2023.

26. Also in October 2022, the Respondent withdrew its BSF application based on the CAN and re-submitted it by reference to the PAS9980 report, revised (then version 5) to add an overall assessment as required by the BSF.

27. Apart from other changes since the earlier proposed works, scenario modelling exercises were then carried out to help inform the PAS9980 assessment. These identified that the plywood said to have been identified in wall types 1-C and 1-E could be retained (removing only the "PIR" insulation), avoiding the need to decant residents.

28. On 2 November 2022, the Secretary of State for the Department then known as Levelling Up, Housing and Communities applied to the tribunal under section 123 of the Building Safety Act 2022 (the "**Act**") for a remediation order ("**RO**") against the Applicant in respect of Vista Tower.

29. The parties to those RO proceedings subsequently agreed revision 8 of a FRAEW/PAS9980 report prepared by CHPK in January 2023. In summary, this report advised that the following defects were high risk and the following remediation works were required:

Wall types	**Remedial action required**
Wall types 1-C and 1-E (each the inner leaf of a render finish concrete exterior wall, containing different thicknesses of PIR insulation and plywood)	Removal of the "PIR" insulation and replacement with non-combustible material
Wall type 2 (opaque spandrel panels with UPVC framed glazing, including organic foam insulation, timber battens and EPS)	Removal of the opaque panels and combustible insulation, and replacement with non-combustible materials
All the above	Installation of vertical cavity barriers at the vertical compartmentations, cavity barriers around window openings and effective firestops around the vent ducts and openings

30. It was not disputed that wall types 1C and 1E are those described as "wall type 1" in these proceedings. This covers most of the three glazed elevations of the building (in horizontal strips, alternating with wall type 2). Types 1A and others are in small, isolated areas around the building.

31. On 24 February 2023, the BSF confirmed that all the works said by the PAS9980 report to be "required" were eligible for funding. In March 2023, it was discovered that ADI did not have (or no longer had) sufficient insurance cover for the proposed works. In April 2023, TFT issued a new first stage tender to four potential contractors, including Lancer Scott.

32. On 19 May 2023, practical completion of the internal compartmentation and fire stopping works was certified (subject to snagging). In June 2023, the Respondent engaged Lancer Scott under a new pre-contract services agreement to design and produce a specification of remedial works for the defects described in the FRAEW/PAS9980 report. Lancer Scott carried out their own opening-up works in June and July 2023, with their final report due by October 2023.

33. On 4 September 2023, pursuant to an order made in the RO proceedings by Judge Wayte at the request of the Applicant, R1 and Gould disclosed construction documents sought from them in relation to their conversion of the building.

34. By letter dated 19 September 2023, the Respondent was informed that subject to conditions funding totalling £12,443,565.93 (including VAT and pre-tender support paid earlier) towards the costs of the remedial works had been approved. On 21 September 2023, at the final CMH in the RO proceedings, directions were given to prepare for the substantive hearing. Following those directions, the parties to the RO proceedings agreed a specification of relevant defects and remedial works, and the programme for carrying out those works. On 15 December 2023, following work started under an earlier letter of intent, the Applicant entered into a full design and build contract with Lancer Scott Construction West Limited for the external remedial works.

35. On 17 January 2024, the Applicant entered into a grant funding agreement (the "**GFA**"). The published template form of GFA with the Homes and Communities Agency (trading as Homes England) describes "*…the Cladding Safety Scheme, which is designed to provide funding to address and remedy life safety fire risks associated with defective and/or unsafe Cladding (which may include render based external wall systems on residential buildings which are 11 metres or higher*" (recital (A)). It provides in clause 5.4 that:

> "*…the Applicant shall use all reasonable endeavours to pursue reasonable remedies available to it in respect of any litigation and/or claim relating to the design and construction of the Building and/or manufacture of any part or parts of the Building or any materials or components used and installed at the Building where the remediation of any defective Building design or as to any construction, materials or components relates to Works in respect of which Funding is provided pursuant to the terms of this Agreement or any litigation and/or claim relating to the specification and installation of the same on the Building (including, without limitation, any claims against insurers, any relevant contractors and/or manufacturers and/or warranty providers with any liability in relation to the Building)…*"

36. Clause 5.4.3 of the GFA requires the "*Applicant*" to account to Homes England for any amount received in respect of such "*Litigation Remedies*", or at least the amount referable to the elements funded, subject to further provisions.

37. The external remedial works started in January 2024. Under the contract with Lancer Scott, and the GFA, the works are due to be completed in September 2025.

38. On 10 May 2024, the relevant tribunal made a RO against the Applicant, largely to reassure leaseholders and the Secretary of State that the remedial works would be carried out and completed. The RO required the Applicant (who had agreed the following matters were relevant defects) to by 9 September 2025 (subject to extension provisions) remedy:

> "*Combustible PIR insulation (expected to be Euro Class C)" in "Wall Type 1-C" and "Wall Type 1-E".*
>
> *"Opaque infill panels with a combustible Expanded Polystyrene (EPS) core (expected to be Euro Class E)" in "Wall Type 2-A" and "Wall Type 2-B".*
>
> *"Opaque infill panels with a combustible Expanded Polystyrene (EPS) core (expected to be Euro Class E), with combustible organic foam insulation (expected to be Euro Class D) behind the infill panels within Wall Type 2-C".*
>
> *"No effective cavity barriers/fire stopping "at vertical compartment lines" and "around windows"".*
>
> *"Timber battens without effective cavity barriers/firestops at vertical compartment lines".*
>
> *"Vent duct penetrations with no effective fire stopping".*
>
> *"Combustible expandable foam between window glazing and concrete slabs*".

Procedural history

39. On 25 April 2023, the Applicant applied to the tribunal under section 124 of the Act for remediation contribution order(s) ("**RCO**") against R1 to R17. On 16 June 2023, following initial directions and responses, the tribunal gave directions for service on the Respondents in the UK and on R17, Midwest Holding AG (the main shareholder of R16, itself the main shareholder of R1), in Switzerland under the Hague Convention (the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at the Hague on 15 November 1965) and an initial case management hearing.

40. The Applicant's statement of case was broad. It inferred that a substantial profit had been made from the development. It alleged relevant defects including organic foam insulation, expanded polystyrene in blanking panels, absence of effective cavity barriers at vertical compartmentations around windows, duct vents without firestops, defective internal compartmentation and other problems. It described costs of £1,309,011.58 already incurred in preparing and progressing a remedial scheme. It said that the costs of the remedial work were then anticipated to be £14.7 million and updated costings

would be prepared by the new remedial works contractor. It referred to paragraphs 977 and 1013 of the explanatory notes to the Act and alleged that R1 was part of a "*wider corporate structure*" which included R1 to R17. It sought a RCO for the costs it had incurred and would incur.

41. Separately, the Applicant issued proceedings in the Technology and Construction Court against R1, R16 and R17 (HT-2023-000205) seeking a building liability order under section 130 of the Act (the "**BLO proceedings**"). The relevant test for those who may be associated with R1 for these purposes is narrower than the test for a RCO under section 124. We understand that those proceedings will not be heard for some time and (after more than a year and a half of what appear to have been reasonable endeavours by the Applicant requesting this through the appropriate authorities) neither set of proceedings have yet been served on R17.

42. In their statements of case:

    a. R1 and R3-16 admit R1 was the previous landlord, commissioned the works to convert the building from office to residential use in 2015/16 and was a developer in relation to the building. They admit that during the relevant period under section 121 one of Jack Frankel and Jacob Dreyfuss was a director of both R1 and R3 to R15, and R16 owned at least 75% of the shares in R1, so they are all bodies corporate which may under section 124(3) be specified in a RCO. R3-15 said they did not receive any profit or derive any benefit in respect of the development. R16 said they did not directly participate and the benefit to them was limited. Amongst other things, they said no RCO should be made and if the Applicant has not sought recovery of remedial costs from leaseholders who are not qualifying leaseholders those costs should not be taken into account in any RCO. They said part of the profit from the development (and interest on loans) was paid to R16 and part was paid to DF (Stevenage) Ltd, a company created by Mr Frankel and Mr Dreyfuss to assist in obtaining funding for the purchase; and

    b. similarly, R2 admits that Mr Frankel and Mr Dreyfuss were directors of R1 and R2 during the relevant period, so R2 is associated with R1 under section 121. Amongst other things, R2 says it did not earn any profits from the development and is 80% owned and controlled by persons with no connection to R1.

43. DF (Stevenage) Ltd appeared not to have been identified from company searches. As requested, in directions given on 6 November 2023 following the first case management hearing, the tribunal directed Mr Dreyfuss and Mr Frankel to identify any other bodies corporate or partnerships of which they were directors or partners between 15 February 2017 and 14 February 2022, the relevant period under the association provisions in section 121 of the Act.

44. The directions provided for Scott Schedules of relevant defects to be exchanged, as sought by the Respondents. The directions also required disclosure of documents in specified categories, including "*…documents sufficient to identify the current liability and asset position of each respondent, including but not limited to … bank account statements … loans and other charges…*", and "*…any and all documents regarding the distribution of funds and profits made by any of the Respondents in relation to the building…*".

45. On 29 January 2024, in view of delays in service on R17, the existing Respondents were directed to provide information in relation to R17. As requested by the Applicant, the tribunal added R18 to R96 (all identified from the information Mr Dreyfuss and Mr Frankel had provided in response to the earlier direction) to these proceedings as additional Respondents. The Applicant had produced an amended statement of case, in the same substantive terms as their original broad statement of case (as summarised above). The additional Respondents were directed to produce their statements of case in response.

46. In these RCO proceedings, parties referred to their pleadings in the BLO proceedings. In February 2024, the Applicant had provided schedules indicating costs of £2,001,586.27 incurred to the end of 2023 and £11,977,407 incurred and anticipated for the internal and external remedial works. The Respondents referred to further details which they had provided in their replies to successive requests from the Applicant for further information.

47. In February 2024, the parties made no progress with the list of issues required by the directions given earlier. The Applicant produced a simple list – essentially, whether matters were relevant defects and in relation to them what works had been undertaken, what costs had been incurred and whether it was just and equitable to make an order. They resisted attempts by the TS Respondents to add issues about whether each remediation solution was a reasonable one, whether the costs which had been incurred were reasonable, whether interim safety measures were necessary and/or reasonable and so on, arguing these were not the test under section 124. The parties were directed to engage with each other to seek to agree a list of issues by 19 April 2024. They exchanged correspondence with each other in response, but again made no progress with this.

48. On 9 May 2024, the tribunal gave final case management directions to prepare for a substantive hearing. These provided for disclosure by the additional Respondents, witness statements and other matters. They gave permission for expert evidence in the following disciplines:

    a. fire safety, in relation to whether the defects alleged and relied upon by the Applicant each constitute a 'relevant defect' for the purposes of section 120 of the Act and in relation to the scope and extent of the remedial works required to remedy those defects;

b. architecture, in relation to the scope and extent of the works required to remedy those defects; and

c. quantity surveying, in relation to the costs of those works.

49. At a review hearing on 3 October 2024, the tribunal gave final directions, confirming that oral opening submissions were not required and providing for written opening submissions/skeleton arguments in advance. The directions extended the time for the Applicant to serve R17 in Switzerland until 31 January 2025 and confirmed that the substantive hearing the following month would decide the RCO application for all of the Respondents other than R17.

50. On 29 October 2024 the Applicant provided lengthy written opening submissions with appendices (over 300 pages in total) and the active Respondents provided skeleton arguments. We summarise below the descriptions in the Applicant's opening submissions of the costs they had incurred or currently expected to incur (which are a little less than those indicated previously):

£1,999,980.90 costs incurred prior to the end of 2023:

1 Initial investigation of the relevant defects £45,493.00

2 Temporary safety measures (JGA's report £3,500.00, waking watch £412,306.00, sprinklers, emergency lighting and other works £14,426.20, consultation dispensation applications £13,749.90)

3 Internal remedial works (fire alarm works £54,328.00, Miller Knight internal compartmentation and fire stopping works - direct costs £371,873.00, preliminaries £107,175.28, loss and expense £44,679.00, Miller Knight direct costs of the fire door works £54,089.00)

4 Design development (compartmentation specification £10,330.00, façade remedial works under the CAN £211,674.90, façade remedial works under PAS 9980 £307,194.50)

5 Project management and legal fees £349,162.12

£11,852,517.60 costs incurred since January 2024/future costs of façade remediation works:

6 Pre-contract services costs £190,307.00

7 Direct costs of remediation (cost of remediating wall type 1 £1,755,844.00, cost of remediating wall type 2 £2,329,210.52, remediation of cavity barriers £289,555.95, works to internal staircase £439,587.00, works to under croft £114,317.00, works to the entrance/reception area £4,897.00)

8 Enabling and reinstatement works £2,305,981.97

9 Additional contract costs (contractor preliminaries £1,039,343.00, sub-contractor preliminaries £352,920.00, overhead and profit £782,701.00, contractor's contingency £463,597.00, building insurance £11,183.25)

10 Grey contingency allowance £1,005,497.40

11 Professional fees in respect of façade remediation works (project manager/employer's agent £140,135.92, cost consultant £90,740.84, CDM advisor £30,012.88, fire engineer £60,000.00, façade consultant £139,790.00, structural engineer £25,000.00, clerk of works £84,000.00, compliance inspector £70,500.00, managing agents £50,274.87, project coordinator £14,000.00, legal fees £63,121.00)

Costs incurred since January 2024 in respect of other relevant defects

12 Sprinkler Commissioning £10,862.08

The hearing

51. At the substantive hearing from 4 to 15 November 2024, the Applicant was represented by Alexander Hickey KC and Jennie Gillies of counsel, instructed by DAC Beachcroft. The TS Respondents (R1 and R3-16) were represented by Tom Morris of counsel instructed by Teacher Stern. R2 was represented by Marcus Birch, solicitor, of BCLP (who attended on days eight and nine only). The Greenwood Respondents (R18-25) were represented by Keith Knight of counsel, instructed by Greenwood & Co. The BNI Respondents (R26-95 excluding R29 (Castlewood Properties Ltd), R32 (Sammy Estates Ltd) and R58 (2016 Ventures Limited), who were all removed from the proceedings on 9 May 2024, and R44, R48 and R63 described below) were represented by Mark Warwick KC of counsel, instructed by Bude Nathan Iwanier.

52. We are grateful to counsel and the other representatives for their assistance. The Opus 2 document management and transcription facilities enabled a more efficient hearing than would otherwise have been possible with this volume of material.

53. Oliver Basi, deputy general counsel of Railpen Limited, and Alan Pemberton, chairman of TFT, gave factual evidence for the Applicant. James Clarke (fire safety), Alastair Ferguson (architecture) and Richard Jenkinson (quantum) gave expert evidence for the Applicant. Christine Leigh (fire safety), Simon Murray (architecture) and Nicola Rampersad (quantum) gave expert evidence for the TS Respondents. Zalman Roth gave evidence for the TS Respondents. Jacob Dreyfuss and Jack Frankel gave evidence for the TS Respondents and the BNI Respondents. Leslie Frankel gave evidence for the Greenwood Respondents. Moishe Kornbluh gave evidence for the BNI Respondents. Pinchas Olsberg gave evidence for R92 (one of the BNI Respondents). Daniel Davila gave evidence for R3 and R12. Paul Miller gave evidence for R2.

54. Witness statements had also been provided from Abraham Oestreicher for R44 and Isaac Perlstein for the BNI Respondents. The Applicant had agreed in advance that they were content not to cross examine these witnesses, with their statements to stand as their evidence.

55. We treated the Applicant's request to remove R63 (Rockerbay Limited), represented by Colman Coyle, as notice of withdrawal under rule 22 of the part of their case which was against R63. They said a settlement agreement had been entered into on 29 October 2024. There were no objections, and we consented, to the withdrawal.

56. R44 (Gatepalm Ltd) were represented by Abraham Oestreicher, a director. At the hearing, we decided that we would not deal with their further application (sent on 30 October 2024) to strike out the case against R44 before the conclusion of the substantive hearing because we would need to decide what was just and equitable after we had considered the many matters in dispute. The Applicant said they had been unable to reach agreement with R44 and noted that Petley Limited (R44's parent) had an association with another Respondent, so wanted the tribunal to proceed to determine the application against R44 and any other remaining "*outliers*".

57. R48 (Spinnaker HS Ltd) had been represented by Lawrence Stephens Ltd but did not attend. We considered it was in the interests of justice to proceed in their absence and the absence of the other parties who had been notified of the hearing. R96 (Flanders Estate Ltd) did not attend and had already been barred from further participation for failure to produce the statement of case required by the unless order in paragraph 7 of the directions order of 9 May 2024.

58. Mr Morris had already confirmed that earlier issues about the costs of waking watches and other interim measures had fallen away following the amendments made to the Act (shown underlined in the extracts below) by sections 114 and 116 of the Leasehold and Freehold Reform Act 2024. These were brought into force from 31 October 2024 by the Leasehold and Freehold Reform Act 2024 (Commencement No 1) Regulations 2024. Section 116(7) confirms that the amended provisions apply to pending RCO proceedings and costs incurred before or after the amendments came into force.

59. We heard objections from Mr Warwick (supported by Mr Morris), who was concerned about the contents of the detailed opening submissions and appendices produced by the Applicant, particularly appendix D.1. He was rightly not too concerned about the adjectives but wished to clarify whether illegality or the like was being alleged. Mr Hickey confirmed that neither dishonesty nor illegality was being alleged and said the submissions and summaries of details were to question reliability.

60. We were not satisfied that the opening submissions gave new evidence or otherwise ambushed the Respondents. Instead, they referred to and

sought to compare the information and documents disclosed by the Respondents (in response to the allegations in the statements of case that they were part of a wider corporate structure) with each other and the relevant public records at Companies House, as Mr Hickey said. These submissions in effect gave notice of matters which might be explored in cross examination to test the evidence of the Respondents' witnesses.

61. Following that decision, on the fourth day of the hearing (7 November 2024) we admitted the second witness statement of Mr Kornbluh for the BNI Respondents. This had been produced to respond to the table at Appendix D.1 to the Applicant's opening submissions. It produced a schedule with owners of shares shown in red where these were said to be different from those in the Applicant's table. Mainly, it was said, the differences were that the relevant shares were held on trust for these owners. Mr Kornbluh produced copy documents said to be declarations of trust (two by Bina Angela Dreyfuss and seven by Rivkah Dreyfuss, all stating that 50% of certain shares registered in their names were held as trustee for Deborah Roth, as noted in Schedule 1 to this decision).

62. We also later admitted a brief updating witness statement from Mr Miller for R2, and the documents produced during the hearing on behalf of R2, as noted below. We have not referred to the highlighted transcripts and accompanying notes provided by the parties after the hearing, in view of the arguments between them about whether we should do so.

The law

63. On 28 June 2022, sections 117 to 125 of and Schedule 8 to the Act came into force. These were subsequently amended as noted above and shown underlined below. They make provision for the remediation of certain "*relevant defects*" (defined in s.120, as set out below) in any "*relevant building*" (defined in s.117: for our purposes, a building that contains at least two dwellings and is at least 11 metres high or has at least five storeys). As was agreed, Vista Tower is obviously a relevant building.

64. Under section 120 of the Act:

"*(2) "**Relevant defect**", in relation to a building, means a defect as regards the building that—*

> *(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and*
>
> *(b) causes a building safety risk.*

(3) In subsection (2) "relevant works" means any of the following—

> *(a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;*

(b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;

(c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

"The relevant period" here means the period of 30 years ending with the time this section comes into force.

(4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.

(4A) "Relevant steps", in relation to a relevant defect, means steps which have as their purpose—

(a) preventing or reducing the likelihood of a fire or collapse of the building (or any part of it) occurring as a result of the relevant defect,

(b) reducing the severity of any such incident, or

(c) preventing or reducing harm to people in or about the building that could result from such an incident.

(5) For the purposes of this section—

*"**building safety risk**", in relation to a building, means a risk to the safety of people in or about the building arising from—*

(a) the spread of fire, or

(b) the collapse of the building or any part of it;

"conversion" means the conversion of the building for use (wholly or partly) for residential purposes;

"relevant landlord or management company" means a landlord under a lease of the building or any part of it or any person who is party to such a lease otherwise than as landlord or tenant."

65. It was agreed that R1's conversion works were "*relevant works*".

66. It may be useful at this point to decide two issues in relation to section 120. These arose because the experts seemed (understandably) to have created their own technical gloss to help them answer the issues which had emerged from the Scott Schedule which had been sought by the Respondents and (perhaps because it seems much the same schedule was used in the BLO proceedings) used to particularise and debate the individual alleged relevant defects in granular detail.

Defect

67. First, the fire safety experts had agreed that for the purposes of section 120(2) it was reasonable to interpret "*defect*" as building work that did not comply with the Building Regulations 2010 as at 9 October 2014. They agreed this was the relevant version for the purposes of the conversion works because that was the date the relevant Initial Notice had been submitted to Stevenage Borough Council for the conversion works. By reference to the agreements and views of the experts, Mr Morris argued that whether something was a defect *depended* on compliance with the relevant building regulations.

68. Mr Hickey relied on the open wording of the Act, reading section 120 as a whole. We agree; if "defect" meant only non-compliance with building regulations, the Act would say so. The Act also refers specifically in section 130 (building liability orders) to section 38 of the Building Act 1984 (in connection with non-compliance with building regulations). It would be surprising if the Act limited "defect" to non-compliance with the pre-Grenfell version of the building regulations, which the independent review by Dame Judith Hackitt (published in December 2017) had found not to be fit for purpose. In case we are wrong, we will as requested consider the issues of compliance with the 2014 version of the building regulations, so set out below some key provisions before moving on to the second issue. However, we consider that non-compliance with those building regulations is merely one way, not the only way, in which something can be a "*defect*" for these purposes.

69. The main relevant provisions of the building regulations themselves are the following extracts from paragraphs of Schedule 1 to the regulations. Regulation 8 confirms these did not require anything to be done except for the purpose of securing reasonable standards of health and safety for persons in or about buildings (and any others who may be affected by buildings, or matters connected with buildings).

"*B1. … The building shall be designed and constructed so that there are appropriate provisions for the early warning of fire, and appropriate means of escape in case of fire from the building…"*

B3. … (3) Where reasonably necessary to inhibit the spread of fire within the building, measures shall be taken, to an extent appropriate to the size and intended use of the building, comprising either or both of the following—

(a) sub-division of the building with fire-resisting construction;

(b) installation of suitable automatic fire suppression systems.

(4) The building shall be designed and constructed so that the unseen spread of fire and smoke within concealed spaces in its structure and fabric is inhibited…

B4. (1) The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building."

B5. (1) The building shall be designed and constructed so as to provide reasonable facilities to assist firefighters in the protection of life."

70. Approved documents, published by the Secretary of State, provided guidance on how these requirements could be met in some scenarios. The experts agreed the relevant guidance was Approved Document B2 on fire safety, including amendments up to 2013 ("**ADB**").

Building safety risk

71. Second, Mr Morris argued that whether something causes a "*building safety risk*" for the purposes of section 120(5) depends on whether the risk is tolerable, having regard to the other features and characteristics of the building. The fire safety experts had opined that, when assessing the risks associated with fire safety of external walls under PAS9980, a "*medium*" fire risk that is considered to be "*tolerable*" would not be a building safety risk. Mr Morris argued for this narrow interpretation, particularly in view of the interference (by Schedule 8 to the Act) with private/property law rights in preventing or limiting recovery of service charges relating to relevant defects.

72. We think the better view is that any risk above "low" risk (understood as the ordinary unavoidable fire risks in residential buildings and/or in relation to PAS9980 as an assessment that fire spread would be within normal expectations) may be a building safety risk. Section 120(5) describes a risk to the safety of people arising from the spread of fire or collapse, not a risk reaching an intolerable or any other particular threshold. We do not think "collapse" indicates the risk must be of catastrophic fire spread, as was suggested. It need only be a risk to the safety of people arising from the spread of fire in a tall residential building.

73. PAS9980 cannot help with assessment of defects which are only internal, where other PAS codes of practice or forms of assessment under the fire safety orders and regulations may be helpful.

74. The aim (or one of the aims) of PAS9980 is to form a view on which fire safety risks need be remedied or need further investigation and which are tolerable and so might be accepted without remediation for the time being. That involves an assessment that fire spread is likely to be more rapid than normally expected but may be tolerable based on the methodology in PAS9980. In that case, there is "*potential*" to accept the "*residual risk*" with no remediation "*subject to periodic review*", to use the wording from the summary diagram on page 20 of PAS9980. This all seems more consistent with a continuing risk (which may be tolerable if kept under review) than with something which has ceased to become a relevant risk.

75. Further, this may involve assessment of likelihood of a range of different factors, as indicated by the commentary in "clause 7" of the PAS9980 standard itself. The experts agreed that risk assessment is subjective; different fire engineers could reasonably reach different views on the level of risk posed by a given defect (alone or in combination with other defects or mitigating factors). Mr Clarke accepted (when Mr Morris put it to him hypothetically) that a relevant defect in an original construction might itself be unchanged but be deemed tolerable after the overall risk has been reduced because other relevant defects have been remedied. Disagreement about whether a risk is tolerable, alone or with other factors, seems more likely (or logically) to be about whether or what action should be taken from time to time, not whether this is a relevant risk at all.

76. In case we are wrong (different points were being argued in Triathlon, about the scope of "remedying") we keep in mind the alternative construction suggested by the fire safety experts and argued by Mr Morris.

Remediation contribution orders

77. Section 124 provides:

"*(1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so.*

(2) "Remediation contribution order", in relation to a relevant building, means an order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying or otherwise in connection with relevant defects (or specified relevant defects) relating to the relevant building.

(2A) The following descriptions of costs, among others, fall within subsection (2)—

> *(a) costs incurred or to be incurred in taking relevant steps in relation to a relevant defect in the relevant building;*
>
> *(b) costs incurred or to be incurred in obtaining an expert report relating to the relevant building;*
>
> *(c) temporary accommodation costs incurred or to be incurred in connection with a decant from the relevant building (or from part of it) that took place or is to take place—*
>
> > *(i) to avoid an imminent threat to life or of personal injury arising from a relevant defect in the building,*
> >
> > *(ii) (in the case of a decant from a dwelling) because works relating to the building created or are expected to create*

circumstances in which those occupying the dwelling cannot reasonably be expected to live, or

(iii) for any other reason connected with relevant defects in the building, or works relating to the building, that is prescribed by regulations made by the Secretary of State.

(2B) The Secretary of State may make regulations for the purposes of this section specifying descriptions of costs which are, or are not, to be regarded as falling within subsection (2).

(3) A body corporate or partnership may be specified as a person required to make payments only if it is—

(a) a landlord under a lease of the relevant building or any part of it,

(b) a person who was such a landlord at the qualifying time,

(c) a developer in relation to the relevant building, or

(d) a person associated with a person within any of paragraphs (a) to (c).

(4) An order may—

(a) require the making of payments of a specified amount~~, or payments of a reasonable amount in respect of the remediation of specified relevant defects (or in respect of specified things done or to be done for the purpose of remedying relevant defects)~~;

(aa) if it does not require the making of payments of a specified amount, determine that a specified body corporate or partnership is liable for the reasonable costs of specified things done or to be done;

(b) require a payment to be made at a specified time, or to be made on demand following the occurrence of a specified event.

(5) In this section—

"associated": see section 121;

"developer", in relation to a relevant building, means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it;

"expert report" has the meaning given by section 123(9);

"interested person", in relation to a relevant building, means—

(a) the Secretary of State,

(b) the regulator (as defined by section 2),

(c) a local authority (as defined by section 30) for the area in which the relevant building is situated,

(d) a fire and rescue authority (as defined by section 30) for the area in which the relevant building is situated,

(e) a person with a legal or equitable interest in the relevant building or any part of it, or

(f) any other person prescribed by regulations made by the Secretary of State; …

"relevant steps": see section 120;

"specified" means specified in the order.

""temporary accommodation costs", in relation to a decant from a relevant building, means—

(a) the costs of the temporary accommodation, and

(b) other costs resulting from the decant, including removal costs, storage costs and reasonable travel costs;

"works" means works—

(a) to remedy a relevant defect in a relevant building, or

(b) in connection with the taking of relevant steps in relation to such a defect."

78. Schedule 8 to the Act provides (amongst other things) that certain service charges relating to relevant defects in a relevant building are not payable. Most of these new protections for leaseholders apply only in respect of qualifying leases, as defined in section 119.

79. We were referred to the explanatory notes to the Act at [1011] to [1013], [1015] and [1019] as a secondary aid to construction. We also keep in mind the decision in Triathlon including the descriptions of the hierarchy or cascade of liability at [42], the BSF at [189-190] and [193], and the RCO jurisdiction at [237], [239], [256] and [261]. We note that the new jurisdiction appears essentially not to be fault-based, providing a route to secure funding for remedial works, with the emphasis on protection of leaseholders/residents and helping to expedite remedial action.

General arguments and Applicant factors

80. We agree with Mr Morris that the RCO jurisdiction does not simply give a blank cheque, and we bear in mind his argument that this jurisdiction is "*expropriatory*" (to avoid repetition, the arguments about this are described below under Respondent factors). However,

we do not accept his argument that anything which has not been shown to be "*unavoidable*" should be outside the scope of a RCO. That seems to us to depend on what is just and equitable in a given case, which may be very fact sensitive. Mr Morris rightly accepted that what might be included in any RCO was a matter for our discretion and may not turn on necessity. We agree with him that we could limit a RCO to what was "*proper*" or "*reasonable*" to have incurred, but only if that was just and equitable in a given case.

81. Mr Hickey referred to the wording of the Act and argued that we were not deciding what was "*reasonable*". He accepted that in some cases a remedial scheme might involve large unrelated works, or might otherwise be unjustifiable, but this was not such a case. Here, the experts considered parts of the remedial scheme too "*comprehensive*" (as he put it) from a purely technical perspective and many of the costs claimed exceed those assessed by the quantum experts. Mr Hickey pointed out that the Applicant had followed expert advice throughout. It had to act quickly, particularly in 2023, to protect residents, work with the BSF and satisfy the Secretary of State in their first and well publicised "test case" under their power to seek remediation orders against landlords of tall, high-risk residential buildings. The landlord has control, so has to carry out the remedial works even if they did not create the relevant building safety risks.

82. He observed that the landlord also has to grapple with other problems and costs of remediation schemes which inevitably involve more than direct fire safety costs. He gave as examples working around the challenges of an occupied residential building and the other needs of leaseholders and occupiers, from providing acceptable replacement non-combustible thermal insulation to making good damage caused to flats (here, mainly by the Isowall system used to avoid decanting). The new sections 20F and 30D of the Landlord and Tenant Act 1985 (introduced by the Act) may not yet be in force but are expected to put additional pressure on landlords to tackle building safety risks, seek grant funding and seek monies from developers and other third parties.

83. We consider these matters below when examining the technical aspects of the dispute, but generally we accept the submissions made by Mr Hickey. When considering whether it is just and equitable to make or include certain costs in a RCO, if it is helpful to ask whether the relevant remedial works/costs were within a reasonable range of responses/costs, we consider that in the circumstances of this case (including the factors identified above) that range is relatively wide.

84. The Respondents submitted that it was highly relevant to the exercise of our discretion that the Applicant is (in effect) substantial and sophisticated, ultimately owned by Railpen (which, Mr Basi accepted, has some £34bn in assets). It had invested in freehold residential blocks to generate "*attractive*" returns for its members. It chose to purchase the freehold a year after the Grenfell Tower tragedy, having made enquiries and investigated a range of matters, including fire

safety, and therefore assumed responsibility for any risks. It negotiated a warranty only from R1 and a relatively modest retention which was later released to R1. It must have understood that R1 had been incorporated as a single-purpose vehicle ("**SPV**"), since it had no prior trading history, but did not require a guarantee for R1's obligations.

85. The Applicant and its associates do fall within the categories of body corporate or partnership which could be required by a RCO to make payments. However, for the following reasons, we do not consider that the Applicant factors summarised above have any significant weight in this case. The developer and any associates against which we decide to make a RCO will be those we consider higher in the hierarchy of liability than, who should pay before, the Applicant (let alone the taxpayer or leaseholders), particularly in view of the matters set out below.

86. At least with hindsight, it seems surprising that the Applicant chose to purchase the freehold for what appears a substantial price following the Grenfell tragedy. However, it had been given a surprisingly firm warranty and indemnity in clause 6 of the sale agreement [H/11/6]. R1 warranted that the conversion works had been "*…carried out and completed in a good workmanlike manner according to normal building practices generally accepted at the date of the Agreement, using suitable good quality materials…*" and that those works "*…complied with Building Regulations in force at as the date of construction of the Development*." Further, the agreement provides that R1: "*…hereby indemnifies [the Applicant] from any claims, demands, costs (including legal fees) or liabilities incurred by [the Applicant] as a result of [R1's] breach of the warranty*."

87. Given the facts found below, it appears that warranty was untrue. Further, serious warnings were not disclosed by - and a misleading fire risk assessment was produced for - the sellers, as explained below. This all makes it more difficult to criticise the Applicant for proceeding with the purchase and not insisting on security for the warranty/indemnity.

88. Further, the Applicant is a vehicle of a pension fund. The GFA required it to seek reasonable litigation remedies and account for relevant recoveries in respect of the grant funding provided for the remedial works. It has incurred substantial costs which it has not sought to include in a RCO (such as the costs of the RO proceedings, said to be over £1m plus VAT and one of the items included in the claim in the BLO proceedings, and the costs of these proceedings). Mr Basi explained that some 12 of the 200 or more ground rent "investments" it had acquired were the subject of remediation projects. It seems likely to lose substantial sums in relation to Vista Tower alone, even if everything it is claiming in these proceedings is included in a RCO and paid.

89. We were not impressed by the further argument that the Applicant should not be entitled to any costs which could have been recovered

from non-qualifying leaseholders through the service charge. We note that, in this case, where (unlike their previous landlord, R1) their current landlord was not responsible for the relevant defects, these leaseholders may not have the protection of Schedule 8 to the Act. However, such leaseholders are lower in the hierarchy of liability. The purpose of the BSF and the Act is to protect all leaseholders and other residents. Moreover, the non-qualifying leaseholders (along with anyone else with a legal or equitable interest in the building) also have the right to make their own application for a RCO against the developer and its associates (or others); it is difficult to see why that does not point in the opposite direction to that argued by the Respondents.

90. We note paragraph [1012] of the explanatory notes to the Act and the observations in Triathlon at [75], particularly that "*An interpretation of the Act which resulted in some leaseholders bearing the cost of remediation, and some developers, landlords and their associates avoiding responsibility, would not give effect to the obvious purpose of the Act to protect leaseholders to the fullest extent possible.*" We also note the obvious fact that it is the leaseholders who will have lived with years of uncertainty (to say the least), and they and/or their tenants who have suffered and will be suffering all the noise, disruption and unpleasantness of sets of major remedial works.

Technical aspects of the dispute

91. With the general approach noted above in mind, we move on to consider the technical aspects of the dispute and the costs claimed. We remind ourselves that a RCO can include payments for costs incurred or to be incurred in remedying or otherwise in connection with relevant defects. Once the jurisdictional threshold is reached the only test in the statute is (in effect) whether we consider it just and equitable to make a RCO which includes each of the payments sought by the Applicant.

Wall type 2

92. The experts started with wall type 2. The fire safety experts agreed that the blanking panels and insulation boards in the UPVC window framing system were "a defect" because the combustible insulation did not comply with the relevant building regulations.

93. Paragraph B(4)(1) of Schedule 1 to the regulations required the external walls to adequately resist the spread of fire. The relevant guidance, paragraph 12 of ADB, states that external wall insulation should be of limited combustibility (it was not) unless the wall complies with diagram 34 (it did not) and the reaction to fire of external surfaces should follow the recommendations in diagram 40 (it did not) or be tested and shown to meet the fire performance criteria in BRE Report 135 on fire performance of external thermal insulation for walls of multi storey buildings ("**BR135**") (the fire safety experts agreed it was unlikely to do so).

94. The fire safety experts agreed that this combustible insulation was a building safety risk because it was likely to provide a ready medium for horizontal fire spread across the wall, including over compartment wall lines. Mr Clarke said it would also risk vertical fire spread, despite the breaks provided by the alternating wall type 1, and these combustible materials were also exposed to the combustible foam insulation in the wall type 1 cavity. Ms Leigh had appeared to be suggesting that any necessary improvements to the sprinkler system could "*in combination with improvements in fire stopping and construction*" reduce the risk of fire spread to a tolerable level, but at the hearing was not taking this that far. In any event, we prefer the evidence of Mr Clarke, who was the more impressive of the two fire safety experts. The combustible insulation was a very serious building safety risk and relevant defect, particularly in combination with the other defects noted below.

95. Because wall type 2 is a single (or ribbon) window system, it crosses compartment lines. The experts agreed that the junctions between wall type 2 and the vertical compartment walls between flats had not been sealed. The fire safety experts agreed these were defects. The junctions (which had significant gaps) should have been completed with fire stopping, by reference to table A1 in ADB (60 minutes between flats) and the guidance in ADB that if a fire separating element is to be effective every joint or imperfection of fit should be adequately protected by sealing or fire stopping so that fire resistance of that element is not impaired. They agreed the lack of seals was a building safety risk; fire and smoke spread would not be inhibited. They also agreed the work needed to reduce the risk to a tolerable level could reasonably involve installation of suitable firestopping details at the junctions to maintain the fire resistance of the compartment. We agree.

96. The experts had dealt separately with the junctions between wall type 2 and the compartment walls of the escape staircases. In the junctions with the firefighting staircase, there was no firestopping. In the junctions with the protected escape staircase, ablative batt had been pushed into the gaps and left unsealed; in some cases, there were large gaps leaving the ceiling void above the flat open to the staircase. The fire safety experts agreed that the lack of (or inadequate) fire stopping at these junctions were defects; the junctions should have been completed with fire stopping with 120 minute fire resistance (as recommended by table A1 in ADB for the firefighting staircase and table A2 for the protected escape staircase). The experts agreed that the work needed to reduce the risk of fire spread in relation to the missing fire stopping at these junctions could reasonably entail a targeted intrusive inspection and "find and fix" firestopping exercise for all flat/stair compartment wall junctions, using ablative batts and intumescent sealing systems. We agree.

97. Wall type 2 also included cavities behind the spandrel blanking panels and some of the cavities in wall type 2 were open to the ceiling voids above flats. In flats, the window head and jambs were made of plasterboard and the windowsill was UPVC which was mostly 15mm

thick. In the firefighting staircase, the window head and jambs were UPVC which was mostly 3mm thick, and the windowsill was plasterboard. In both cases, the fire safety experts agreed the UPVC was not an appropriate material to be used as a cavity barrier. They agreed that paragraph 9 of ADB advises that cavity barriers should be used to subdivide cavities which could otherwise form a pathway around a fire-separating element and close the edges of cavities to reduce the potential for unseen fire/smoke spread. They agreed that ADB recommends that cavity barriers are provided to close around windows in addition to introducing the necessary cavity barriers or fire stopping at compartment wall junctions.

98. Ms Leigh opined that a reasonable level of safety was still provided in view of the plasterboard linings, arguing that the UPVC window board closed the cavity and referring again to the sprinkler system. However, she added that "*if there are instances found where this is not the case and the confirmed construction presents a risk of fire spread then I agree remedial works are required to form a cavity closer*".

99. Mr Clarke said that because cavity barriers had not been provided to close the windowsills in flats and window jambs in the staircases the level of protection expected by ADB (which at paragraph 9.13 specifies appropriate materials for cavity barriers) had not been provided. He pointed out that external wall cavity barriers are to be included in several locations to allow for possible workmanship defects, resilience in a fire, and potential movement/deflection. This, he said, was part of the layered approach to fire safety expected by ADB. The lack of cavity barriers in these locations meant that external fire spread was not adequately inhibited and would result in the unseen spread of fire in the external wall cavities earlier than would otherwise be expected.

100. We accept the evidence of Mr Clarke; these were defects, caused a building safety risk and were relevant defects. The experts agreed that, if these were relevant defects and the window frames of wall type 2 remained in place, the work needed to reduce the risk to a tolerable level could reasonably entail installation of cavity barriers at the limited number of window jambs in the wall type 2 construction.

101. Wall type 2 also included cavities through which ventilation ductwork was installed. Cavity barriers were not installed around these. The fire safety experts agreed this was a defect (by reference to paragraph 9.2 of ADB, as above) and we agree. Ms Leigh said the risk arising from this was tolerable because these penetrations are all above the ceiling line and the cavities do not continue across compartmentation lines. She had also sought to rely on the sprinkler, but it was pointed out in cross examination that the sprinkler heads are below the level of the ductwork. Mr Clarke said this was a building safety risk because a fire could start inside the flat or (above the level of the sprinklers) at the ventilation fan and spread to the ductwork. A fire burning into the ceiling and/or through the ductwork could then directly attack the combustible materials in the external walls. Without a cavity barrier, a

fire could spread faster to the external walls than would otherwise be expected.

102. Again, we prefer the evidence of Mr Clarke; the defect caused a building safety risk and was a relevant defect. The experts agreed that, if we so decided, the work needed to reduce the risk of fire spread to a tolerable level could entail installation of steel sleeves around the ductwork or filling the cavity with mineral wool.

103. The fire safety experts agreed that the UPVC frames themselves were not of limited combustibility, but that the relevant building regulations did not require this of "window frames". Mr Ferguson opined that these regulations and associated guidance did not adequately describe the conditions at Vista Tower, where a window spans across compartment lines (at the separating walls between flats and those between the flats and escape stairs). That view was not seriously challenged and is consistent with the findings from the Grenfell Inquiry about the inadequacy of the building regulations (and the relevant guidance and practices at the time). We agree with him.

104. Ms Leigh said that UPVC would tend to char rather than burn, but had agreed there was a risk that, in a fire, the UPVC frames would melt and distort, creating a potential route for fire spread between compartments and into the escape stair. Ms Leigh noted that even with a non-combustible frame if fire broke out "*as a result of flash over (ineffective sprinklers); flames could extend 2m and break into the window of the flat above*", but agreed that removal of the UPVC would reduce the overall risk.

105. Mr Clarke said that, in the absence of fire test information or detailed analysis of the UPVC frames (Mr Ferguson said any such assessment would need to focus on the risks posed by the frames where they bridge compartment lines), their removal was necessary. Mr Clarke referred to guidance published by the Centre for Window Cladding and Technology in 2020. This distinguished between small well-separated individual windows in punched openings, and systems spanning compartment walls or floors. It observed that even timber frames were likely to perform better than UPVC frames because they would not melt or deform and will maintain their integrity for longer. It warned that combustible framing materials in curtain walling or window systems in tall buildings were "*an area of significant uncertainty*". Mr Clarke noted when cross-examined about this that UPVC frames may themselves contain cavities and opined that as matters stood the UPVC window materials remained a risk of fire spread which might not be tolerable. He referred to the same analysis in relation to the fire stopping at compartment lines, which would obviously be compromised if the frames distorted.

106. Ms Leigh opined that replacement of the frames was not necessary. She said the sprinkler system would (once the defects with that were remedied) reduce the likelihood of distortion or flashover and so fire

break out through the windows. She said that plasterboard or other fire resisting materials provided protection to the UPVC and if effective fire stopping and cavity barriers were provided and suitably fixed these would delay lateral fire spread. Ms Leigh accepted that the only testing of UPVC frames has been on small buildings, so there is uncertainty about their risk when used as unbroken ribbon glazing on tall buildings. She suggested that if the windows had good fixing points the centres of the windows were more likely to fail than the edges.

107. Mr Murray recognised that PAS9980 may address risks in terms of wall types rather than individual components, but said he did not see the need to remove the entire window system, unless fire engineers consider it presented an unacceptable risk to retain in all the circumstances. The work needed to address the combustible insulation was to remove and replace the spandrels (blanking panels) and insulation products, together with the firestopping work noted above. He described three remedial options in relation to wall type 2:

    a. only reconstruction of compartment wall junctions (including plasterboard edges, the addition of a metal plate to the rear face of the abutting frame and installation of 60/120 minute fire stops as appropriate), removal of combustible insulation and replacement with mineral wool and replacement of the blanking panels (his "**option 1a**");

    b. option 1a and, if "*sufficiently justified*":

        i. splicing in new metal replacement frames at compartment lines only (his "**option 1b**"); or

        ii. comprehensive replacement of frames (his "**option 2**").

108. In cross examination, Mr Murray accepted that apart from the ground and mezzanine levels about seven windows per floor crossed compartment lines, so would need to be replaced under option 1b. Sometimes it may not be possible to replace a narrow section, splicing in a new frame may be complex and a contractor would need a specialist team.

109. Ms Rampersad produced a lengthy list of corrections to her report on quantum, which confirmed her assessments of the costs of these options ranged from £1,249,827 to £3,712,734. Those were higher than the figures in her original report, which had suggested £1,733,490 for "option 1b"; that figure was reduced slightly in her corrections and seems unrealistic given the extent and likely difficulty of the matters briefly mentioned above.

110. It may not be necessary to divide wall type 2 into its constituent parts. It was a walling system which contained relevant defects. We consider that it was reasonable to replace it as a whole, particularly in view of the agreed uncertainty about UPVC frames and the lack of fire stopping and cavity barriers noted above and below.

111. If it is necessary to examine the UPVC frames in isolation, it seems to us that these combustible frames were themselves a defect (while not a failure to comply with the building regulations) and presented a building safety risk for the reasons agreed by the fire safety experts as noted above. In summary, there was a risk that, in a fire, the UPVC frames would melt and distort, creating a potential route for fire spread between compartments and into the escape stairways. They were themselves a relevant defect, whether they were a tolerable or intolerable risk. That risk was not tolerable on the information available, for the reasons given by Mr Clarke.

112. If that is wrong and/or if the risk presented by the frames was tolerable, we consider that it was reasonable to replace the frames as a whole as part of the package of remedial works needed to remove and replace the combustible insulation and install the necessary fire stopping and cavity barriers. The possibility of splicing in frames at the many junctions with compartment walls had been considered by those involved in the design of the remedial works, as noted below. It was reasonable to decide this was not feasible or that the frames should simply be replaced instead.

Wall type 1

113. During the hearing, the experts agreed that the foam insulation injected into wall type 1 was probably PUR (polyurethane), which was more combustible than PIR (the material it had previously been said to be). Isothane Technitherm had been specified, which was a PUR product. The experts had already agreed that this insulation was exposed along a ~20mm wide gap across the top of wall type 1. In some locations, there were voids between the blockwork inner leaf and the concrete cladding panel where the foam had not filled the gap, and some where it had spilled out of the gap at the top. The internal linings varied, but were typically plasterboard fixed to timber battens.

114. The fire safety experts disagreed about whether the combustible foam insulation was a defect or a building safety risk. Section 12 of ADB advised that insulation products used in external wall construction should be of limited combustibility unless the wall complied with diagram 34. The experts agreed that wall type 1 is similar to the typical cavity wall, with a masonry inner and outer leaf, shown in that diagram. Diagram 34 indicated that combustible materials could be placed in the cavity where the cavity is closed at the top of the wall (unless the cavity is "*totally filled with insulation*"), the cavity is closed around openings and the two leaves of brick or concrete are each at least 75mm thick.

115. Mr Clarke said wall type 1 did not follow diagram 34 because the top of the cavity containing the combustible foam insulation was not closed (between it and wall type 2 above it) with a cavity barrier. Ms Leigh accepted that diagram 34 "recommended" the cavity be closed, but said it did not require a barrier with fire resistance and pointed out that where a cavity is "*totally filled with insulation*" diagram 34 does not

specify closing the head of the wall. She referred to a modelling scenario conducted by CHPK dated 6 December 2022 to inform their PAS9980 assessment, suggesting this indicated that the UPVC window sill was a sufficient closure of the cavity.

116. Ms Leigh was referring to the modelling scenarios which appear to have assumed fire stopping and cavity closers were provided and/or that the cavity was empty. As explained below, we consider that the modelling scenarios were merely that - exercises to enable CHPK to assess risks and prepare their final PAS9980 assessment in 2023. In any event, Ms Leigh accepted that the cavity was not fully filled. It is likely from the sample photographs taken by the experts on their inspections (which show large gaps in the wall cavity and indicate, from the lack of residue on the block work after the concrete façade panels had been removed, other large gaps particularly at the top of the wall) and the means of (and apparently patchy) injection of the insulation that the cavity was only partly and irregularly, and certainly not fully, filled. This alone left at least a small horizontal void running across the building at the top of the cavity between the concrete and block work walls.

117. We accept the evidence of Mr Clarke. As he had pointed out, the sample photographs also show a connected void immediately above the voids at the top of the cavity wall (because wall type 2 sat on small plasterboard shims supporting it above wall type 1), and another connected void extending down the interior face of the block work wall (because the interior lining plasterboard was fixed to timber battens and the like).

118. At the very least, a significant horizontal void or connected voids had been left running across the building between the two wall types (and was open to the combustible insulation below and above it), even apart from the agreed voids in the sections of the walls outside the flats. This did not comply with diagram 34, so the presence of the PUR insulation in wall type 1 did not comply with paragraph 12 of ADB. The wall did not comply with paragraph B3(3) or (4) of the building regulations. In any event, the combustible insulation and the relevant cavities/voids were, in the circumstances, defects.

119. Ms Leigh opined that the risk associated with wall type 1 was tolerable; the combustible insulation was largely encapsulated by concrete and it did not span compartment floors. The base of the wall was fully closed by the compartment floor construction. The C or F shaped external panels returned at the top to leave a smaller gap (20mm, as noted above) than had been expected earlier in the investigation and planning of the remedial works. That relatively narrow opening, she said, was either closed by the UPVC window sill or concealed by plasterboard wall construction. As with all the other alleged defects, she also relied on the sprinkler system and the two staircases in the building.

120. Ms Leigh did not have a satisfactory answer to the other cavities apparent from the sample photographs and highlighted by Mr Clarke

and Mr Ferguson in their report, as summarised above and considered below. She accepted that the additional horizontal void (above the horizontal void at the top of the cavity and below the UPVC window frame) was about 15mm deep. She suggested the connected horizontal void behind the plasterboard was insignificant. She was taken to PAS9980 at p.93, which includes the following about cavities in external walls, particularly those containing some combustible insulation:

"*Fires, started either internally or externally, can spread to a building's exterior envelope. Internal fires usually spread by breaking out through a window or another opening which is not fire-resisting. Although an open window would allow this to take place at an earlier stage, the propensity for this to occur is most pronounced at the point of flashover within the room of fire origin (at which point, window breakage is assumed). Once flames from, for example, a broken window have attacked the external envelope of the building, there is the potential, especially if the façades incorporate external wall construction and cladding that is combustible, for the fire to develop rapidly and fire to spread extensively. …*

A notable feature of external walls, and especially modern cladding systems such as a rainscreen cladding system, is the presence of cavities. These present the particular danger of concealed and extensive fire spread. As well as contributing to the speed of fire development, this mechanism for fire spread can, if not properly mitigated by cavity barriers, circumvent key features in the building's fire safety design. Most notably, in the case of a block of flats, this can allow the compartmentation between floors and between flats to be bypassed. …

That cavities can contribute so significantly is evident from many fires and is discussed further below. It is due, largely, to the elongation of the flames as they seek out oxygen, and the dynamics of heat transfer from, and to, flames within a confined space. This is further exacerbated when the cavity contains combustible material that is readily ignitable and that is able to release a significant quantity of heat when it burns. Such a situation can give rise to extremely rapid fire spread."

121. Mr Clarke said the PUR insulation was a building safety risk because it was not suitably protected and likely to achieve a low fire performance classification in terms of its reaction to fire, so a fire attacking the insulation would result in unseen spread of fire between flats and to the staircases. He was cross examined carefully by Mr Morris about how a fire might reach the insulation in wall type 1 if the building were in a "*remediated state*", with the combustible blanking panels removed and all other problems such as the missing fire stopping at compartment walls remedied. Mr Clarke accepted that he was not expecting fire to start in wall type 1 so much as in wall type 2. However, he noted that the sample photographs (such as those on p.159 in his report) showed and highlighted electrical cabling, running through open holes drilled through the blockwork into the cavity, which were a potential cause of fire. He also referred to the remaining risk of an external fire. He

accepted that, if a fire started inside a flat, a sprinkler system should limit the size of the fire and make it slower or less likely to spread to the insulation in the wall.

122. Mr Clarke had already noted that CIBSE guide E had indicated 88%/94% reliability of sprinkler systems, at least in reducing the risk of loss of life. Ms Leigh accepted that the research materials she had quoted were nearer 66% in relation to reducing injuries in the event of a fire. She agreed that even under the pre-Grenfell building regulations a sprinkler system was a minimum requirement for buildings over 30m and the top floor of this building was over 45m. Mr Clarke said a sprinkler system in this building was not something which would justify deviations from other minimum requirements, and Ms Leigh essentially agreed. Mr Clarke said that, even when the sprinkler system has been commissioned, it should not be assumed it would activate every time. It operates using one or two heads to seek to contain a fire in a flat. The system becomes less effective when a fire has spread because the flow rate will be insufficient; systems can only serve a limited number of heads. He explained that temperatures of 60/70 degrees should set off a sprinkler. Obviously sprinklers are of less assistance with external fire spread; they would not activate until the fire had broken into the flat from the external wall, when the fire may already have spread up the outside wall.

123. Ms Leigh agreed there were no sprinklers in staircases/corridors, or the AOV corridor, only inside the flats. She agreed that the sprinkler system could not help an external source fire, from a car or bin or otherwise, but said if everything was remediated apart from the insulation in wall type 1 the concrete at the base would provide protection up to about 5m from ground level, so she would consider external fire a low risk "*in that scenario*".

124. The fire and architectural experts had all agreed that the remedial work procured by the Applicant for wall type 1 was more extensive than the solution they considered "*strictly necessary*" from a technical perspective. It involved the removal of the concrete cladding panels and the injected foam insulation, and installation of a new steel framing system, mineral wool insulation and cladding panels. Ms Leigh referred to the guidance in PAS9980 that alternative options (to remediation of all deficiencies) need to be explored and an appropriate option chosen such that the cost of remediation is proportionate to the risk and that the most cost-effective solution is implemented. Mr Clarke agreed (in connection with consequential works) that the chosen remedial works were not "*proportionate*".

125. Mr Clarke and Mr Ferguson agreed that the work needed to reduce the risk of fire spread to a tolerable level was provision of a seal to the top edge of the foam/cavity between the external concrete cladding panel and the inner blockwork wall. Ms Leigh opined that a fire resisting seal was not necessary and work to remediate wall type 2 would reduce the risk of lateral fire spread. Mr Murray agreed that, if a solution was

needed, addition of a fire seal to the joint at the top edge of the concrete panel/blockwork below the window sills was a reasonable one. Neither of the quantum experts estimated a cost for installation of such a seal. Mr Morris suggested that Ms Rampersad had, but it seems to us that she gave no such opinion with sufficient clarity. Her analysis of each cost incurred in the Applicant's wider remedial scheme suggested a figure of £292,758 or less for horizontal fire barriers, but that was part of the scheme which would open everything up, replace wall type 2 entirely and replace outer layers of wall type 1. To give the benefit of the doubt, we assume that her cost of £3,712,734 for Mr Murray's "option 2" (including replacement of wall type 2 entirely) included or would in effect have provided an adequate cavity barrier or seal to the top of wall type 1.

126. However, the experts agreed that the scope of the remedial works may have been affected by other considerations, such as requests by building control or other statutory bodies, a lack of sufficient information about the as-built construction and pressure from stakeholders to adopt cautious or rapid resolutions, but the relevance of such matters was for the tribunal. They all agreed that, if removal of the combustible foam insulation in wall type 1 was required to remedy the building safety risk, the scope of the remedial works was reasonable.

127. Mr Clarke was also referred to photographs in his report showing what was described as poor condition of the internal blockwork as an additional risk factor which might add to those which the opinions in reports had been based on, with holes, missing mortar and blocks which were missing or cut away. We do not consider that we should put any weight on this; the evidence was too little (to enable assessment of how widespread this was, whether holes were in fact nonetheless filled and what had been disturbed on opening up) and may have been raised too late (to give a fair opportunity for any evidence in response).

128. The experts had dealt with the lack of cavity barriers between wall types 1 and 2 under a separate heading, largely repeating their analysis of the component parts of the external walls. They agreed that the UPVC windowsill had been used to close the top of the wall type 1 cavity, but was not fully sealed against the plasterboard wall lining and there was a cavity directly below the windowsill which extended horizontally into and across wall type 2, exposed to the combustible insulation in both wall types.

129. Ms Leigh opined that the lack of cavity barriers was not a defect because at the relevant time alternative routes to demonstrating compliance had been available. She accepted there was no evidence of any such assessment having been undertaken at the time of construction, but opined that the wall type 1 construction was unlikely to contribute to rapid fire spread. She mentioned experience of reviewing test evidence of similar constructions on other projects and

opined that if the wall was tested to BS8414 the test results would meet the criteria set out in BR135.

130. Mr Clarke said that the missing cavity barriers or equivalent materials to close the top of wall type 1 did not follow the ADB guidance and was unlikely to be capable of demonstrating compliance with paragraphs B3(4) and B4(1) of Schedule 1 to the regulations by any alternative route (where any assessment in lieu of test evidence should be fully documented and included as part of the fire safety design).

131. Mr Clarke said the unsealed cavities and combustible insulation were likely to provide a ready medium for horizontal fire spread between flats and to the escape staircase. He said that once fire had entered the cavity or the exposed insulation was attacked, fire and smoke could spread unseen. Ms Leigh emphasised that vertical fire spread (circumventing internal lines of fire resistance) was the predominant hazard associated with external walls and opined that a holistic assessment using PAS methodology could conclude a tolerable risk rating.

132. Mr Clarke opined that cavity barriers, or one of the equivalent materials listed in paragraph 9.13 of ADB should be used to close around openings in a masonry cavity wall following diagram 34. He noted that, while the purpose of closing cavities is to limit the risk from a (chimney) stack effect, closure would also resist attack by fire of any combustible materials in the cavity. His opinion was that closing as he advised would protect the foam insulation from fire attack and resist unseen spread of fire and smoke.

133. Again, we accept the evidence of Mr Clarke. The PUR insulation and the horizontal cavities above it (let alone the connected cavities) in wall type 1 caused building safety risks for the reasons he gave and were relevant defects. We consider the remedial works below by reference to the evidence summarised above.

Other alleged defects

134. The experts agreed that the internal compartment walls between the flats included relevant defects because they were not installed to the manufacturer's requirements; the plasterboard was not taped and jointed, gaps at the head of the wall were not sealed with fire stopping, the service penetrations were not sealed with fire stopping and there was insufficient mineral wool insulation in the cavity. They agreed the same in relation to the compartment walls between the flats and the corridors, which were agreed to have all the same defects save for the last (mineral wool insulation in the cavity). They agreed the fire resistance necessary for compartmentation between flats had been reduced by the as-built construction, including the missing fire stopping. They agreed that the remedial works in relation to the corridor walls were necessary and reasonable to reduce the risk of fire spread to a tolerable level. They agreed that if the same works were

carried out for the compartment walls between the flats that would be reasonable.

135. The experts agreed that inadequate fire stopping to service penetrations passing through the wall between the plant room and lift shafts, and missing deflection details and proprietary seals around penetrations through the walls between the corridors and the flats, failed to comply with paragraph B3(3) and were relevant defects which should be remedied using ablative batts/intumescent sealing products or the like on a "find and fix" basis. Similarly, they agreed that missing putty pads (or any other adequate fire stopping to maintain the resistance of the compartment wall) for the electrical sockets in common areas were relevant defects and should be remedied by inspection and installation of suitable putty pad or similar products where needed. They also agreed that inadequate fire stopping on the mezzanine floor was a relevant defect and the remedial works described in respect of them were likely to be necessary and reasonable to reduce the risk of fire spread to a tolerable level.

136. The experts agreed that excessive gaps between the fire door frames and their openings in compartment walls, ventilation louvres and missing hinge screws were likely to be from the time of installation. These would reduce the fire (and smoke) resistance of the doors and were relevant defects. Remedial work could reasonably entail filling gaps with mineral wool and/or intumescent sealant products. They agreed the service riser doors in the firefighting staircase were defective because they had excessive gaps between the door and frame, inadequate firestopping to penetrations and other deficiencies, and this was likely to arise from the conversion works.

137. These were defects in breach of paragraphs B1, B3(3) and B5(1) and severely limited the fire resistance of the doors; they were a building safety risk. Reasonable remedial works, to reduce the risk to a tolerable level, could entail replacement of the fire door sets as proposed in the remedial works. The experts also agreed that the common area fire doors and the doors to the vodaphone plant room on the fourteenth floor (probably part of the original construction, and on an escape and fire service access route) were defective (they were unsure about whether these were part of the conversion works). Amongst other things, there were excessive gaps between the door leaves and frame, and unsealed gaps between the frame and supporting construction. They agreed work needed to reduce the risk to a tolerable level could reasonably entail repair or replacement of the doors with suitable fire door sets.

138. The experts agreed the reception fire doors were probably from the original construction, not replaced during the conversion works, and despite excessive gaps did not represent a building safety risk in view of the other features of the building. The experts were unable to assess whether the other alleged defects in relation to the fire and exit doors resulted from incorrect installation or were the result of general

deterioration following installation, or were or were not a relevant defect (in the absence of any evidence of fire rating certification).

139. The experts agreed that the mezzanine terrace (with a bituminous felt floor) was not a relevant defect. Mr Clarke opined it was an aggravating factor but the effect was negligible compared to a fire spreading from an adjacent flat. The experts agreed the plasterboard insulation boards in the wall type on the north elevation were not a relevant defect and did not need to be replaced.

140. The experts did not agree on the MDF linings in the internal escape staircase on the south side of Vista Tower. Ms Leigh noted they were painted white, said it was "possible" that the painted finish was sufficient to comply with building regulations, subject to further investigation and test, and referred to the second staircase. Mr Clarke said the painted MDF was unlikely to meet the reaction to fire classification set out in ADB. He also noted that some edges and surfaces of the MDF were unpainted. He opined that, if ignited, the configuration and extent of the MDF linings would increase the rate at which a fire would spread internally through the tower. He acknowledged the second staircase provided an alternative means of escape, but said occupants could become trapped by fire/smoke spreading to multiple floors via the staircase. We accept his evidence; this was a defect and a building safety risk.

141. The experts agreed reasonable remediation could include painting the MDF lining with a suitably tested intumescent coating, although this would have an ongoing maintenance cost. Mr Murray said replacing the MDF entirely seemed excessive compared with applying a coating, but might be justified on other grounds. We agree with Mr Ferguson, who said that replacing the MDF linings was initially likely to be substantially more expensive than applying a coating but, in view of the ongoing management and maintenance costs of retaining the MDF with a coating, replacing the MDF was a reasonable solution.

142. The experts agreed that the use of timber/plywood balustrades in both staircases was not a relevant defect. They agreed that the combustible material in the soffit of the car park may be a defect but was not a building safety risk given their configuration in relation to the means of escape and the external walls. They agreed the use of timber fencing to enclose the bin and bike stores in the open car park under the tower failed to comply with ADB and was a defect, but opined that it was not a building safety risk because it presented no greater risk than the cars parked in this area; they suggested the stores could have been relocated rather than enclosed with blockwork. They agreed that some of the materials at the entrance to the tower had been misidentified as combustible when they were not. They agreed that an area of combustible material installed to the underside of the soffit above the reception area is not a defect and does not cause a building safety risk. They also agreed that there was no need for separate horizontal cavity barriers in view of the floor slabs and no separate remedial works

appeared to have been proposed in relation to this item (save in relation to the removal and replacement of wall types 1 and 2).

Review

143. The agreement between the experts, that from a purely technical perspective the remedial works for wall type 1 were not proportionate, has very significant weight. However, they acknowledged that the scope of the remedial works may have been affected by other factors. Do these justify what was done?

144. As noted above, from 2020 the Applicant had engaged experts and procured proposals for a remediation scheme based on the CAN, which would have required removal of all combustible material. In 2022 they switched to a new approach based on the (then new) PAS9980, because this might reduce the scope of work and/or enable them to secure BSF funding for all works advised. The PAS9980 report from CHPK advised that the presence of the combustible insulation in wall type 1 was a "*high*" risk and it needed to be removed. In these proceedings, the experts agreed that advice was too cautious (or "*conservative*", as they put it). But was it reasonable to rely on it as the basis for the design of the remedial works and not to revisit it later to attempt to reduce the scope of the works?

145. Armed by Ms Leigh and Mr Murray, Mr Morris attacked the wording used in parts of the PAS9980 report when cross-examining Mr Pemberton. He argued, in effect, that the contents or other matters should have prompted a review of the advice CHPK had given. He referred to the CHPK modelling scenario mentioned above. This document is dated 6 December 2022 [G/24] and considered six scenarios, describing different sample variations of wall types 1 and 2.

146. These scenarios assumed the main combustible panels in wall type 2 had been replaced with non-combustible alternatives and cavity barriers had been installed. They describe samples of wall type 1 which are rather different from those mainly found in the remedial works (some with rigid insulation filling the cavity and some with an empty cavity, for example). They suggested that plywood to the inner walls and any combustible "PIR" insulation would not need to be removed, if effective fire stopping or cavity closers were in place around openings and the edge of the façade system. TFT sent the modelling scenarios report to the Applicant by e-mail on 9 December 2022 [H/42], noting that the report would inform the PAS9980 assessment. They explained that the modelling indicated the works could be undertaken from outside the building, so decanting residents should be avoidable although some screening would still need to be provided in the flats.

147. CHPK then produced the next version of their PAS9980 report, which described various wall types including wall type 1C (as found on most of the building during the remedial works and described in these proceedings as wall type 1). Their samples were based on holes drilled

in different locations through the walls, describing 135-140mm PIR insulation between the external concrete panels and thermalite blocks, 18mm plywood on the inside face of those blocks and plasterboard on the inside face of the plywood. Wall type 1E was similar, but had thicker rigid PIR insulation in the cavity (225m) and a dry lining gap instead of the plywood in wall type 1C.

148. In their PAS9980 report, CHPK advised repeatedly that the risks of wall types 1C and 1E were high and remedial works were required. They took into account such matters as the sprinkler system, access to more than one staircase and smoke control (AOVs) as positive factors, and vehicles parking under the overhangs and the open-sided car park directly underneath the building as negative factors. The remedial works they recommended in relation to wall type 1 included removal of the "PIR" insulation in wall types 1C and 1E and replacement with non-combustible materials, as noted above.

149. Mr Morris commended to us the report from Mr Murray, who was very critical of the planning and procurement of the remedial works. Mr Murray had not been involved in procuring such works himself, but had reviewed a number of remedial schemes. He said, in effect, that there had been several opportunities to review the scope of the remedial works after the PAS9980 report, suggesting missed opportunities and what he said were gaps in logical planning of the work.

150. In particular, Mr Morris pointed to part of the more detailed risk assessment description in section 8 of the PAS9980 report, which said wall types 1 and 2 had a shared inner leaf ("*inner part of the wall from floor slab to the floor above*") so the combustible insulation with plywood in wall types 1C and 1E had the potential to spread fire because there was no sheathing board and no non-combustible insulation between the steel framing system, advising that the risk of fire spread in these types of wall could not be considered tolerable and remedial works were needed. In cross examination of Mr Pemberton, he suggested scenario 4 (from the previous scenario modelling report) in particular was at odds with this. He suggested that the discrepancies should have been reviewed at the time, or by reference to drawings produced by ADI, or in any event when Lancer Scott carried out their investigations and prepared their design report and proposals between June and September 2023. Mr Morris referred to the first Lancer Scott survey report on their investigations in June and July 2023 [G/27/10]. This showed external panels in wall type 1 which were larger than expected and C (or F) shaped, leaving a far smaller gap at the top of the cavity than had been expected, and found or assumed there was no plywood on the inner face, only plasterboard.

151. It may be easy to criticise after the event. However, it was clear from the cross examination of Mr Pemberton that the scope and planning of the works was driven initially by the BSF grant funding application and eligibility process, and seeking to avoid the need to decant residents. The advice in the original PAS9980 reports in 2022 left the risk of

decanting, which TFT knew from other projects was expensive and likely to involve unpredictable delays. The cost of decanting would not be covered by the BSF and if interior linings had to be removed they would have to go through a process of decanting. The modelling scenarios report seems to be part of the efforts which were made to avoid such costs. From late 2022, the works were also driven by significant pressure from the Secretary of State in the RO proceedings.

152. It is surprising that the change from the CAN to PAS9980 appears to have expanded the works, when it would have been reasonable to expect that the change would reduce them. The expansion appears to have been the result of the further investigatory works (which identified a variety of differing wall types and configurations at an inevitably limited number of test locations in this large occupied residential building) and the cautious approach taken in the PAS9980 report.

153. At least before the remedial works began, no-one working for the Applicant can reasonably be expected to have known how much of the building was covered with which wall type or what other configurations of the observed wall types, or other wall types or defects, might be found when the full remedial works were carried out. The Applicant's representatives had been asking R1 and their solicitors for a construction package since January 2021 but nothing of any substance was provided until September 2023, after the disclosure order made against them (and the successor firm to Gould) by the tribunal in the RO proceedings.

154. Particularly in 2022 and 2023, when the PAS9980 standard was new, it does not seem unreasonable for CHPK to have taken a cautious approach. In any event, it was reasonable for the Applicant to rely on the advice in their report without attempting to conduct their own analysis of the reasoning in it. Ms Leigh accepted that CHPK were reputable advisers and a sensible choice, as were the other professional advisors the Applicant had appointed.

155. The modelling exercises gave different configurations from that shown in most of wall type 1 (with the cavity completely full in scenario 4 and an empty cavity in scenarios 5 and 6; scenarios 1-3 describe different types of wall type 2). The exercises, particularly scenario 4, had been criticised by other fire engineers (Design Engine in January 2023, as noted below). In any event, these modelling exercises were carried out to inform the PAS9980 assessment, which apparently took them into account but decided on a more cautious approach. ADI had for the previously planned remediation scheme produced drawings showing differing wall types, but a variety had been described in the CHPK PAS9980 report and many earlier reports. ADI themselves fell away when it emerged they did not have the requisite insurance cover for work of this high-risk type. The reference in the PAS9980 report to a "*shared inner leaf*" did not call for the report to be challenged either, because it should be read in context. Mr Ferguson confirmed that in his view the inner leaf of most of the wall was shared - the concrete and

foam insulation below and the UPVC/insulation above could reasonably be described as a shared inner leaf.

156. Further, the Applicant was by then already under serious pressure, in the RO proceedings started by the Secretary of State in 2022, to state its case in relation to the relevant defects (they did so by reference to the PAS9980 assessment, which the Secretary of State then agreed) and progress the remedial works. In February 2023, the BSF confirmed that wall types 1C and 1E, with the proposals to remedy them by removing the combustible insulation and carry out related works as set out in the PAS9980 report, were eligible for funding. Even apart from the matters noted in the previous paragraphs, we consider it reasonable for the Applicant to have (at least in part) relied on the BSF grant funding process to test the advice in the PAS9980 report.

157. When it comes to the opening up work by Lancer Scott, we are not satisfied that the lack of observed plywood called for review of this aspect of the remedial scheme. The CHPK assessments had decided that any plywood could be retained, avoiding the need for decanting. They had also advised repeatedly that the combustible insulation in the cavity was a high risk and needed to be removed. The C/F shaped panels might have prompted a review or questions about their extent (Mr Pemberton could not say whether CHPK had been asked specifically about this, only that the surveys would probably have been shared with them; we do not know whether if asked they would have changed their advice), but it was reasonable not to stop and review again with CHPK or otherwise. The Applicant had in effect already tried and failed to reduce the scope of remedial works by switching from CAN to PAS9980, and was following the advice in the PAS9980 report - having already worked with CHPK to seek to reduce the costs of the remedial works and been pressed in the RO proceedings to commit to the final report.

158. It appears the only fire engineering advice the Applicant had seen criticising the CHPK reports criticised them for not being cautious enough. Design Engine (as fire engineer for ADI) had reviewed the CHPK reports in January 2023 [E/5.2/115]. They queried scenario 4 from the modelling exercise, indicating that to provide a fire barrier the cavity in wall type 1 would need to be over fixed with a stainless steel plate or the "PIR" insulation would need to be partially removed and replaced with a compressed, rated mineral wool fire barrier. They warned that the condition of the concrete façade panels may have corroded or become unstable over time and advised consideration of the structure of the existing concrete panels and inner leaf blockwork. In relation to wall type 2, they also warned that correct installation and design of vertical compartment walls may require breaking the ribbon windows at compartment wall positions. They also criticised various assumptions which they said were made in the CHPK report and were "*optimistic*".

159. The Lancer Scott survey results were not provided until July 2023. The discovery of the C (or F) shaped panels - and the bonding of the combustible foam insulation to the panels and the inner blockwork - was discussed between Lancer Scott and the professionals (including Kiwa, the fire engineers engaged by Lancer Scott, and the building control officer). Their discussions focussed on whether to retain the concrete panels and remove the blockwork inner leaf from inside (likely to require decanting), or remove the panels and work from outside as planned. As before, TFT stressed the need to avoid decanting.

160. Later in July 2023, Lancer Scott produced their "option 3" proposal which they said "*…responds to the existing planning consent … removes any latent liability on the concrete panel and designers can attain all necessary aspects of compliance for building regulations*." They explained that specific opening-up works would be needed to enable them to validate this design, which was ultimately chosen as the "*most sensible*" solution (said Mr Pemberton). Mr Ferguson accepted in cross examination that because Lancer Scott were taking responsibility for the design and their work under the design and build contract, they would be inclined to be cautious.

161. Mr Murray said he struggled to understand the necessity for this work on fire safety grounds, since closure of the wall type 1 cavity would have sufficed. He accepted there could be a range of reasonable responses and there may be reasons why this option was preferable. He accepted that availability of suitable remedial works contractors had been limited by existing workload and capacity, and a risky strategy may be a factor which makes contractors less willing to bid. He did not dispute that the BSF was testing the relevant proposals/costings at each stage and they had their own independent expert advice from Mott MacDonald "*to some extent*" to help them to do so.

162. It is obvious that the remedial works team were all proceeding on the basis that the foam insulation had to be removed, as advised by the PAS9980 report. In view of the significant time pressure that existed, we are not persuaded that it was unreasonable to fail to press pause and attempt to go back to the drawing board to ask CHPK whether a way could be found to leave the combustible insulation in place. Lancer Scott were required to produce their design for the remedial works in September 2023, the end of their pre-contract services period. The directions given in the RO proceedings required the Applicant to produce their full proposed specification of the remedial works at the same time. As expected, they did so using the design produced by Lancer Scott. Again, this appears largely to have been driven by the requirements of the BSF and the Secretary of State, who promptly agreed the specification of remedial works which had been produced by Lancer Scott and grant funding for those works.

163. Further, this point was in effect the deadline for an Initial Notice for the remedial works to take advantage of the established building control regime through local authorities. Otherwise, this would shift to the

Building Safety Regulator ("**BSR**") in October 2023 under the new building control regime for tall buildings. Ms Leigh accepted that the industry was well aware of likely problems with this new and complex regime, for which staff had not been recruited. She agreed that, as anticipated, there had been huge delays in seeking approval from the BSR and many applications had after delays been rejected because additional information was requested. She agreed this had been a legitimate concern at the time and there had been a real benefit to "*getting in*" before October 2023.

164. As the Applicant had pointed out, R1 had been notified of the RO proceedings at an early stage and had (through their previous solicitors, Freemans) declined an early invitation, prompted by the Applicant, to seek to be joined to those proceedings. We asked whether that was relevant in relation to R1 and potentially the other Respondents of which Mr Frankel or Mr Dreyfuss remained directors, since they had in effect declined the opportunity to make representations about the alleged relevant defects and the scope of the remedial works. Mr Morris argued strongly that was not relevant, the Secretary of State had opposed joinder of R1 and others (including arguments about jurisdiction) and in any event the other Respondents should not be tarred with the same brush. Accordingly, we give this no weight, but it appears to be another example of the Applicant having taken a careful approach to the scope of the remedial works and the corresponding costs, seeking to mitigate these despite the RO proceedings and public pressure. It was not disputed that Teacher Stern (the solicitors for R1 and R3-16) attended the RO hearing to observe.

165. Sections 83-84 of the Act require the landlord as accountable person for an occupied higher risk building to assess building safety risks (defined for these purposes in section 62, including a risk to the safety of people in or about the building arising from the spread of fire) as soon as reasonably practicable and promptly take all reasonable steps to prevent a building safety risk materialising or reduce the severity of any incident resulting from such a risk materialising. The Higher Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023 were made in August 2023 and in force from January 2024, when sections 83-84 came substantively into force. Ms Leigh was referred to the prescribed principles at regulation 4, including to: avoid building safety risks, combat building safety risks at source by introducing proportionate measures to address, reduce, mitigate and control the risk at the earliest opportunity, where reasonable to do so, replace the dangerous with the non-dangerous or less dangerous, and consider the impacts on residents and carry out engagement with residents. Ms Leigh agreed that the Applicant was in the process of replacing the dangerous with the non-dangerous and that her expert opinions were technical, not including such matters as the need to consider the impact on and engage with residents.

166. Ultimately, as Mr Hickey and Miss Gillies pointed out, the residents of Vista Tower had been living in unsafe conditions since they took up

occupation and then throughout the earlier attempts to check/reduce the scope of the remedial works and costs (for example, changing from the CAN to PAS, considering in 2020 and 2021 whether new frames could/should be spliced into the window frames at junctions with compartment walls rather than replacing all of the frames, and seeking to avoid decanting). It seems each investigation of a different part of the building had thrown up unexpected variations, challenges or new uncertainties. The Secretary of State had selected Vista Tower to use as an example to require that remedial works be carried out for this type of high risk building without further delay, to minimise the continuing risk to residents. At this stage and in the circumstances of this case, we consider that it was reasonable to press on with the remedial works based on the CHPK report.

167. The quantum experts had analysed £13,441,842.41 of the costs claimed by the Applicant. They said the £1,555,131 of this indicated earlier for costs incurred to a certain point (£518,667 for interim measures and £1,482,919 for remedial schemes) was too low and initially agreed this should be £1,596,001, then agreed this should be increased to £1,601,500.88 (excluding grant funding/service charge sums of £359,038, which had peculiarly been deducted from the original figure but which the Applicant confirmed were being claimed as costs incurred). We consider the appropriate figures below.

168. In relation to the balance of over £11,886,000, Mr Jenkinson initially assessed £10,055,192, increasing this in his report to £11,289,172.51 as a reasonable amount for the costs to be incurred. Ms Rampersad initially assessed £7,964,219, increasing this in her report to £8,142,219 (if the tribunal included the future costs of the remedial scheme proposed by the Applicant).

169. In relation to the matters they did not agree, we preferred the evidence of Mr Jenkinson to that of Ms Rampersad, who had never dealt with a fire safety remediation project before. Mr Jenkinson's assessments functioned as a useful valuation/cross-check of the costs which had been incurred. He explained the need for queried additional costs in relation to the Isowall panels, the need for electricians to track and trace any services, isolate and then reinstate and re-certify when the work was complete, allowing £1,000 per apartment. He explained why he had been satisfied that the items he had previously questioned were highly likely to be incurred, mainly the £70,000 for repairs to flooring. The Isowall panels would need to fit into a floor track, so the floors would need to be repaired when this was removed. We accept his evidence that the £500 suggested by Ms Rampersad for repairing each ceiling is far too little given the variations in the ceilings. When the Isowall is cut in, it will damage the ceiling and probably also the metal ceiling suspension system, which will need to be replaced.

170. We accept his explanation of the full amount claimed for the Denval window replacement because this was a fixed price offer. Tenderers had been required to measure themselves and/or take the risk on any

variation in quantities; the approximate quantity of 2,746 m2 (this was probably nearer 2,032 m2 and the difference may or may not have been intended to allow a margin for incidentals) had been referred to for tender analysis purposes. The only other quotation to provide compliant windows had been from Dudleys, who had sought to qualify their tender by reference to quantities so would have been required to firm this up if Denval had not been selected. With appropriate adjustments from SPONS, his estimated guide price for the window was £972.31 per m2, which was within 5% of the Denval tender price of £2,083,063.

171. In relation to supervision fees and contingencies, Mr Jenkinson referred to the high level of supervision needed for a high risk project. He had never seen a contingency of less than 10% on a project of this type. The figure of £1,065,152 for scaffolding was checked as a measurement around the external face, which will double count around corners, but a suitable reference price (£70 per sq m) had been used with this in mind. He confirmed that this was a lump sum fixed price contract, with the contractor responsible for errors in quantities. References (taken from the contract analysis) to quantities were unfortunate but seemed to be the product of the earlier exercise(s) for budget estimating. Undefined provisional sums were exclusive of overheads and profit.

172. Ms Rampersad had questioned whether some of the claimed costs had been incurred, because she had seen invoices rather than evidence of payment. She accepted that it had not been put to the Applicant's witnesses that costs had not been incurred. She accepted that under the provisions implied by law into construction contracts interim payments must be made, so when there is a payment notice and no pay less notice the presumption was that the relevant sum was due. She accepted the Miller Knight payment certificates had been issued by TFT and the relevant sums were payable. She had not seen the final account/certificate, but accepted the Applicant was liable to pay what had been certified. She accepted there was no evidence of any overlap between the work done by ADI and Lancer Scott in relation to their work under pre contract services agreements to design the different proposed remedial works schemes. She accepted the contract with Lancer Scott was a fixed price contract and the need for certainty. She agreed the works had started from the top down, initially the top floors and with floors seven to 10 now also stripped. She accepted that the effect of an instruction to stop work and reduce the scope could be a contractor claim for loss of profit.

Payments sought to be included in a RCO

"£1,999,980.90 costs incurred prior to the end of 2023"

173. As noted above, the first item was **£45,493** for "*Initial investigation of the relevant defects*". This is the total of fees for various cladding and fire safety investigations from 2019 to 2021, including fees from White

Hindle and Partners (who carried out the first cladding investigations for the Applicant), Wintech, TFT, JGA and others. The quantum experts agreed the total figure and there was no specific dispute about them. They appear to be costs incurred in obtaining expert reports relating to relevant defects or potential relevant defects (s.124(2A)(b)). In any event we consider they should be included in a RCO as costs incurred in remedying or otherwise in connection with the relevant defects found above.

174. The next claim heading was "*temporary safety measures*":

a. the first item under this heading was **£3,500** for advice from JGA on appropriate temporary measures. The quantum experts had seen an invoice for this. We are satisfied that it was incurred and should be included in a RCO for the same reasons as above (and as a cost incurred in taking relevant steps under s.124(2A)(a));

b. the next item was a claim for waking watch costs of £412,306.00 (which is the figure claimed earlier, exclusive of VAT). Ms Leigh had indicated, in effect, that these costs were reasonable (some were incurred before the alarm system was installed and some were incurred when a further waking watch was needed during works to address inadequate internal compartmentation in the common parts). Mr Jenkinson had agreed the slightly lower total figure of **£411,748** and we consider that is the figure which should be included in a RCO, as a cost incurred in taking relevant steps and in any event in connection with the relevant defects;

c. the next item was £14,426.20 for sprinklers, emergency lighting and related matters. The quantum experts had agreed a higher figure (of £16,983.20), but the difference was not explained. The costs shown in the breakdown provided all appear to have been incurred in 2021 in connection with the sprinkler system, emergency lighting, door alarm(s), the AOV system and the evacuation strategy/fire marshal training. We consider the total explained cost of **£14,426.20** should be included in a RCO for the same reasons as the waking watch costs; and

d. the last item was £13,749.90 for the applications made to the tribunal to dispense with the statutory consultation requirements. The costs shown in the breakdown provided all appear to have been incurred in connection with the applications in relation to the installation of the fire alarm and cladding remediation works, and later for the internal remedial works. Mr Jenkinson had agreed the lower figure of **£11,192.90** and in the absence of an explanation we consider that figure should be included in a RCO as costs incurred in remedying or otherwise in connection with the relevant defects found above.

175. The next claim heading was "*Internal remedial works*":

a. The first item under this heading was **£54,328** for the fire alarm works. This was paid to Cromwell Fire for installation of the fire alarm to the common parts. The quantum experts agreed the figure. We are satisfied that this sum should be included in a RCO for the same reasons as the waking watch costs.

b. The next items are the sums paid to Miller Knight for the internal compartmentation and fire stopping works in 2022 and 2023. The direct costs were £371,873.00. The technical experts had agreed the relevant matters were relevant defects and the works were reasonable. The quantum experts agreed that the invoices showed a small overpayment, so the gross amount should have been £359,623.68. They also applied a 2.5% deduction for the retention under the contract with Miller Knight, reducing this further. The Applicant contested both deductions. We accept the figure of the quantum experts, on the understanding that this seems to be a simple mistaken overpayment of invoices rather than payment of sums according to valuation certificates; **£359,623.68** is to be included in a RCO as costs incurred or to be incurred in remedying or otherwise in connection with the relevant defects. We do not reduce this further; more than a year has passed since the works were completed and the Applicant is likely to be liable to pay over the retention to Miller Knight now or in due course.

c. Preliminaries of £107,175.28 for those works was agreed by the quantum experts, who again deducted 2.5% from this for the retention. Again, we consider that the full **£107,175.28** should be included in a RCO.

d. Last in connection with the Miller Knight compartmentation and fire stopping work, a total loss and expense claim of **£44,679** was made. It appears this resulted from extensions sought by Miller Knight for delays relating to such matters as additional works to risers, additional fire stopping and renewal of partitions. TFT granted the extension(s) and certified the sums claimed for payment. The quantum experts had carried out their own revaluation of the claim, reducing this. In view of the nature of these works to remedy some of the relevant defects in the building before the external defects could be remedied, we consider it reasonable to have procured the works urgently and allowed the contractor to carry out the additional work identified during the course of those works. It appears reasonable to have paid the sums certified by TFT as contract administrator rather than seeking to challenge them. For the same reasons as above, we would include the full sum claimed in a RCO.

e. Finally under this heading, the Applicant sought £54,089 for the direct costs of the fire door works carried out by Miller Knight

(£39,353 for the "general" fire doors themselves, £3,536 for the ground floor fire doors, £2,489 to replace the outer and inner doors to the Vodafone plant room and £8,711 for the external fire exit door on the ground floor). We would exclude this last item because based on the agreement of the experts it does not appear to be justified in the way that the other costs do. We consider that the other items (a total of **£45,378**) should be included in a RCO, for the following reasons.

f. Not all of the problems with these doors were relevant defects, but the figure for the general fire doors includes the costs of remedying or in connection with serious relevant defects in those fire doors. In another case, without other serious relevant defects in the building, it might not be appropriate to include the other costs in a RCO; it is normal for fire doors to need maintenance over time and some of them may have been part of the pre-conversion construction. However, in this case, in view of the wide range of very serious relevant defects in this building, particularly the risks posed by the relevant defects noted above in relation to the external walls and their junctions with the internal compartment walls, our view is that it is appropriate to include all of the costs of these fire door works (recognising they will include work which may be in the nature of repair of deficiencies which may result from wear and tear, and other work which does not itself remedy relevant defects) to seek to reduce the severity of, or prevent or reduce harm to occupants that could result from, a fire, as costs of "relevant steps" pending remediation of the other defects relating to the external walls.

176. The next claim heading was design development. The first item was £10,330 to prepare the specification for the internal compartmentation works. These are the fees of Tenos for surveys and compartmentation drawings, and Socotec building control. The next item was £211,674.90 for the design of the façade remedial works prepared and proposed under the CAN. The invoices are all well before PAS9980 was published, from 2020 or 2021 from IDP, Wintech or Socotec, and then in 2021 from ADI for pre-contract survey and design services and work to open up areas to enable Tenos to carry out their compartmentation surveys (as above). The third item was £307,194.50 for the design of the façade remedial works under PAS9980 in 2022 and 2023. It includes the invoices from CHPK for their PAS9980 and other reports (£51,250), and from IDP Central Limited to assist with information for CHPK. It includes fees from Socotec in relation to the car park, Wintech for consultancy services and TFT (£10,800) for project management services. The pre-contract design services were provided by Lancer Scott, as the successful tenderer for these appointed on 29 June 2023, and pursuant to payment certificates were paid a total of £232,769.50.

177. Mr Jenkinson had (after he and Ms Rampersad had weeded out duplicate invoice(s) from an earlier higher figure) agreed the total of

these items was £529,199.40. Ms Rampersad had suggested that there may have been overlap between the ADI/Lancer Scott design work, but as noted above there was no evidence of this. Any overlap seems to us to have been reasonable in view of the change to the new standard to seek to reduce the scope of work and/or maximise BSF funding for the protection of leaseholders. We would include the total **£529,199.40** in a RCO as costs incurred remedying or otherwise in connection with the relevant defects found above, including costs incurred in obtaining expert reports.

178. Finally, £349,162.12 was claimed for project management and legal fees. These include TFT's fees for project management of the fire alarm works (£21,550) and the internal compartmentation, fire stopping and fire door works (£74,647.96), and £7,226.50 for legal fees in relation to the contract with Miller Knight for the internal compartmentation works. They include TFT's fees for project management of the ADI design works (£109,640.29) and the Lancer Scott design works (£136,097.37). Mr Jenkinson agreed the total figure of **£349,162.12** and we consider this should be included in a RCO. We recognise that part of the internal compartmentation (etc) project management figure will include costs which may relate to such matters as repair/maintenance of fire doors rather than remedying the relevant defects in relation to the fire doors. Our view is that such costs should be included as costs of relevant steps for the same reasons given above in relation to the fire door works.

179. For the avoidance of doubt, we do not deduct the pre-tender support or other recoveries from these sums. We accept that the Applicant may become liable to repay the pre-tender grant funding support to the BSF and/or need to account to the BSF for any recoveries in relation to the relevant sums. We consider that the waking watch relief fund contribution (towards the costs of the fire alarm in 2021) should not be deducted from a RCO in this case. We do not wish to impose a condition for reimbursement of the funding, in case that is inconsistent with the accounting provisions and arrangements under any relevant grant funding agreements or arrangements now or in future. If all the sums specified in a RCO are paid, it may be appropriate for the Applicant to offer to account to the Government (presumably through Homes England and/or MHCLG) for the amount contributed by the waking watch relief fund, even if they are not otherwise obliged to do so. If such an offer were not made or was refused and it can be shown that the Applicant cannot be required to reimburse the relevant grant funding, it might then be appropriate to deal with it under the balancing provisions described at the end of this decision. Similarly, we do not deduct any costs which had been funded from service charge payments, since (in view of section 124 and Schedule 8 to the Act) the Applicant may need to refund such payments if it has not already done so.

180. Accordingly, we consider that the rounded total of **£1,975,905** should be included for these costs incurred to December 2023.

"£11,852,517.60 costs incurred since January 2024/future costs of façade remediation works"

181. The first item claimed is £190,307 for design development. This is the sum provided (in the agreed fixed contract price of £10,054,974 under the building contract made in December 2023) for Lancer Scott to develop their design of the façade works to stage 5. It includes fees of architects and the usual range of engineers. Ms Rampersad sought to reduce the figure to £139,044.11, but we prefer the evidence of Mr Jenkinson for the reasons he gives at 6.43 of his report. The full £190,307 is reasonable and should be included as costs incurred or to be incurred remedying or otherwise in connection with the relevant defects found above, including costs incurred in obtaining expert reports, but is dealt with below.

182. The next claim headings appear to form the balance of the contract price of £10,054,974. As noted above, they were described as:

    a. direct costs of remediation (cost of remediating wall type 1 £1,755,844.00, cost of remediating wall type 2 £2,329,210.52, remediation of cavity barriers £289,555.95, works to internal staircase £439,587.00, works to under croft £114,317.00, works to the entrance/reception area £4,897.00);

    b. enabling and reinstatement works £2,305,981.97; and

    c. additional contract costs (contractor preliminaries £1,039,343.00, sub-contractor preliminaries £352,920.00, overhead and profit £782,701.00, contractor's contingency £463,597.00, building insurance £11,183.25).

183. These costs and the remedial works are described in detail in the report of Mr Jenkinson and its appendices. In view of our findings above, we consider that we should include the costs in relation to wall types 1 and 2, the remediation of cavity barriers and the works to the internal staircase.

184. We recognise that the works to the internal staircase include such matters as replacement of the timber balustrades which the experts in these proceedings agreed were not in themselves a relevant defect. Particularly in view of the fact that their replacement appears to have been requested by the relevant local authority officer for building control purposes and/or advised by Kiwa, the fire safety engineers engaged by Lancer Scott for the remedial works, we accept the submissions made by Mr Hickey about the types of consequential or other works involved in a package of works to remedy relevant defects which may be included in a RCO. These were works to remove combustible materials, not to carry out (for example) repairs or improvements unrelated to fire safety at the same time as the remedial works, and are a reasonable proportion of the cost of the works to remedy the specific relevant defects found above. We consider that these costs should be included, whether they are costs of relevant steps

or simply part of the costs incurred or to be incurred in connection with the relevant defects found above.

185. Similarly, as noted above, the experts had agreed that the combustible ceiling to the car park and the combustible timber fencing around the bin store (the subject of the "works to the under croft" above), and the timber fascia boards, soffits and frames in the entrance/reception area, may be defects but did not by themselves cause a building safety risk or could have been dealt with differently. Again, these were all combustible materials. Kiwa had advised that the ceiling finish be replaced with a new board system and the bin store fencing be replaced with blockwork. We accept that, as claimed in the Applicant's Scott Schedule, the works to the reception/entrance area were required by Lancer Scott's fire engineer to facilitate issue of a B1 rated EWS1 form, so were consequential to the "recladding works". The costs are a relatively small proportion of the cost of the works to remedy the specific relevant defects found above. We consider it reasonable to have incurred all of these costs as part of the overall package of remedial works for this building. They may not themselves have remedied relevant defects, but they should be included as part of the costs incurred or to be incurred in connection with the relevant defects found above.

186. However, Mr Jenkinson reduced the total contract sum from £10,054,974 to £9,578,617.54, as his assessment of the reasonable cost, for the reasons he explained in his report. The Applicant resisted this, arguing that (amongst other things) the contract had been procured carefully and negotiated with professional advice and following the BSF process; it is the sum they appear liable for. That argument has considerable force in this case but in view of the substantial amounts and difference involved, the contingency allowed below and the mechanism we have decided below to accommodate the proposals from the parties that there should be balancing provisions in a RCO, we consider that we should use Mr Jenkinson's figure to specify the initial payments, rounding this to **£9,578,617**.

187. Next, the contingency allowance of £1,005,497.40 was sought. Ms Rampersad allowed for no contingency. Again, we prefer the evidence of Mr Jenkinson. For a complex remediation project of this type, it is very likely that additional problems will be encountered and likely that additional costs will be incurred of this order. However, again, we consider that the figure to be included should be his reduced figure, rounding this to **£957,861**, as his recommended 10% of the basic figure decided above.

188. Next, the professional fees in respect of façade remediation works were sought. These were described as project manager/employer's agent fees of £140,135.92, cost consultant fees of £90,740.84, CDM advisor fees of £30,012.88, fire engineer fees of £60,000, façade consultant fees of £139,790, structural engineer fees of £25,000, clerk of works fees of £84,000, compliance inspector fees of £70,500, managing

agents fees of £50,274.87, project coordinator fees of £14,000 and legal fees of £63,121 for the procurement of these works. Ms Rampersad would reduce these to just over £553,000 and Mr Jenkinson would reduce them from the total of just over £767,000 to £738,874.43. For the reasons given in his report and the general reasons given above in relation to the initial sum to be specified in a RCO for the main contract sum, we will use his figure, rounding this to **£738,874**.

189. Accordingly, the total figure to be included in connection with the external remedial works is **£11,275,352**.

"Costs incurred since January 2024 in respect of other relevant defects"

190. Finally, the Applicant sought **£10,862.08** towards ongoing work on commissioning the sprinkler system. Unsurprisingly, it is taking time to access each occupied flat to carry out the necessary work. It was not disputed that the sprinkler system was defective, as noted below, and the defects caused a building safety risk. It was and they did. Further, the Respondents' experts relied heavily on a fully commissioned sprinkler system to mitigate the risks of the other defects in the building, as noted above. We consider that such costs should be included in a RCO as costs incurred in remedying or otherwise in connection with relevant defects, whether as relevant steps or direct remedial costs.

191. The Applicant also referred to anticipated further costs of sprinkler commissioning and other potential costs in relation to compartmentation between flats. They proposed a general provision in a RCO to seek additional sums in relation to such costs when they could be quantified. We are not content to include their suggested provision in this RCO, but since it appears to relate to relevant defects which were agreed by the experts in these proceedings it may be appropriate to deal with any costs which materialise under the balancing provisions of the RCO. Otherwise, the Applicant may need to make a new RCO application in future if they wish to pursue such sums in addition to those in the RCO.

192. The figures above are similarly broken down in the accompanying RCO. We keep in mind that the RCO will be for a very substantial combined sum, of over £13,262,119, if we make a single joint and several RCO against various Respondents as sought by the Applicant.

Respondent factors

193. We begin with the basic factual issues in relation to R1's development of Vista Tower, those associated with R1, and the explanations given about the funding of and proceeds from the Vista Tower development. We then compare these with the evidence in more detail, dealing with all these matters at the same time to avoid repetition.

194. In relation to its development of Vista Tower, R1 said all appropriate professionals and contractors had been brought in. It was said that the

"*directors and human agents*" of R1 had very little involvement with the practical aspects, leaving this to the professionals, but did not cut corners and were not cavalier about the standard to which the development was carried out. They said they had appointed Chaim Cik, an "*experienced developer*", to oversee the project, in addition to a firm of architects (Gould) as project managers and contract administrators, selecting the building contractor (Procare) from about four companies through a tendering process, with oversight from quantity surveyors (Trident) reporting to Mizrahi Bank, the lender which provided funding in relation to the development.

195. R1's witnesses said that checks and a fire risk assessment were prompted by Grenfell Tower and these, together with an inspection by the fire service, resulted in further fire safety work. Works required by a fire risk assessment dated 22 May 2018 were overseen by David Rokach and "KMP Solutions". They pointed out that the Applicant commissioned their own fire risk assessment, dated 6 August 2018, and the retention from the sale price was later released to R1.

196. In view of the matters noted in the following sections of this decision, we do not accept these versions of events (apart from the involvement of the named and other individuals and firms).

197. The TS Respondents, in particular, also disputed the Applicant's assertion that a "*significant profit*" had been made from the development. They said about £1.5 million had been made from a venture which took over two and a half years to complete, borrowing substantial sums and risking capital. Their explanations about this are described below.

198. Jack Frankel and/or Jacob Dreyfuss were directors of R1 and each of the Respondents other than R17 during the critical period of 15 February 2017 to 14 February 2022. Accordingly, by section 121(5)(a) of the Act, those Respondents are all associated with R1. Further, it was admitted that R16 (DFS Three Limited) controls R1 (it holds 80% of the shares in R1), so is also associated by R1 for that reason (under section 121(5)(b)).

199. The TS Respondents (R1 and R3-16) had refused to say whether as pleaded R17 (Midwest Holding AG) owned at least half of the shares in R16. Mr Frankel and Mr Dreyfuss had also each refused to answer questions about whether they had communicated with R17 about these proceedings, even when directed to do so, claiming privilege. We do not consider that these refusals were justified. It was accepted during the substantive hearing that privilege could only attach to the content of any communications, not the fact of whether there had been communication. It seems likely that R17 controls R16 for the purposes of section 121(5)(b) and, as the Applicant alleged, Mr Frankel and Mr Dreyfuss were seeking to shield R17 and its beneficial owner(s). We were told that the Frankel and Dreyfuss families were not beneficial owners of R17. The contemporaneous documents disclosed during

these proceedings refer to a Mr Leo Spitzer (and Mr Yuri Spitzer) as beneficiaries of R17, as noted below.

200. The Applicant's statement of case had alleged that the Respondents were part of a "*wider corporate structure*" and referred to the following explanatory notes on the Act:

> "*977 As well as allowing companies associated with freeholders and superior landlords to be required to make payments in respect of relevant defects, section 124 also gives the First-tier Tribunal the ability to require developers and their associated companies to make payments. It is also common practice for developers to use special purpose vehicles which are wound up after the completion of the development. The associated persons provision similarly allows the assets of the wider group structure to be accessed….*
>
> *1013 As discussed in the explanatory note to section 121, it is also common practice for residential property developers to use special purpose vehicles which are wound up on completion of the project. Remediation contribution orders can also be made against persons associated with the developer; this will include, for example, parent companies where developments have been run through special purpose vehicles which are thinly capitalised or have since been wound up.*"

201. The TS Respondents pleaded that they were not part of a wider corporate structure. They said R16 had provided a loan to R1 for the project and purchased share capital, and had earned dividends, but was not part of a corporate group. They argued the existence of a corporate group required companies held and managed collectively, with unified control. They argued each company was a SPV. Mr Frankel and Mr Dreyfuss would identify a potential property development opportunity, collaborate with investors, and engage contractors and consultants to carry out any construction works. Vista Tower was their most substantial project. The profit from Vista Tower was made, they said, following loans and investments made by "*unassociated*" individuals who collaborated to engage in a property investment opportunity. That was inaccurate, or misleading, in view of the matters noted below.

202. The Greenwood Respondents (R18-25) adopted the same pleading. Further, they said Jack Frankel was a director of the Greenwood Respondents solely for estate planning purposes; his parents are Mr Leslie and Mrs Zisi Frankel, the main directors. They said Jack Frankel did not have an executive role with these companies. They pleaded that they are not part of the same group of companies as R1, had no involvement in the development and are not development companies, but companies that invest in commercial (and some part-residential) properties. They pointed out that for the purposes of paragraph 3 of Schedule 8 to the Act (calculation of net worth of a landlord group for the purposes of the limits on service charge recovery from qualifying

leaseholders of costs in relation to relevant defects), a company is not to be considered associated with the landlord only by a shared director (regulation 3 of the Building Safety (Leaseholder Protections) (England) Regulations 2022, referring to section s.121(4) or 121(5)(a)).

203. The Applicants' opening submissions highlighted the involvement of Maida Vale Investments Limited ("**MVI**"). It appears MVI sits behind some of the Respondents and/or was a source of funding for and/or received funds from the Vista Tower project, with current reported assets said to be over £17 million and substantial sums apparently owed by it to some of the Respondents, as noted below. The sole directors of MVI are Leslie Frankel, Zisi Frankel and Joel Frankel (Jack Frankel's brother). MVI was therefore not a respondent in these proceedings; Jack Frankel was not shown as a director during the relevant period and MVI has not otherwise been shown to be deemed (by section 121 of the Act) associated with R1.

204. The BNI Respondents (R26-95 save for those excluded as described above) asserted that they were not part of the same group of companies. They produced schedules which sought to group the various BNI Respondents. Schedule 1 listed those said not to have been involved in or remunerated from the Vista Tower project. Mr Kornbluh later amended this schedule to remove R26 (Lingwood Limited), R27 (Clockwork Limited) and R71 (Portland Limited)). Schedule 2 listed those said to have been incorporated after "*closing of business*" of R1. Schedule 3 listed those said to have different shareholders from R1. Schedule 4 listed those said to have some different shareholders. Schedule 5 listed those said to be substantially or entirely owned by Rivkah Dreyfuss (said to have at most a 3.5% share in R1), the wife of Jacob Dreyfuss (as explained below). Schedule 6 listed those said to be dormant. Schedule 7 listed those said not to be commercial entities because they were a charity or not involved in the property industry.

205. As noted above in relation to the second witness statement produced during the hearing from Mr Kornbluh, we were told that some of the shareholdings declared to Companies House were in fact held by those declared as shareholder on trust for others. For example, it was said that some investors could not appear as shareholders because bank funders would not accept more than a modest proportion of overseas investors. We consider this in the sections below (or Schedule 1 below) by reference to the evidence.

The development

206. As noted at the start of this decision, Messrs Frankel and Dreyfuss had identified the Vista Tower building as an office to residential conversion opportunity by June 2014. They anticipated recladding the building to enhance values and a substantial return. The project was referred to initially as "Southgate" or simply "Stevenage". Their proposal was circulated to Leo and Yuri Spitzer and Martin Stimler

(one e-mail), Leslie Frankel (one e-mail) and four other people (in separate e-mails) on 24/25 June 2014.

207. They were then able to purchase the building very quickly, completing on 17 July 2014, for total purchase costs of about £4.165m. They will have collected rents from the remaining office occupiers (HMRC alone were said to be paying £115,000 per annum and vacating around the end of 2015); further details are noted below. It appears that R27 (Clockwork Estates Ltd) were engaged to act as managing agents from 2014 to 2016.

208. BBS Building Control were engaged as approved inspector under the building regulations even before completion of the purchase. Gould were engaged later in 2014, with "Planning and Consulting Limited" (Chaim Cik) described as project manager, Gould as architect and principal designer, and other firms as structural and services engineers and other consultants.

209. In February 2015, Gould wrote to Chaim Cik (whose details then indicate he is working for Clockwork Estates Ltd) at chaim@europeak.co.uk with a tender analysis. Procare had submitted the lowest tender for the development works; they are described as "*well known to yourselves*" and as having been involved in preliminary building works. Their tender figure of £3,931,887.33 excluding VAT already seemed low for a project of this size, but minutes in March 2015 record that Procare and the interior designers (Jigsaw) had been "*tasked to go through the specification and to "value engineer" individual elements to try and reduce costs*".

210. After changes in relation to the cladding and other matters, a building contract was ultimately entered into with Procare in August 2015. Between December 2015 and January 2016, Procare appear to have been instructed not to use insulation boards and instead to: "*…install Isothane Technitherm cavity wall stabilisation and insulation foam system to external wall cavity between external concrete slab and block inner walling to east, west and south sides. Allow for fire stopping on line of party walls at each level…*".

211. In a fire risk assessment by CEC Safety dated 7 December 2016, "*Clockwork Estates*" were shown as the client. The assessment identified various concerns, including problems with the fire doors and breaches of compartmentation. Practical completion was certified on 12 December 2016. On 13 December 2016, Nationwide Fire Sprinklers Ltd wrote to Procare warning they had been unable to commission the sprinkler system because, amongst other things, the tank size appeared inadequate. Ms Leigh accepted that the practical completion certificate should not have been issued without evidence that the sprinkler system had been commissioned.

212. In February 2017, heads of terms were prepared for sale of the freehold for £587,650. As noted above, the leases in the building were sold in

2016/2017 for a total of £15,633,725. It was said that the actual sums received by R1 were about £1m less than that, because R1 had pre-sold them to IP Global for a guaranteed minimum price. IP Global then sold directly to prospective purchasers.

213. On 20 June 2017, days after the Grenfell Tower tragedy, Zalman Roth expressed concern in an e-mail to Freemans Solicitors that the sale of the freehold might be lost if they did not progress this more quickly. Unsurprisingly, enquiries then started to come in about the external walls of Vista Tower, from IP Global and others. No satisfactory answer to these queries seems to have been given, as noted below.

214. On 31 July 2017, Nationwide Fire Sprinklers wrote again, having visited the site about a reported leak. They said they were "*deeply concerned to find that the building appears to be fully occupied despite the system being left in a non-compliant state as reported … it also appears the water supply has been altered as the standing pressure exceeds safe working limits, and was found to be in excess of 12Bar on the first floor*".

215. On 8 August 2017, KMP Solutions (new managing agents engaged by R1) also advised Zalman Roth that the fire service had inspected and raised concerns about the sprinkler stop valves, fire doors and other matters.

216. CEC produced another fire risk assessment (dated 24 August 2017 but produced later), expanding on the problems noted in their 2016 assessment. This time, the client is shown as KMP Solutions. The CEC fire risk assessor called KMP Solutions from the site to warn of their concerns about lack of smoke seals, large gaps between communal doors and compartmentation issues. On 29 August 2017, awaiting the written report, KMP reported the call to Mr Roth and to David Rokach. Ms Leigh accepted that R1 would be a responsible person in relation to the building at this time, since they were the landlord.

217. In November 2017, the CEC fire risk assessment report was sent by KMP Solutions to Mr Roth (copied to Jack Frankel) and David Rokach (who apparently replied that he was not involved/responsible). The report specifically warned there was a high risk to residents and others of combustible cladding causing a fire to spread rapidly making the escape stairs unusable, and if the cladding was combustible suitable measures could include removal of the cladding. KMP warned in their covering e-mail that most of the problems had been highlighted in the previous FRA and were "*very serious items and pose a very serious and real safety to the building and it inhabitants. The items are mainly concerned with the prevention of the spread of the fire/smoke around the building, which should have been completed before the building was signed off for safe use*." They asked for confirmation these items would be dealt with by "*yourselves as developers and by extension, Procare, your contractors…*".

218. On 17 November 2017, Jack Frankel replied "*some of the items have already been carried out. However, all remaining costs will fall on the Service Charge…*". KMP queried this; Philip Klein of KMP spoke to Mr Frankel and then wrote to him on 20 November 2017 in striking terms:

"*The email sent to Mr Harding sent by our Mr Spencer on 15th November clearly attaches two FRA's, one dated November 2016 and one very recent one. The assessments were carried by the same person which is very handy.*

The first assessment dates back to before the building was completed. It makes very clear stipulations on many pages about what needs to be done to put the building in acceptable condition re fire legislation. The predominant issues outstanding surround fire compartmentalisation. A score of HHH on any page is very bad. On many pages…… If there was to be incident it would be very bad indeed. We would have thought that between Mr Harding, Mr Cik, Procare and perhaps yourselves to some extent, measures would have been put in place AT THE TIME LAST YEAR AND BEFORE THE DEVELOPMENT WAS 'SIGNED OFF' to ensure that all matters raised in the initial assessment were dealt with. They clearly were not. We do not know why. If you cannot get easy answers, I am confident that your colleague Mr Rokach will be able to work his magic and get answers and ensure that the recommendations are implemented.

We have always made it clear from our part that fire safety is an area where Procare have clearly not finished their job and should therefore not be paid. The most recent FRA just received has reinforced that view, quite dramatically. What we cannot determine is precisely what Procare were asked to do in relation to fire safety in the first place. That would have been likely Charles Harding's role."

219. On 21 November 2017, Mr Klein of KMP pressed Gould to confirm that the necessary works would be carried out. Charles Harding of Gould replied, copying in Jack Frankel and Zalman Roth, that they would be completing their work under the contract but other items "*…may have to form part of ongoing management expense of the building*". Mr Klein replied immediately to dispute this, copying his e-mail to Mr Frankel, Mr Roth and others:

"*…This has nothing to do with whether building control pass and sign off the building. This is a duty of care that our mutual clients have to leaseholders and residents of the building. If matters were known to you and them before the building was completed and they have not been carried out, then that needs to be put right, plain and simple. Whether Procare are responsible under the terms of the contract you have with them as neither here nor there.*

The building currently does not comply and never has done since it was converted. This is not a maintenance issue and not an 'ongoing management expense' as you put it.

We are duty bound to inform leaseholders and the potential new buyer should it be decided that Edgewater/you are not intending to deal with these issues…"

220. Mr Frankel forwarded this e-mail to David Rokach later that day, asking for his comment. Mr Frankel said he was "*concerned that Procare will turn around and say the cost obligation is on Edgewater*." Mr Rokach asked Procare for information about the cladding panels, highlighting the infill panels and asking for confirmation "*this is of zero combustibility*".

221. On 30 November 2017, Charles Harding of Gould forwarded to David Rokach, copied to Jack Frankel and Zalman Roth, an earlier exchange in relation to building control, stating "*the window panels are not Class 0 due to the internal sprinkler system*". The e-mail it forwards is from BBS building control inspectors in December 2015, stating that (while awaiting formal confirmation) they had informally agreed with the fire officer that "*it would be reasonable to omit the class 0 blanking panels due to the full sprinkler coverage*." For what that is worth it was obviously long before the Grenfell tragedy, even apart from the problems with the sprinkler system.

222. In December 2017 and January 2018, specific fire safety information was sought by the agents involved in the freehold sale and the solicitors for the Applicant, including what material was used in any cladding. Responses were given indicating there was no cladding, but Mr Roth also e-mailed Oak Tree PM (David Rokach) asking whether there had been a final answer about the "*little bit of cladding in Vista Tower vis a vis the fire regulations*".

223. In January 2018, CEC produced a different version of their fire risk assessment report, which was also dated 24 August 2017 as before. It was pointed out that it uses the reference "*DSF/3456 v2*". Mr Dreyfuss denied that this referred to Dreyfuss, Spitzer (or Silver) and Frankel. In view of their other use of these initials in their company names and proposals, it seems likely that it was. In this version of the report, the warnings and any risk rating in relation to the cladding have been removed entirely and replaced with the following wording:

> "*We understand that the window panels are not Class 0 rated* [i.e. not of limited combustibility even under the old standards] *however this is considered acceptable as the flats are protected with a sprinkler system. We are advised that this information has been given to the local fire and rescue services.*"

224. This was misleading, or based on misleading information. It appears that not only had Edgewater or their advisers failed adequately to disclose the different combustible insulation in both wall types, but they also failed to disclose to the fire risk assessor or the prospective purchaser that the sprinkler system had not been commissioned. In

any event, Ms Leigh confirmed she would not have been prepared to put her name to this report. She confirmed that without commissioning and maintenance documents confirming the sprinkler system was functioning as needed, the assessor would not know whether it was. In cross examination Mr Roth and others suggested there was a "*conflict*" because a company named Lexicon had carried out maintenance work to the sprinkler system. We do not consider that to be an answer to the clear warnings from Nationwide Fire Sprinklers and the managing agents, or the evidence of Ms Leigh.

225. On 22 May 2018, CEC produced a further fire risk assessment, removing fire safety defects which had by then been rectified. This included the same wording as noted above from the previous document, indicating that the combustible window panels were considered acceptable because the flats are protected with a sprinkler system.

226. David Rokach and Zalman Roth categorised the other fire safety works expected to be completed by 14 June 2018 (having brought in Castles Maintenance to carry out such works) and further fire safety works which Edgewater would address within eight weeks if the sale proceeded. The £80,000 retention from the sale price was negotiated for the latter. It included work in relation to smoke seals, fire doors and riser cupboards. The previous proposed purchaser, Castelnau Acquisitions, was changed in June 2018 to the Applicant and Freemans (R1's solicitors at the time) confirmed that the Applicant could rely on all responses already given to enquiries. On 20 June 2018, R1 sold the freehold to the Applicant for £587,650 (subject to the retention which was later released to R1), apparently exchanging and completing on the same day.

227. On 7 September 2018, KMP forwarded to Chaim Cik, copied to Jack Frankel and Zalman Roth, an e-mail from Nationwide Fire Sprinklers. This attached their earlier reports, noting that the installation had been over pressurised, beyond the operational limits of the installation, so no warranty could be offered. They confirmed they had heard nothing since their warnings. They confirmed the building should not be occupied if sprinklers are part of the fire engineered strategy, and the building did not comply with the British Standard or (since the building was over 30 metres high) the building regulations.

228. On 7 November 2018, following requests from Cardinus (fire risk assessors engaged by the Applicant) for information, Mr Mole of Gould confirmed to David Rokach and Zalman Roth that the sprinkler system had not been commissioned. He warned them that this needed urgently to be commissioned and asked them to instruct Nationwide to attend as soon as possible to do so. Gould chased later in November, saying that the sprinkler system needed to be commissioned as a matter of urgency, without waiting for any discussions about whether Procare were responsible for the cost.

229. Mr Mole of Gould was then told that Mr Roth was dealing with this, but he did not. Instead, on 28 November 2018, Mr Roth wrote to the managing agents stating that Mr Mole was not the project manager, "*Lexicon don't seem to believe there is an issue and the systems has in fact been tested several times before PC. Nevertheless you should be aware and take it from here. I'm merely passing this on to you as we are no longer involved in the project*."

230. On 3 December 2018, Mr Mole at Gould circulated a carefully worded e-mail to David Rokach, Zalman Roth, Chaim Cik and others, noting that their client "*Edgewater Group*" had sold the building and the managing agents, KMP, were now the managing agents for the purchaser, and it had been confirmed that the sprinkler system is tested and serviced twice a year by Lexicon. Mr Mole recorded that "*as comments by Lexicon appear to refer to some assumptions that they have taken on a system that has been installed satisfactorily, I have stressed my opinion that Nationwide need to be asked to inspect again so that both the installing contractor, and the maintenance contractor, are happy that the sprinkler system is operational*."

Explanations about funding/proceeds

231. We now turn to the basic explanations given about the funding of the Vista Tower development and who benefitted from it. In their statement of case, the TS Respondents pleaded that:

    a. to purchase the building:

        i. R16 (DFS Three Limited) had lent £3,351,179.08 to R1, and invested £80,009.50 to acquire 80 shares in R1;

        ii. R77 (DF Stevenage Limited), said to be a company created by Jack Frankel and Jacob Dreyfuss to obtain funding for the purchase of the building, had lent £865,695 to R1;

        iii. those loans were repaid with a preferred return of 10% per annum, totalling £1,095,321.43, which was paid to R16 and R77;

    b. the Mezrahi Bank loan facility was used to fund those repayments and the development, with £3,085,668.70 capital and interest repaid in January 2017; and

    c. the total profit made by R1 was £1,566,568.17, paid as dividends to R16 (~£1,252,000) and R77 (~£313,000).

232. We consider that, even if no or modest profits had been made, it would have been just and equitable to include in a RCO the huge costs incurred in connection with the relevant defects left by R1 in their development of this very tall residential building. However, we do not consider the claimed profit figure of over £1.5m to be modest. Further,

we would also take into account the "preferred return" of over £1m (or at least part of it) as part of the benefit from the development.

233. In his statement, Mr Roth acknowledged proceeds of just over £15m (over £14.5m from the sales and about £0.5m in rental income and other sums). He asserted main costs of about £4.198m for the acquisition, £6.607m for the conversion works, just over £0.257m interest and fees to Mezrahi bank, about £0.287m for snagging and improvement works, about £0.565m for "*additional fees*" and about £0.413m for "*corporation tax and other expenses*".

234. The statement of case did not give a frank explanation about who funded or benefited from the development. Similar explanations had been given in the BLO proceedings, where the Applicant requested further information about the source of R16 and R77's funding. A gnomic reply signed by Jack Frankel was then produced for R1 and R16. This said that R16 and R77 had obtained funding through loans and there were no other loans. It also protested that R1 did not form part of a corporate structure with a "*top company*" and SPVs.

235. The Applicant pursued this. They noted that it appeared from accounts filed with Companies House that R1 owed £40,000 to DFS (East Grinstead) Limited (a "*fellow subsidiary*" of R16) in 2018 and R16 owed £6,878,948 to an undisclosed creditor. After about four months, a new reply was produced, again signed by Jack Frankel. This disclosed that:

    a. R16 had borrowed £6,370,430 from Midwest Holdings AG and £424,695 from J Stimler Ltd, used to fund R16's loan to R1 and the East Grinstead development (held by R4);

    b. there were intercompany loans from R4 (Edgewater (East Grinstead) Limited) between August 2015 and January 2016 amounting to £215,000;

    c. the loan "*from*" and 10% return ascribed to R16 were repaid/paid in February and March 2017. However, at least when the main tranche of £3,430,000 was repaid on 2 February 2017, R16 did not have its own bank account, so this was paid directly to its majority shareholder, R17 (Midwest Holdings AG);

    d. the loan and 10% return ascribed to R77 (DF Stevenage Limited) was also repaid/paid in February and March 2017, and "*…all the sums paid to DF Stevenage have been distributed to Maida Vale Investments Limited.*"

236. In his further witness statement for the BNI Respondents, in August 2024, Mr Dreyfuss confirmed that R77 did not have a bank account either, so profits were in fact sent directly to its shareholders. He stated that R67 (Waterpeak Limited) and MVI are those shareholders.

237. The disclosure documents include a structure chart from May/June 2015 which had been sent by Zalman Roth (zr@theedgewatergroup.com) to Mizrahi Bank on 4 June 2015. Mr Roth said Jack Silver would have prepared this chart. It indicates that R1 would hold the property, and the shares in R1 would be held by R16 (80%) and R77 (20%), as to which:

    a. just over 70% of R16 would be held by R17, Midwest Holding AG, of which Leo Spitzer is named "*Beneficiary*", just under 5% would be held by J Stimler Ltd, of which Martin Stimler is named "*Beneficiary*", and the remaining 25% would be held by Jacob Dreyfuss and Jack Frankel; and

    b. 65% of R77 would be held by R25, Scoperule Limited, of which Leslie and Zisi Frankel are named "*Beneficiary*", and the remaining 35% would be held by R67, Waterpeak Ltd, of which Jacob Dreyfuss and Jack Frankel are named "*Beneficiary*".

238. The Respondents said that, ultimately, Scoperule Limited was not involved/used; MVI was instead. As the Applicant pointed out, R16 and R77 were involved on paper only; no actual funds passed through them. The only loan/shareholder agreements produced were generally for the lower tiers of the structure, although shareholder and loan agreements with R17 and J Stimler Ltd (providing for all payments to be approved by Mr Stimler or Joehri (Yuri) Spitzer) were produced in relation to R16. It appears no loan agreement was produced in relation to the money lent by MVI (or Scoperule).

239. We now turn to specific matters in relation to each witness.

Zalman Roth

240. Zalman Roth gave evidence for the TS Respondents. He had a background in property agency/consultancy. He worked for Mr Frankel and Mr Dreyfuss from about 2013, when they started to get into permitted development conversions, avoiding the need for full planning permission. They would buy office buildings to convert them into residential use, heavily investing in this between 2014 and 2017. His evidence was that Mr Dreyfuss focussed principally on finding investment opportunities. Mr Frankel dealt primarily with investors, partners, lenders and equity lenders (not bank lenders). Once a property was found, a SPV was set up to make it easy for various investors to engage, and external contractors and professionals were appointed. The only common denominator was Jack and Jacob. He said the SPV often had the "*Edgewater*" name but there was no Edgewater group "*per se*".

241. Mr Roth (as well as other relevant witnesses) was taken to a brochure from June 2015 entitled "*A Taste of Edgewater*". This is headed "*The Edgewater Group*" on most pages. It gave contact addresses as 166a Granville Road, London and info@theedgewatergroup.com. It has the following introduction:

"*The Edgewater Group was set up by Jack Frankel and Jacob Dreyfuss, combining 30 years of experience in the UK property market.*

The current venture was set up in mid 2008, to take advantage of the downturn in the UK and world markets, particularly in the UK Property market. We viewed this as an unprecedented opportunity, where we are able to buy value at 20%+ below the current book values of the properties. This coupled with the opportunity to trade off some properties and to add value through improved planning and conversions, provided a very exciting opportunity, and continues to do so.

We have acquired in excess of £150m worth of property since December 2008 and continue to expand our portfolio with new assets.

Our venture is strengthened by being able to provide in-house the full range of services required to maximise the profitability of the assets we purchase. These include, project management, rental management, freehold management, refurbishment, planning and accountancy. This enables us provide a boutique service encompassing the entire life-cycle of the assets we purchase.

We are continually able to raise finance due to past relationships and pedigree with the banks. We nevertheless maintain a strict policy not to enter into a transaction, which we cannot complete in cash, as we do not rely on bank funding until it has been drawn-down."

242. The brochure went on to describe various properties which "*we*" had developed or were developing. These were described as Woolwich, Burdett Road (London), Portsmouth, Hammersmith Broadway, Phoenix Heights (London), Poole, Goldington Road (Bedford), Crawley and East Grinstead. Many of these involved Respondents to these proceedings which have corresponding names, as noted below.

243. Mr Roth was also taken to his own e-mails from 2015. These come from an Edgewater Group e-mail address (as above) and are signed "*The Edgewater Group*". They use the same blue and black logo which is used throughout the "*A Taste of Edgewater*" brochure and other documents. He said the name was a "*banner*" and existed prior to the "*partnership*" of Jack and Jacob (we note that at least some e-mails to Mr Dreyfuss are to a "europeak" e-mail address when Mr Frankel has an "edgewater" e-mail address). In his evidence, Mr Roth started to describe what had happened after the partnership had been "*dissolved*". He then caught himself and said this was not a partnership arrangement. The expression "*joint venture*" was used instead. He said that each project had a different set of investors over different periods and the others were not aware of each other, although occasionally they would know through the community. For some six years he had been involved with each Edgewater project and never "*one penny*" was sent from one project to another; that was "*inconceivable*".

244. Mr Roth's evidence about these matters was not wholly reliable. It is contradicted by the limited evidence which was disclosed, such as the

links and payments between R1 and R4, as noted later below. He was taken to his own e-mails in March 2015 to a valuer asked to look at three development assets, described as East Grinstead, 8 Goldington Road (in Bedford) and Southgate House (Vista Tower). He was also taken to his own e-mail in August 2015 to Jack Frankel and Chaim Cik (chaim@europeak.com) copied to Jacob Dreyfuss (jacob@europeak.co.uk) about Stevenage and Bedford, with CGIs requested by Mr Frankel to present to a "*Far East Group looking at both*". Another e-mail in April 2016 from Chaim Meir (copied to Mr Roth) to Jack Silver refers to a shortfall and appears to be looking for any source of funds, having asked for confirmation of any monies received in relation to Southgate (Vista Tower) or Goldington.

245. Mr Roth said that if companies were not dormant they were mostly registered with accountants as their registered office. This was often Jack Silver and his accountancy business Precision (who, Mr Dreyfuss said, also provided a bookkeeping service to deal with all transactions). Mr Silver was a director of some of the Respondents and a secretary of others. Mr Roth said that Mr Silver would sometimes need to be a director to operate a bank account for a company. Mr Roth said he had obtained financial information provided in the proceedings from Mr Silver.

246. In relation to the evidence about the role of Chaim Cik, we do not accept that Mr Cik was an "*experienced developer*" as pleaded. Mr Cik did not give evidence. The relevant witnesses all told us that Mr Cik no longer worked for Mr Frankel or Mr Dreyfuss. Mr Roth said that Mr Cik had gone from overseeing maintenance work for Jacob's property management firm Clockwork Estates Ltd (R27) to running small developments and permitted developments for Jack and Jacob. In 2015, Mr Cik's e-mail address was chaim@europeak.co.uk and he was later shown as Senior Manager at "*Clockwork Estate Ltd*". Mr Cik's role seems to have been to attend meetings, and act as the point of contact, for Messrs Frankel, Dreyfuss and Roth. Mr Roth accepted in cross examination that Mr Cik was not asked to make decisions, but would filter, relaying to them matters which needed instructions. This extended to such details as the tiles for the kitchens. If a change of plan was involved Mr Roth would pick this up; some matters would go to the directors and some to the investors.

247. Mr Roth said his own role was to co-ordinate aspects of a project and support Jack and Jacob. He had been paid for his work in relation to Vista Tower in different ways. He said that he had been paid 0.5% of the bank funding obtained, so about £25,000 of the £5m. He did not recollect any other payments. Jack and Jacob would pay him from their own funds on a monthly basis, for work done and being available when needed. Sometimes the money would come from R71, Portland Ltd, sometimes R26, Lingwood Properties Ltd, or sometimes their own funds. R67, Waterpeak Ltd, was Jack and Jacob's "*other them*", a holding company. He said Waterpeak was the paying entity for many "*partnerships*" which had nothing to do with Edgewater.

248. Zalman Roth and Deborah Roth have been married for more than 20 years. Her maiden name was Rokach. She was, he said, a home owner and investor with her family's money. It was an oversight, he said, that she had been registered as a director of two of the relevant companies. Her brother, David Rokach, had been involved in the later stages with work on Vista Tower, as noted above. Mr Roth suggested that Mrs Roth had no knowledge of what her brother does.

249. Mr Roth had a rabbinical position. He said he now had no day to day commitments for Messrs Frankel and Dreyfuss, or Eurocent. Since late 2018 he had not worked on any projects of this nature at all, doing only very limited work for them of other sorts. He would do some things for Jack (occasionally) and some things for Jacob (more closely). When cross examined, he disclosed that he was still involved with R14 (Edgewater (Wokingham) Limited), updating "*investors*" periodically. He also accepted that he had (with Jacob Dreyfuss) been a director of R30 (Eurocent Group Ltd) until 2020. He accepted that R17 (Midwest Holding AG) had been investors in Stevenage. He knew members of the Spitzer family, confirming that Leo and Yuri were father and son. He thought Leo lived in Switzerland or Antwerp and Yuri lived in London. He had communicated with Yuri on a regular basis and Yuri had come to the office for regular meetings, but he told us that he had no idea where in London Yuri lived.

250. Mr Roth was asked about an e-mail of 21 May 2015 from Mr Roth to Mr Frankel at their "theedgewatergroup.com" e-mail addresses, headed Southgate House and saying "*Because Leo called JD and gave him a shouting that you wouldn't believe*". Mr Roth said that following the purchase in 2014 he imagined the investors were getting nervous. He confirmed Leo was Leo Spitzer. He said he had no idea what the structure of Midwest Holding AG was. He had met Leo Spitzer at the wedding of Jacob Dreyfuss' daughter a few months ago.

Jacob Dreyfuss

251. Jacob Dreyfuss was brought up in New York, then moved to Israel and married Rivkah Dreyfuss. In 1994, he moved to England and started working in property. This typically involved investing in property, but also sourcing deals and introducing them to other investors. He said that for the first few years he was only a broker, learning how property worked.

252. In the late 1990s, he began buying residential and commercial properties as investment opportunities, building his business, and became friendly with Jack Frankel. They were in the same social circles and both started working in property at the same time. Mr Dreyfuss sold some properties to the Frankel family. They kept meeting and in the credit crunch of 2008 saw that prices had dropped, creating investment opportunities. They decided to seek alternative sources of funding from cash investors, working together from 2008/9 using SPVs and under the Edgewater Group "*banner*". Mr Dreyfuss sourced

investment opportunities and investors. Mr Frankel dealt with the property development and delivery side of things. Mr Dreyfuss accepted that, while he and Mr Frankel used professionals and people like Mr Roth, they made a lot of the decisions together. Mr Dreyfuss said that he was not involved with the development details; his input was on strategic matters.

253. Mr Dreyfuss said the new permitted development rules from 2012/13, allowing office to residential conversions without full planning permission, gave him new opportunities to buy "*a few*" offices. He described or accepted a description of this as a "*gold rush*". He said during this period most of his business was with Jack Frankel, but he was also active in his office in Stamford Hill, working with Izzy (Israel) Kohn of P4I (property for investment).

254. Mr Dreyfuss said in his witness statement that in or around 2017/18 he and Jack Frankel "*stopped working together*." In cross examination, he was asked whether that was true. He said he meant to say they had stopped buying properties together. They still had companies and "*a few*" properties together. They had been very active from 2009, speaking twice a day. From 2017/18, the last few permitted developments had not made money, so they stopped looking to buy and stopped forming companies. He and Mr Frankel now had "*a few*" phone calls a year.

255. Mr Dreyfuss said that generally investors would provide all the funds required and the profits would be shared. Those investing 100% would collect 50-75% of the profits, with Messrs Dreyfuss and Frankel receiving the rest. Those investing 50% of the funds would receive 25-37.5% of the profits. The capital investment made by investors would be repaid with interest for the duration of their investment. He said many investors were from overseas and many investors' shares were not recorded at Companies House, but were held on trust for them.

256. His wife, Rivkah Dreyfuss, was described as a businesswoman. Their daughter, Bina Dreyfuss, is now about 21 years old. Mr Dreyfuss said that Rivkah Dreyfuss knows what is going on and could answer questions that he could not. Asked why she was not giving evidence, when her money was at risk, Mr Dreyfuss said she was relying on him to do his best. Her father, Abraham Pollack, was a wealthy man. Zeev Pollack, her brother, was involved in one of the Respondent companies (R43 below). That, Mr Dreyfuss said, was a small company.

257. Mr Dreyfuss was asked about the "DFS" initials used in the names of relevant companies. He explained that "D" was Dreyfuss, "F" was Frankel and "S" was "Spitzer" (not "Silver") - the whole Spitzer family, not just one person. He said the "Midwest Group" had been introduced to them as an investor from 2009. He accepted that he knew Leo Spitzer well. His son has an uncle through marriage who is a cousin or nephew of Mr Spitzer. He said they were not close, but he was embarrassed they were involved in this litigation, having convinced Mr

Spitzer to invest with and trust Mr Dreyfuss years ago. They "*did a few*" companies together with Mr Frankel from 2008/2009, using the DFS name, and then went their own ways. Mr Spitzer had helped him a few years ago when his child was buying a house. He confirmed that Mr Spitzer was aware of these proceedings and that efforts so far to serve R17 in Switzerland had been unsuccessful.

258. In these proceedings, Mr Dreyfuss initially gave an address in Castlewood Road (the registered office of Precision accountants, run by Jack/Jacob Silver) and later an address in Lingwood Road, London. He was asked how he kept "on top of" the many companies of which he was a director. He said that he relied on help, and had difficulties with details. He had four employees and quite a lot of people "outsourced" work for him. He relied on his accountant, who also had a bookkeeping role (Jack Silver of Precision, and his staff of at least 10).

259. Mr Dreyfuss said that he remembered matters such as the order of events, but struggled to explain matters put to him about various companies. He tended to answer that Mr Silver would know. He said that Jack Silver had been travelling, so they had not thought to ask him to check inaccurate information given earlier in the proceedings about the proceeds from the Vista Tower development; he did not think there was anything to hide. He accepted that with hindsight they should probably have checked with Mr Silver and/or Cohen Arnold, the other main firm of accountants (auditors) involved. Asked why Mr Silver and/or any of those other accountants had not given witness statements and were not at the hearing to explain matters, he said that no-one had wanted to come to give evidence.

260. Mr Dreyfuss accepted that the registered office of R1 on incorporation in July 2014 was 214 Stamford Hill. At the time, that was his office, until his wife wanted the space for the shop downstairs. He did not know why R1 had remained on the register when he said it had not done anything for a few years, and why he was still declared as a person with significant control when he had retired as a director. He did not think that he was; he usually leaves these matters to his accountant.

261. Mr Dreyfuss said that Midwest Holding AG (as main shareholder of R16, DFS Three Limited, the main shareholder of R1) relied on Mr Frankel and Mr Dreyfuss to make the right decisions. Mr Dreyfuss and Mr Frankel hired solicitors and represented the company. He had no idea who were the debtors shown owing R1 £3,365 in the last filed accounts (signed by Mr Dreyfuss in 2021 for 2020). He did not know what the transactions with group member undertakings mentioned in the accounts (as having not been disclosed) might have been. Maybe, he said, he should be studying such matters more.

262. Mr Dreyfuss could not immediately explain the registration of a charge dated 17 July 2014 granted by R1 in favour of Southgate House Stevenage Limited (incorporated in April 2014, now Broomfield 43 Ltd). It was pointed out that it was certified by Bude Nathan Iwanier,

who represent the BNI Respondents in these proceedings. It was put to him that the sole shareholders and persons with significant control of Southgate House Stevenage Limited were (from 2016, when it became compulsory to declare those with such control) shown as Rivkah Dreyfuss and Israel Kohn. He said he had no idea why this might be. Mrs Dreyfuss was a property investor who had quite a few businesses but made her own decisions, he said. In re-examination, he was taken to the relevant charge, which provides for the borrower to repay £790,000 to the lender by 24 September 2014. It was suggested that this was deferred consideration payable to the seller. It was pointed out that the charge must have been discharged by 11 August 2015, when Mizrahi Bank took their charge, and Rivkah Dreyfuss was only shown as a person with significant control from 2016 to 2017.

263. We do not need to decide on this limited evidence whether (say) this was deferred consideration payable to an independent seller who then handed over the company to (or some kind of short term funding sourced from or through) Rivkah Dreyfuss and Mr Kohn. It simply indicates involvement of Mrs Dreyfuss and Mr Kohn with a company which had been involved with R1 and its acquisition of Vista Tower, which is not consistent with careful separation of the corporate vehicles funding or otherwise involved with different development projects.

264. The accounts for R1 for the year to 30 June 2016 showed debtors of £974,909. Mr Dreyfuss, who had signed the accounts, did not remember who these might be. Mr Dreyfuss said that Precision dealt with all transactions. When asked why only very limited bank statements had been provided by way of disclosure, he said that accounts had been with NatWest until they suddenly closed all of their bank accounts around 2020/21. NatWest had closed a lot of accounts of property companies at this time. He had left it to Mr Kornbluh to go to Precision and get everything needed for disclosure in these proceedings, he said. He confirmed that he had personally looked through the disclosure documents provided by the relevant Respondents. He had dealt more with those for the BNI Respondents and Jack Frankel had dealt more with those for Edgewater companies.

265. Mr Dreyfuss was taken to an Account QuickReport [J/15/41] and asked how R1 made the payments shown in this, to DF Stevenage Ltd and DFS Three Limited in 2019/2020, when they did not have a bank account. He said banks did not like opening accounts for many companies. They had done so with NatWest before the bank closed their accounts. He said that many of "*our*" companies did not have bank accounts. They would choose which ones would have bank accounts. Because the accountants were dealing with everything, he and Jack Frankel and investors were all happy that the accounts were being taken care of. They paid "tremendous" amounts in fees to Jack Silver/Precision, which was worth it with so many companies and so much going on. This gave peace of mind. He suggested there were tens or hundreds of investors and only almost one in a hundred had any problems with the accounts and understanding.

266. Mr Dreyfuss said that another company must have made payments on behalf of the relevant companies, but that did not mean they were acting as a group. As long as records were kept he did not see any problem with dividends being paid on behalf of another company, without the money actually coming in and being distributed. When he was pressed about further bank statements, payment records and loan agreements, he said he was sure that Jack Silver or Cohen Arnold would have them.

267. He was taken to documents relating to R4, Edgewater (East Grinstead) Ltd. These included notes recording £260,000 owed to group undertakings, understood to be R16, DFS Three Limited. He said that they/R1 and R4 were the only two companies "*slightly linked*" because they owned these two properties, Vista Tower and East Grinstead. If money was lost on one they could take from the other; they had the same shareholder. He did not accept that this was a group, but the accounts state the parent company is DFS Three Limited under control of Midwest Holding AG. He said the bank lender for East Grinstead was probably Misrahi, as it was for Vista Tower. R4 was incorporated in 2014, with the initial shareholders:

    a. "*Midwest Holdings AG*" (60 shares), giving as their address in the filed document 214 Stamford Hill, London (Mr Dreyfuss' office at the time); Mr Dreyfuss said this was not true and probably a mistake;

    b. DF (East Grinstead) Ltd (36 shares); and

    c. J Stimler Ltd (4 shares).

268. Mr Dreyfuss accepted that, he thought, DF (East Grinstead) Ltd was his company with Leslie and Jack Frankel. It was put to him that (as set out in the Applicant's written opening submissions referring to the details filed at Companies House) he was currently a director and shareholder of DF (East Grinstead) Ltd, where persons with significant control were declared as: R25, Scoperule Ltd (2016 until March 2017), MVI (since March 2017), Mr Dreyfuss (since 2016) and Waterpeak Ltd (since 2016). The accounting report at [J/15/113] showed substantial transactions between R1 and R4 (such as a payment of £215,000 apparently from R1 to R4 in 2016) and payments to "*DF Stevenage*" and Waterpeak Ltd. Mr Dreyfuss could not explain these payments.

269. Mr Dreyfuss accepted that R5, Edgewater (Hampshire) Ltd, was still doing business, keeping the relevant property with Mr Frankel and Mr Dreyfuss directors. The idea, he said, was to sell the remaining properties when the market gets better. He was asked whether this company was owned by or through Waterpeak Ltd and said he did not know. It was owned by Jack Frankel and himself. Leslie Frankel "*maybe*" was also a shareholder. Mrs Rivkah Dreyfuss was, he said, also a shareholder, and knew she was a shareholder and what was going on.

270. He was asked about other partners in relation to R5. He said this brought back bad memories. He was referred to Hodes v Frankel, Dreyfuss and Edgewater (Hampshire) Limited [2024] EWHC 1311 (Ch D). He said he did not recall the findings made, which included:

a. in 2017 the bank funder, Mizrahi Bank, had been informed that Leslie Frankel would hold his interest through a 40% shareholding in R5, but it then transpired that Leslie Frankel required his interest to be held directly in the property, through his company, Jeap Investments Ltd, and a trust deed was entered into declaring that R5 held 40% of the property on trust for Jeap [13-14];

b. it appeared that Mizrahi Bank was not informed of the updated position. They had already been provided with certified share certificates which purported to show that Jeap had been issued with 4,000 shares and the other shareholders a total of 6,000 shares, but no such shares had in fact been issued, since the issued share capital of R5 was at the material times only 100 shares, all held by R67, Waterpeak Ltd;

c. it "*…reflects poorly on Mr Silver, who arranged for and provided the purported certified share certificates to the bank, that they did not in fact reflect the true position. This is particularly so given that he was responding to a specific request from Mizrahi Bank to be provided with such certificates, presumably so that it could verify the position. It suggests that Mr Silver was simply prepared to provide, as a matter of expedience, whatever documentation was required irrespective of what the true position was*" [16];

d. "*I understand from Mr [Jack] Frankel's evidence that another company in the Edgewater Group had loaned the £650,000 to [R5] in order to complete the purchase…*" [18];

e. in 2021, the shares in R5 were transferred from R67, Waterpeak Ltd, to Rivkah Dreyfuss and Mr Frankel. It was said this had been done because R5 wished to open an account with Starling Bank, which did not accept customers with corporate shareholders. The Court observed that was "*clearly unsatisfactory if, as the Defendants themselves have asserted, part of the shares were being held on trust*" for other investors, but the transfer was not dishonest conduct (as had been alleged) [75-77];

f. "*However, this episode is again symptomatic of what was undoubtedly a very loose approach to governance and documentation within Edgewater. It is another example of a transaction done or documentation being issued as a matter of expedience without proper regard to the necessary formalities and the rights of interested parties…*" [78].

271. Mr Dreyfuss was referred to his witness statement, which said that the only BNI Respondents receiving money from the Vista Tower development "*whether directly or by 'trickling down'* " were R26 (Lingwood), R27 (Clockwork), R67 (Waterpeak), R71 (Portland) and R77 (DF (Stevenage) Ltd). He said these were money movements; R27 did not benefit itself, it managed for tenants or the companies.

272. Mr Dreyfuss was asked about R27, Clockwork Estates Ltd, whose registered office was his former office in Stamford Hill. He was a director and Rivkah Dreyfuss had been a director until 2016. He was taken to [K/332.2], a bank statement for Clockwork Estates Ltd for May 2024. This shows a payment in referring to Lingwood Properties Ltd (said to be owned and controlled by Mr and Mrs Dreyfuss) and a payment out to P4I Ltd (said to be owned and controlled by Israel Kohn). Mr Dreyfuss said that Clockwork was a managing agent, with a lot of money going in for clients who send money from overseas, also using accounts as a management account for other people. It was still used "*a little bit*", he said, to hold money for other companies. Mr Dreyfuss was asked why no bank statements had been produced for 2017 to 2023. He referred to the NatWest account closures.

273. Mr Dreyfuss was referred to the filed accounts for Clockwork Estates Ltd for 2023, which show very modest assets (debtors of £1,833 and cash of £28) against creditors of £7,767. He said the accounts had needed to be amended. They were prepared by Venitt and Greaves Chartered Accountants. They record that they were approved by the director, authorised for issue very recently (on 29 September 2024) and signed by J Dreyfuss, director.

274. Mr Dreyfuss was taken to the accounts for 2021 and 2022 [K/331/4], which showed cash of £2,256,104 and debtors of £1,495,939 (strikingly, identical figures for both years), against creditors of just under £2.5 million for both years. He was asked where the money had gone. He said he did not know, but Precision had told him that Venitt and Greaves (the accountants who prepared these accounts) had made a "*big mistake*". The "controlling party" of R27 is shown in the accounts as J Dreyfuss, who is recorded as having received a £700,000 advance which remained outstanding through 2021 and 2022. He did not remember receiving this. He said the accounts did not make sense; the company had never owned property or made their own money. He said it was only used for client money, which did not need to be reported in company accounts. The 2022 accounts (stating the 2021 and 2022 figures noted above) record that they were approved by the director, authorised for issue on 14 September 2023 and signed by J Dreyfuss, director.

Jack Frankel

275. Jack Frankel described himself as a property investor and asset manager. His career had been focussed on residential property, some with a commercial element. He began investing in property in 1994,

buying investment properties in his own name then using a company (R35, Aspern Limited). Then he began "*refurbishing*" properties, setting up R71, Portland Limited, which he described as his trading company, putting the profits through R71. Now, he said, his main business activities were residential asset management. He accepted that he was involved with many more companies apart from the Respondents, and had only recently set up a new company called Edgewater Evolve Limited.

276. Mr Frankel started using the Edgewater name in 1999, when he moved on to larger projects. An agent friend had suggested he needed a name to be known by, so he settled on the Edgewater Group. He said the first project under that banner (Kingsland Road) became his business model, setting up SPVs to acquire a subject property and outsourcing design, planning permission, refurbishment and day to day project management to professional consultants and contractors. At that time, he did not need to raise money from external sources. His father, Leslie Frankel, set up a "*family capital*" facility for Jack Frankel to borrow from. It worked, he said, like an overdraft. He would borrow money to fund the property purchase and refurbishment costs, paying it back when the project was sold.

277. Mr Frankel's witness statements described a similar background to that described by Mr Dreyfuss in his. They recognised, he said, that they would from 2007/2008 need to start working with outside money, bringing investors on board. They decided to do this together under the Edgewater "banner". They formed their relationship with Midwest, setting up "*DFS1*" and "*DFS2*" through which Midwest invested in various ventures with them.

278. Mr Frankel said that, throughout, he leased an office on Granville Road, where he remains, in the name of R71, Portland Limited. Mr Dreyfuss would come into the office from time to time to work, or Mr Frankel would go to his office. Zalman Roth was introduced by Mr Dreyfuss and worked for them from 2013, in Granville Road.

279. Mr Frankel mentioned various permitted development projects, noting that Vista Tower was not their first but was certainly their largest. Mr Frankel described how he considered the work on Vista Tower had been outsourced to Chaim Cik, the professionals and the contractors. He was involved with executive decisions, about such matters as the colour scheme for the external works, internal layouts and finishes. Design layout and visual matters, he said. He said Procare had brought an adjudication towards the end of the conversion works and they had ultimately reached a settlement with them, paying an additional sum to Procare. He said snagging items were dealt with by the same people, helped by David Rokach of Oaktree.

280. Mr Frankel accepted that he and Mr Dreyfuss had received about £440,000 from the Vista Tower project in tranches over time. He said there was no flow of funds from R71, Portland Limited (said to have

received his share, or most of his share, of the funds), into other investments, but did not explain what had happened to the funds he admitted receiving. He accepted the evidence in his witness statement that R16 had purchased a "*small*" shareholding in R1 "*could*" be an error. It apparently had 80% of the shares. He said the R16 shareholder was not involved with the deal "*as such*".

281. Mr Frankel confirmed at the hearing that he remained a director of the Greenwood Respondents, R18-25 (except R22, having been a director from 1996 until October 2024; he had also been a director of Nirlake, a property investment company which is owned by R22). Esther Frankel was his wife and was also a director of the same companies until she resigned in March 2022. Mr Frankel said he did not make decisions for the Greenwood Respondents. He believed he was a director mainly for the "*benefit of the trust*".

282. It had been suggested that the BNI Respondents were not part of the same group and had no involvement with the development. Mr Frankel accepted that in fact R77 (DF Stevenage Ltd) did benefit from Vista Tower. He said that R27 (Clockwork) were not involved at all and there was no reason to pay them any money, or profits; they should not benefit at all. He accepted that R26 (Lingwood Properties) was a Jacob Dreyfuss company (that was where he held his shares) and was paid from R1. Mr Frankel said that R71 (Portland) was where he held his shares but was not involved in the development; his profits went through Portland. R67 (Waterpeak) had not actually benefitted and moneys flowing through them did not mean they were interconnected, he said.

283. In relation to R77 (DF Stevenage Ltd), said to have been created by Mr Frankel and Mr Dreyfuss to obtain funding for the purchase of Vista Tower, and to have lent £865,695 with a 10% preferred return, he did not recall that R77 (or R16) had any bank account; they did not need one. Money could be sent by another company on their behalf, and that did not mean they were connected. He was asked why companies often had sitting behind them companies with the name DF or DFS. He said that was on the advice of the accountants, Jack Silver in the most part. DF indicated a vehicle for Jacob Dreyfuss and himself. Mr Dreyfuss had already explained that DFS referred to Dreyfuss, Frankel and Spitzer.

284. Mr Frankel was taken to the documents disclosed as loan and shareholder/waterfall agreements between R1, R16 (DFS Three Limited) and R77 (DF Stevenage Ltd) in relation to Vista Tower, generally dated 17 July 2014 and some unsigned. Some, at least, give the company registration numbers of R16 (8780779) and R77 (9157005) [F/6/1, for example].

285. It was put to Mr Frankel that R77 was not incorporated until 1 August 2014, so it did not exist at the date of these documents and they must be forgeries. He answered that he would not say they were forgeries,

but they should not have been entered into later and given an earlier date. He said he could not comment but he did not know why the accountants had not incorporated the company until later; he could not explain. Next, it was put to him that R16, DFS Three Limited, did not have that name until 16 December 2014, when Mr Frankel became a director and the name was changed from Chocoffee Limited, so these documents must be untrue. He said this was an off the shelf company and they would have decided on a name. He could not comment on the name change, referring again to the accountants. He denied that the documents were not an accurate reflection of what went on.

286. It seems to us that (consistent with the other matters noted in this decision, including the findings in the High Court litigation about R5) these documents are not forgeries, in the way that expression would generally be understood, but may bear little relation to the true position, having been created after the event and backdated. They are another indicator of the unreliability of the accounting, ownership, management and other documents used and relied upon by the Respondents.

287. Jack Frankel said that shares may be held on trust for other people with no documents at all. In the community, agreements may be oral, on trust, on a handshake. He said that his accountants would file the share certificate with HMRC. He said a trust would be shown by the way funds came in and payments went out, without a trust document.

288. Mr Frankel was asked why no bank statements had been produced for R1 for the period from 2014 to 2016, or 2018 to date. He referred to what he said the Respondents had been directed to disclose and said he was not in charge of bank accounts; he did not remember.

289. The directors of MVI were his parents and Joel Frankel, his much younger brother. Jack Frankel accepted that Leslie Frankel had invested in "*many of the deals we did*". He had a great deal of respect for his father, but would not necessarily obey his wishes. MVI provided money to and owns DF (Brighton) Ltd, which lent money to R2, Edgewater (Brighton) Ltd. The money which seeded that project came from MVI; about £860,000. Leslie Frankel (or his company) also lent money for R1.

290. Mr Frankel was asked about R28, Gavewell Ltd. He accepted that he and Mr/Mrs Dreyfuss were the co-directors and owners. He said this was a property company but had long since sold out, with the profits going to the banks and partners who invested with them. Their profits had probably gone to R67, Waterpeak and then themselves or one of their companies. Their accountants advised them that profits for Jacob and Rivkah Dreyfuss and himself went to Waterpeak, and then parted ways. He confirmed R28 would have had a bank account.

291. He was taken to the last filed accounts for R28, for the year to 31 October 2023. They were prepared by Venitt and Greaves accountants.

They show debtors of £1,159,871. Mr Frankel was "*surprised*" and "*flummoxed*" as to what this was referring to. He said it had been years since everything was sold out. It was pointed out that the accounts record that they had been approved by the board of directors and authorised for issue recently, on 8 July 2024, signed by Mrs R Dreyfuss, director. Mr Frankel said he was not consulted and he did not recall seeing these accounts. It was pointed out that the accounts showed exactly the same figures for the previous year, so this seemed unlikely to be a mistake. He said that he could not explain. He said Gavewell had been three shops with "*uppers*", upgrading and selling the upper flats one by one. He said the investors had been family companies with 20% perhaps through Pre2let (his brother's company) and Israel Kohn. He did not know Mr Kohn particularly well, he said.

292. Jack Frankel was asked why companies said to have received funds did not seem to have a bank account. He said that they were a "*look through*", receiving money only in name, with money going to its shareholders - to his father's company, to Portland for his benefit and to Lingwood for Jacob's benefit. He did not think R27, Clockwork, gained any direct benefit. He had been willing to pay substantial sums of money to Clockwork, of which he was not a director, because his "*partner*" was a director of it and the funds would go to where they needed to end up. He was asked why the 2019 accounts suggested the company was dormant when substantial sums were coming in and out. He thought that did not affect the question of whether it was dormant.

293. Asked why R27's assets increased substantially from 2019 to 2020 (to over £2m in cash alone), he said that he expected funds had been sent to Clockwork to pass on, and said it had retained no benefit. This seems difficult to reconcile with the explanations which had been given that anything held by Clockwork was only client money, given that the accounts show substantial sums retained for several (and identical sums in the last two) years.

294. Mr Frankel was asked about R25, Scoperule Limited. He (and until 2022 his wife, Esther Frankel) and his parents and younger brother Joel Frankel were directors. The accounts to 31 March 2015, signed by Mrs Zisi Frankel, named him as one of the directors who "*served the company*" during the year [K/300/4]. He said that he had a non-executive role. Those accounts showed substantial amounts owed to R25 by MVI (£790,715), R20, SBH Properties Limited (£579,290) and R18, Keythorpe Properties Limited (£345,000), and a smaller amount owed by Bitochon Limited, all described as related companies. Mr Frankel could not say what these were for, but believed they would have been inter-company loans not, he said, connections. It was pointed out that the loans were said to be interest free and repayable on demand, so not commercial. He denied that these companies were controlled and operated as a collective. These accounts note that £605,000 is also due from Edgewater (Crawley) Limited, of which Joel Frankel was also a director, which is said to be bearing interest.

295. In a list of R25's creditors for the year to March 2023, R8, Edgewater (Poole) Ltd, is said to be owed £94,662. Jack Frankel was asked how Scoperule could owe money to this company. Mr Frankel suggested that an investor could be seen as owing money. He explained that he thought R25 had bought the freehold of the relevant property, so this might possibly have something to do with that. He said the only connection with Leslie Frankel was that a family company had invested money, getting shares and profits.

296. In a list of debtors for the same year, MVI is shown owing R25 more than £1.9 million. Mr Frankel could not say what this was for. Bitochon Limited is shown as owing nearly £400,000; it was said that this company invests in property deals to grow the assets of the "charity" (that was later corrected); it was mainly controlled by his father but he was a non-executive director. R18, Keythorpe Properties Limited, are still shown as owing more than £175,000 to Scoperule.

297. Mr Frankel was asked whether it was correct that money was distributed or intended to be distributed from R1 to R25, Scoperule Limited, and MVI owes substantial sums to Scoperule. He was taken to the structure chart from June 2015 for the Vista Tower project [F/103], which shows Leslie and Zisi Frankel as beneficiaries of Scoperule Limited, itself shown as holder of 65% of the shares in R77, DF (Stevenage) Ltd. He said that maybe the original consideration was Scoperule, but this was then changed to MVI. He said it was misconceived to say that because the funds went to MVI, who owed money to Scoperule, the Applicant could go to Scoperule. He was asked whether there were share certificates, showing MVI owning the relevant shares. He said he thought those would have been issued in 2014. He was "*fairly confident*" all funds/profits had gone to MVI; he did not think that anything had gone to Scoperule.

298. Mr Frankel was asked about the R1 account ledger dated May 2024 [J/15/41]. He believed that Jack Silver would have been the accountant and could generally only transfer money with confirmation from Mr Frankel or Mr Dreyfuss. He was asked how a payment of £70,000 could have been made in March 2017 by "*Cheque*", as entered in the ledger, to R77, DF (Stevenage) Ltd when it did not have a bank account. It was put to him that this £70,000 did not appear in any of the other documents. Mr Frankel accepted responsibility for the information provided but said he had not gone through the items line by line.

299. Mr Frankel was asked about the £200,000 "*Cheque*" to R67, Waterpeak Ltd, shown in this R1 ledger, apparently for the benefit of R77, DF (Stevenage) Ltd. He was asked why there was no reference to MVI. He answered that their funds go through DF (Stevenage) Ltd and said he was not an accountant. He was asked whether the ledger gave an inaccurate impression and said he could not comment. He could not explain the later payments shown as having been made to R77, DF (Stevenage) Ltd. Similarly, he could not explain why the ledger showed payments of over £221,000 and £58,000 in March 2018 by "*Cheque*" to

R16, DFS Three Limited, when that company did not have a bank account. He accepted this cannot be. He said the payment would have gone to DFS Three Limited's "*partners*".

300. Mr Frankel was taken to the table in his witness statement of the total amounts said to have been received by R67, Waterpeak Ltd, for itself and for MVI as the shareholders in R77. It was put to him that figures shown in R1's ledger as paid to R77 are different from this table. For example, the ledger does not include £150,000 shown as paid in 2019 or £31,520 shown as paid in 2020. The bank statement for Waterpeak [K/707.4] shows the latter payment, which is not in the ledger for R1. The bank statement for 2019 [K/707.2] showed a payment of £150,000 on 26 June 2019, but described it as "*DFS Three Dividend*". Mr Frankel could not explain why this was not recorded in the ledger. Whether or not the Respondents have managed to disclose everything they should have, the R1 ledger is obviously unreliable.

301. The R1 bank statement at [K/12.1] shows a payment in of over £125,000 on 7 December 2016, with no indication of where it is from. On 9 December, £85,000 and £105,000 are then paid out to "*Clockwise Estates*". Mr Frankel said he had nothing to do with them, but thought this was Mr Dreyfuss. Clockwork was used to put monies through, he said. Clockwise did not seem to exist and was not Mr Frankel's company.

302. The R1 bank statement for 5 January to 3 February 2017 shows over £5m coming in and out. Mr Frankel could not explain why £190,000 arrives from Freeman Solicitors' client account on 12 January 2017 described as "*professional fees*" and the same amount is immediately paid out again, on 13 January 2017, to "*Clockwise Estates*". It was suggested there was no legitimate reason for this. Mr Frankel said it may have been paid to one of the partners for their share. If so, the descriptions used in the bank statements were misleading, suggesting that this payment from the Vista Tower development project was for specific expenses, professional fees, when it was not.

303. R1's bank statement also shows that when a payment of £4.8m came in from Freemans Solicitors on 1 February 2017 a payment of £865,695 was made the next day, 2 February, direct to MVI. It was suggested that attempts had been made or there had been pressure to keep the involvement of MVI hidden in these proceedings, referring to the further information which had been sought about the sources of funding and beneficiaries. Mr Frankel had signed the statements of truth in the relevant replies but said he did not see any reason why Leslie Frankel would want this, referring to his honesty and charitable activities.

304. On the same day, payments of over £268,000 and £82,500 were also made to "*Clockwise Estates*". Mr Frankel could not explain the name but again said money would go through and end up where it needed to go. The following bank statement [K/12.3/2] shows further payments

of £50,000 and £10,000 in February and March 2017 to "*Clockwise Estates*", with further payments in the following statements. Mr Frankel said this was almost definitely to pay partners. He could not say why they had been paid through R27 (or whatever entity Clockwise Estates was). The "*partners*" were Midwest, J Stimler, his father's company, Jacob Dreyfuss and himself. He did not believe there was anyone else. Mr Frankel could not comment on why P4I Limited (Israel Kohn's company) were making payments into R1's bank account [K/12.5/1].

305. In addition to a payment of £100,000 to Edgewater (East Grinstead) Ltd on 2 February 2017, £124,000 was paid to "*DFS Ventures Ltd*" and £3,430,000 was paid to "*Midwest Holding*". Mr Frankel confirmed that East Grinstead was cross-collateralised, so there was some balancing out. DFS referred to anything with Mr Spitzer; Mr Frankel could not explain the payment to DFS Ventures Ltd, saying this was an accounting question. Midwest got the profit they were due, he said. It was suggested that those involved had moved the money around in different ways, treating this as their own money. Mr Frankel denied this; not in the way suggested, he said. DFS Ventures had the same partners. He was asked about the duties to a company and said that if another entity has the same "*partnership*" he did not think there was an issue.

306. Mr Frankel was taken to a recent Starling Bank statement for R71, Portland Limited [K/743.5]. He accepted that Portland received money from the Vista Tower development. Starling Bank had recently closed accounts, like the NatWest account closures, apparently following concerns about inadequate checks. The bank statement shows payments to "*J F Property Investments (loan)*". Mr Frankel explained this is a trading name for his own properties in his own name; effectively it is Jack Frankel. The bank statement also shows a payment of £20,000 from R6, Edgewater (Harrow) Ltd, recorded as "*(Loan re Teacher Stern)*" on 3 May 2024, followed by another £5,000 on 13 May 2024 marked "*(loan)*". Also on 13 May 2024, it shows £5,000 paid to "*Jack & Esther Frankel (payment)*". It then shows payments in totalling £150,000 from "Edgewater (Troy) 1" on 13 and 14 May 2024; Mr Frankel confirmed he was the sole shareholder and said these commission payments came to his company, Portland, for him. Some repayments are then shown to R6, Edgewater (Harrow) Ltd.

Leslie Frankel

307. Mr Leslie Frankel described himself as a semi-retired property investor. He is in his early 80s, born in Budapest in 1943. His family settled in the UK in 1953. From 1966, he followed his father into property, initially buying residential properties with tenants. From the 1980s, he started working in commercial property and did not buy solely residential properties. He bought shops, some with residential upper floors. In recent years, he had not bought anything new but would instead invest in other people's projects, which included Jack Frankel's

businesses. He did not become involved with the developments but only invested when he thought the matter suited him. He also invested with other people. On one occasion, he owned a parade of shops and wanted to convert the upper part into flats; Jack Frankel developed them for him.

308. All of the Greenwood Respondents were incorporated between 1991 and 1993 except for R22, Balstraw Limited (1971), and R24, Callalot Investment Co. Limited (1959). Leslie Frankel confirmed that all, apart from Balstraw, are property companies. He confirmed that he operates them alone, with some help from his wife Zisi Frankel. Jack Frankel, he said, had nothing to do with these companies and did not attend meetings or sign cheques. He was a non-executive director. He said that he had added his children as directors following estate planning advice from his accountant.

309. Asked about this, Leslie Frankel accepted that Jack Frankel had been a director of R25, Scoperule Limited (and said in the accounts to have been serving on the board) ever since 1995. He said that Jack Frankel had been "*put*" director of various companies. At the beginning of Jack Frankel's career he thought that it would look good on his CV and Leslie Frankel was also starting with estate planning. Jack Frankel did not, he said, have "*daily*" involvement in "*my*" companies. Jack Frankel was not involved in running these companies, only in relation to developments and liaising with the accountant. Esther Frankel, also a director from 1995, was a director in name only, for estate purposes and perhaps little expenses - a start, he said. Leslie Frankel confirmed he still had a few residential properties and if they needed conversion or works he would consult Jack Frankel.

310. The nature of R22, Balstraw Limited's business is shown at Companies House as "*Activities of religious organisations*". The accounts to 2023 indicate reserves of over £3.2 million. They state that Balstraw was "*...established to foster, assist and promote the charitable activities of any institution professing and teaching the principles of traditional Judaism, to advance religion in accordance with the Jewish faith and to give philanthropic aid to the Jewish needy*." They state the charity "*...receives income from its cash deposits, subsidiary undertaking and voluntary income from companies associated with the trustees which it utilises in the provision and distribution of grants and donations to organisations that fall within the objectives of the charity*."

311. Leslie Frankel explained that this is a company limited by guarantee and a charity (registered with the charity commission), the sole object of which is to provide charitable funds to the needy and for educational purposes. He confirmed it did not solicit funding from the public and its sole income was from investments, the commercial activities of its subsidiary Nirlake Investments Limited and income from companies connected with the trustees. He said the vast majority was distributed to charity, the trustees are not permitted any payments and he had never personally benefitted from Balstraw or its funds or assets. He

accepted that when it had been allowed loans had been made from it and repaid, but Balstraw did not do that any more. He accepted that the reason for the company was the tax benefit from giving, but pointed out that "*we do give a lot to charity*".

312. Leslie Frankel said that his wife and he relied on the income from the Greenwood Respondents to support them in their advanced years; he compared them to the pensioners who rely on the Railpen pension fund. He said in his witness statement that it was unjust and unwarranted to seek a RCO against "*…family companies who do not have access to large sums in order to fund this litigation*". He protested in his witness statement that none of them had been involved with or benefitted from the Vista Tower development.

313. Mr Frankel was asked why he had said this in his witness statement without mentioning the existence of MVI, or the fact that MVI had been involved with the Vista Tower development. He said that he had not been asked that question. He said he knew funding for Vista Tower came from his company, but all the rest of the development he knew absolutely nothing about. That was not part of what he did; he invested. He was asked whether he was putting up money to allow Jack Frankel to "do developments". He said that he wanted to be part of a deal to make profit but that was purely a business deal, he was not doing any favours.

314. Leslie Frankel was taken to an e-mail sent to him on 15 March 2017 from Jack Silver referring to R1 and R77, about payment of his preferred return of £176,459.47 and an interim payment of £65,000 (as 65% of a total interim dividend of £100,000), asking for confirmation that the funds should be transferred to MVI, with "*Tatty Frankel*" as the label used by the e-mail system for his e-mail address. Mr Frankel said "tatty" meant "daddy", which was what his family called him. He did not know Jack Silver well. Asked how Mr Silver knew to send funds to MVI, he suggested that must be from Jack Frankel.

315. Leslie Frankel accepted that he had invested in R77, DF (Stevenage) Ltd. He said that he was an investor, not a partner. He confirmed MVI had also provided a loan to DF (Brighton) Ltd to fund the Edgewater (Brighton) Ltd project. It was put to him that MVI owns R8, Edgewater (Poole) Ltd and with another company R6, Edgewater (Harrow) Ltd, was an owner of DF Grinstead Ltd which was behind R4, Edgewater (East Grinstead) Ltd, and was also an owner of DF (Phoenix Heights) Ltd which sits behind R7, Edgewater (Phoenix Heights) Ltd. That could be, he said. He left it to lawyers and accountants to deal with where investments were made and how they were recorded. He said that could have been the reason for the change from R25, Scoperule Limited, to MVI if it was originally suggested that it be used as a vehicle for tax purposes and then as it turned out he was advised to use MVI instead. He did not dispute that MVI was (with R67, Waterpeak Ltd) shareholder of DF (Weybridge) Ltd, which controlled R13, Edgewater (Weybridge) Ltd.

316. Leslie Frankel said that Joel Frankel was involved with different types of business in the property field. Joel Frankel bought small individual properties, he said.

317. Leslie Frankel was taken to the same early documents as Jack Frankel, noted above, in relation to R25, Scoperule Limited. These show that substantial sums were owed by related companies including more than £790,000 from MVI alone in 2015. He accepted that he was a director of all of these companies, and Jack and/or Joel Frankel were directors of some of them. He confirmed that Bitochon Limited was not charitable (as had been suggested earlier), but a property company. He said loans were interest free because this was allowed; they did not have to charge interest. He disagreed that this was a set of companies being conducted for a common purpose. He was asked about the increase by March 2023 [K/309/2] in the amount owed by MVI to Scoperule, to more than £1.9 million. It was suggested to him that the purchase funds for Vista Tower came from R25, Scoperule Limited, and MVI received the repayment. He first said he could not recall, but later said it had come from the MVI bank account.

318. Leslie Frankel was asked why there was no loan agreement from MVI in relation to R1 or the Vista Tower project. Again, he did not recall how the money was sent. He was taken to the interest calculation for MVI in relation to R77 [F/189], which indicates an advance of £865,695 on 17 July 2014 and a "priority return" of 8% (not 10%) amounting to £176,459.47. There had been no limit on what the advance was used for, but it was advanced for the purchase of Stevenage (Vista Tower). He accepted that MVI had invested in various companies. In re-examination, he said that apart from the advance noted above no other money had been lent in relation to Vista Tower, apart from £100,000 which was initially advanced and came back a few weeks later. That had not previously been disclosed.

319. Leslie Frankel was asked about his e-mail address at "*worldholdgroup.co.uk*". He accepted this was R21, Worldhold Limited. He used this e-mail address for all his correspondence. An e-mail from Jack Silver to him on 5 April 2017 refers to a further dividend from R1/R77 of £130,000 out of a total £200,000, with "*further payments coming shortly from the last remaining unit, followed by some more from the mast Income and the freehold sales*." Again, Mr Silver asks for confirmation that the funds should be transferred to MVI that day.

320. On 15 July 2020, Mr Silver wrote to Leslie Frankel about a further payment in relation to R1, referring to a tax refund due to carrying back losses to prior years and a final dividend of £43,500, saying the amount "*due to Maida Vale*" at 65% was £28,275 [F/333].

321. Leslie Frankel was asked about R19, Primecastle Limited, recorded as carrying out property investment and development of building projects. He said it was formed to give a wide range but that was not what it did.

The last filed accounts, to March 2023 [K/234] show substantial assets including over £2.9m debtors, and creditors of over £4m. The notes to the accounts show that over £2m is owed to R19 by "*group undertakings*" and other debtors include interest free amounts of £443,311 due from a joint venture in which an entity controlled by the directors has a beneficial interest, and other joint ventures. Mr Frankel said this was "*accountant speak*". It was suggested that R19 had no bank account, so conducted its transactions through R18, Keythorpe Properties Limited.

322. R20, SBH Properties Limited, did have a bank account, he confirmed. The accounts to March 2020 [K/242/9] showed similarly substantial amounts owed to R20 by group undertakings and undertakings in which the company has a participating interest (over £1.6 million) and other debtors of over £1.4 million. Those "*other debtors*" include £437,955 due from MVI and other sums due from other Respondents, including £300,000 due from R71, Portland Limited. Leslie Frankel agreed that if Jack Frankel needed it he would lend to help out from time to time. The accounts for R20 show that the same amounts were owed by Portland, and MVI, the previous year.

Pinchas Olsberg

323. Pinchas Olsberg was an accountant at Cohen Arnold and a paid director of Highzone Holdings Limited ("**Highzone**"), which invested funds in R92, Edgewater (Croydon) Ltd. In his witness statement, he said he had been introduced to Jack Frankel in 2021 with a view to "*partnering*" with him in his property ventures in the UK, for a project which did not proceed.

324. When asked about this, Mr Olsberg said he had known Jack Frankel for 18 or 20 years. He said his witness statement was not misleading; this was the first business venture introduced with a view to partnering. Mr Frankel was known in the community for his financial activities (or, Mr Olsberg later said, as a "*property boy*") but he would not call them friends. He accepted that he believed Cohen Arnold had long standing links with Jack Frankel and Jacob Dreyfuss companies but he did not work in audit, so would not have access to the details. He knew the Frankels.

325. He was later introduced to the smaller development opportunity in Croydon. He understood this was a "*couple*" of residential properties but could tell us nothing further about what the project was. He said he could not recall all the details, and did not seem to know anything about the matter. It was probably just touching up, he suggested. He had said in his witness statement that, as director of Highzone, he invested all the funds required (over £1.8m), for 70% of the shares. He said the shares in R92 were being held in trust for Highzone. He said there was no connection with Vista Tower. He did not think any security had been taken. He did not recall dates and assumed a

presentation would have been made at the start with a spreadsheet or the like.

326. Mr Olsberg had been left as sole director of Highzone after another retired. When cross examined, he disclosed that Highzone is actually owned by two people in Israel with unfamiliar names (Teppel and Kaufman). He was taken to the disclosed loan agreement from 1 April 2022 [D/31] which gives the address of Cohen Arnold accountants as the address for Highzone. It provides for a short term loan of £1,875,000 for investment in properties in the UK. Mr Olsberg said he thought it was actually for the specific project and did not know why the document did not say that. It provides for 10% interest and repayment by 31 March 2023. He was taken to different versions of the same document and challenged about their authenticity, but again these seem likely to be matters of loose practice rather than fabrication. Mr Olsberg said he had very little memory about the matter. He thought the majority of the money had come back and it had turned out to be a good investment.

327. It was pointed out that Mr Frankel had not in his witness statement describing shares which he said were held on trust [D/20/6] referred to Highzone or R92. Mr Olsberg said trusts were used a fair amount and were quite normal. He could not explain why Highzone or its owners had not been declared at Companies House as person(s) of significant control.

328. He was taken to the document produced as the relevant trust deed [D/31] which indicates that 70% of the shares are held by Jack Frankel for Highzone and 30% are held for Portland. The document is dated January 2022, more than two months before the loan agreement; he did not recall but suggested the company may have been incorporated in advance. He was asked whether the trust document had been sent to him for the purpose of preparing his witness statement; he did not deny that, but said he thought he would have seen it before. He did not think they had been in the same room when Jack Frankel signed the document. He could not explain why Highzone and the loan do not appear in the accounts of R92. He said that Highzone's balance sheet includes the shares in Edgewater (R92).

329. The accounts for R92 for the year to 2022 [K/893] give no indication of any third party involvement, other than creditors of £459,232 due in a year and £1,338,891 after more than one year, against assets of around £2 million. Mr Olsberg suggested the total owed was "pretty close" to the amount lent by Highzone. Oddly, the accounts for the year to 2023 [K/893.2] seemed to show greater liabilities, with £603,079 due in one year and £1,338,658 after more than one year. Mr Olsberg could not explain this, but repeated that the loan had been made and shares had been taken, and the relevant figures were included in the accounts for Highzone.

Moishe Kornbluh

330. Moishe Kornbluh was a rabbinical advocate and managed cases for people "*caught up*" in court proceedings. He had worked on bookkeeping in the past. He had assisted Jack Frankel and Jacob Dreyfuss with the details of the BNI Respondents for their earlier removal applications and statement of case, and later with their disclosure obligations. At the start of his oral evidence, he explained various corrections to his witness statements.

331. Mr Kornbluh was asked how he could identify any distribution of funds or profits in relation to Vista Tower in relation to R27 Clockwork Estates, for example; he would need to know the source of funds. He said that he had spoken to and met Jack Silver, who had given him a list of payments from various companies. He used payment references; some would say East Grinstead, some Southgate or Vista. Jack Silver had assisted him and might have shown him bank statements. He had met Mr Silver in his office and he had shown him where the money went, sending him documents by e-mail. It was pointed out to him that if money had gone into (say) Clockwork Estates and then another company, say Waterpeak, he would have no way of knowing whether the money came from Vista Tower. He accepted he had no personal knowledge.

332. Mr Kornbluh was the penultimate witness to give evidence. Having heard the earlier evidence about Clockwork Estates Ltd and the apparent payments or references to "*Clockwise*", he was keen to introduce into his evidence an explanation, or argument, that "*Clockwise*" meant Clockwork and the references to the latter in bank statements were mistakes. That seems distinctly possible, but he accepted that he could not give evidence about this; he did not know. Mr Roth had also made an early reference in his evidence to "*clockwork or clockwise*".

333. Mr Kornbluh was asked why no explanation had been given when bank statements had not been provided for Respondents or periods. He said it had been common for big banks to close accounts, but it was pointed out that the Applicant's solicitors had challenged the disclosure given and the companies would have been entitled to ask for historic bank statements even if accounts had been closed. He confirmed he had not asked for any. However, he said that he had not just accepted what he had been given: he had also spent time with Zalman Roth going through filing cabinets searching.

334. Mr Kornbluh was asked what had prompted him to correct Schedule 1 to the statement of case of the BNI Respondents, listing those who had been said to have received no benefit from the Vista Tower development. In his first witness statement, he had produced replacement schedules removing R26 Lingwood Properties Ltd, R27 Clockwork Estates Ltd and R71 Portland Ltd, as noted above. He was asked how he had known, when bank statements were not provided for

some of the companies in Schedule 1. He said that he had been told by Jack Silver that money had been sent to these companies, or the bank account came into contact with funds from Vista. He had been told that the "*Clockwork*" bank account had been closed, and referred again to "*Clockwise*".

335. He was asked how Schedule 2 was compiled. It had been presented as a list of BNI Respondents formed after R1 had closed, but R1 had actually filed accounts for the year to 31 December 2020. It was pointed out that the company was still live, with overdue accounts. Mr Kornbluh referred to what "*Jack or Jacob*" said about when Vista ended and after it had sold off all its assets.

336. As noted above, Mr Kornbluh's second witness statement, produced in response to the Applicant's written opening argument, produced a table with the owners of shares shown in red where these were said to be different from those shown in the Applicant's table. Mainly, it was said, the relevant shares were held on trust for these owners. Mr Kornbluh produced copy documents said to be declarations of trust (two by Bina Angela Dreyfuss and seven by Rivkah Dreyfuss, all stating that 50% of certain shares registered in their name were held as trustee for Deborah Roth, as noted in Schedule 1 below). Mr Kornbluh accepted that at the time of disclosure he had not been looking for anything held on trust.

337. Mr Kornbluh accepted that most of the assertions made through his second witness statement about trusts were hearsay and in many cases were not documented. He was asked why he had not come across any of these documents in the disclosure search. He said that he did not know whether Jack or Jacob knew where the documents were. He did not know whether they existed. The brief documents attached to his second witness statement as declarations of trust had been sent to him by e-mail, he thought by Zalman Roth, or some of them. He had not disclosed that e-mail and had not seen the original documents, or spoken to Rivkah Dreyfuss or Bina Dreyfuss.

Daniel Davila

338. Daniel Davila's evidence was straightforward and clear. He described himself as a builder/contractor and property developer/ investor. He had known Jack Frankel since about 1998, when Mr Davila built an extension on his house.

339. Mr Davila gave evidence for R3, Edgewater (Childs Hill) Ltd, and R12, Edgewater (Tudor Court) Ltd. R3 was formed in 2008 to purchase the freehold of Tudor Court, a property in Childs Hill, London. In about 2006, Jack had told him about the opportunity to buy this building, with 20 flats, and build three penthouses on top. They felt there was further development potential and decided to buy together. They each put in 50% of the funds to purchase (for about £200,000 in around 2008) and received 50% of the shares. R12 was formed in 2019, once the development was completed, and holds the leasehold title, a

requirement of the mortgage company. Both companies dealt with the same development. He explained that it had then taken about eight years to get planning permission and UMTB (Mizrahi) Bank had funded the development. He was taken to the accounts for R12 [K/165] which showed debtors of £243,813. He did not know who these were. He meets Jack Frankel every year about the property.

Isaac Perlstein

340. Isaac Perlstein had given a witness statement and the Applicant was content not to cross examine him. Mr Perlstein was a USA based property dealer, investing in properties across the UK and other countries. He also traded in real estate for The Nachlas Yakov Trust, registered in the USA, of which he was a trustee. In 2007, the Trust started investing funds in UK properties via Mr Dreyfuss and his wife, who identified the opportunities and managed the projects. It invested in R37, R46, R49, R50 and R55, and others which are not part of these proceedings. They would buy properties, refurbish them and let them for rental return.

341. The Trust invested all of the cash, with 75% of the shares in return, with rental profits distributed 75% to the Trust and 25% to Rivkah Dreyfuss. He explained that the shareholdings were not registered in this way, "*due to difficulty in obtaining funding for companies owned more than 25% by a foreign trust*". Therefore, he said, 20% of the shares were registered for the Trust and Rivkah Dreyfuss is holding the remaining 55% in her own name for the Trust.

Paul Miller

342. Paul Miller gave evidence for R2 by video from Israel (clearance having been obtained from the Israeli authorities in advance). He was a solicitor and consultant to Bryan Cave Leighton Paisner LLP, solicitors for R2. He was also general counsel for Everglen Capital Partners LLP ("**Everglen**"). Everglen was established by three founder families. When asked, he gave three unfamiliar names (Journo, Mandelowitz and Rossi). He was not aware of any connection with the Spitzer family or Midwest Holding AG; he did not know them.

343. In March 2016, a friend of one of the founders had referred the Russell House development project in Brighton to Everglen. It was being promoted by the "*Edgewater group*", which was seeking investors to acquire and develop a large office building into 54 (later 53) flats. This was the first time they had dealt with Mr Frankel or Mr Dreyfuss. Labadi Limited, registered in the BVI, was acquired for the Everglen families and a few of their close contacts to invest in the Russell House project. Those other contacts were coordinated by Exilion, and again were unfamiliar names.

344. On 4 May 2016, R2, Edgewater (Brighton) Limited was incorporated to acquire and develop the site, with R67, Waterpeak Ltd, the sole shareholder. They would not have been comfortable to use an existing

trading company. In a shareholders' agreement, Labadi Limited agreed to provide 70% of the funding and DF (Brighton) Ltd, "*part of the Edgewater group*", agreed to provide 20%. The remaining 10% was to be provided by a third party investor procured by Edgewater, KIG Brighton Limited. To reflect those arrangements, the shares in R2 were registered in those proportions (70% Labadi Limited, 20% DF Brighton Ltd and 10% KIG Brighton Limited). Under the shareholder agreement, Everglen could appoint more of the directors, who would have a casting vote.

345. Mr Miller gave in his witness statement and accompanying documents a helpful description and breakdown of the details of the funding arrangements, transactions and proceeds from interim rentals and sales of flats. Work commenced in 2017 and was completed at the end of that year. From then, the "*Edgewater group*" played a more passive role. From June 2018, after completion of the development phase, Everglen took on day to day responsibility for managing the project. Two Everglen employees were appointed as directors of R2 from November 2016. Various directors appointed by Everglen came and went from 2018 onwards. In March 2020, Jack Silver resigned as company secretary of R2; another firm of accountants had been retained by then to help with the books for R2 and his company secretarial services were no longer required.

346. Ultimately, Mr Miller said, the project had been a commercial failure, primarily attributable to the flats being unable to realise sufficiently high prices to generate the expected returns. He said that Everglen had deployed significant effort over eight years to oversee the development of the project and progress the rentals and sales of the flats. He produced a breakdown showing that the shareholders still had not received back the capital they had invested, with over £1.4 million outstanding (before interest) and the remaining assets of R2 having about the same value "*at best*" when there are still potential liabilities for R2 of "*up to £215,000*".

347. Mr Miller accepted that Jack Frankel and Jacob Dreyfuss remain directors. Their company owns 20% of R2, so they had an interest in making sure proceeds were eventually released to shareholders and creditors; they were entitled to have two directors under the shareholder agreement. Asked why the shareholder agreement had not been produced, he said that he had summarised the provisions in his witness statement. It was later produced and admitted. He was taken to the loan documents which had been produced earlier, providing for short term funding. He said that he thought all of the loans had been extended, by all three shareholders. He was asked why bank statements had not been provided. He said that he had not been aware that statements were required. He was taken to the directions [B/31/8], as summarised above. He accepted that he had relied on the spreadsheets provided, which had been produced by the Everglen accounting team. Documents confirming bank balances (not bank statements) were later produced and admitted.

348. Mr Miller was taken to a spreadsheet dated 22 August 2024 [D/27.13] showing £595,010 cash at the bank, as part of overall assets of just over £1,350,000. It now has about £9,000 less, as explained in his updating witness statement dated 8 November 2024. The potential liabilities described in the spreadsheet include £150,000 for window repairs which he expected would be recovered from leaseholders, so may not be required, but was provided for. He had explained in his updating witness statement that the grant of a lease of one of the flats (10) was due to complete at a price of £330,000 less transaction costs and a £7,000 retention against liability for future repairs, and one had recently been valued at £300,000, which was £20,000 less then previously. It was pointed out that the liabilities included £281,494 for DF (Brighton) Ltd, even before interest. Mr Miller said that the company would be making a loss; the shareholders would each not be getting back the capital that they had put in.

Approach

349. We accept Mr Hickey's general submissions (in line with Triathlon) that the just and equitable test in section 124 of the Act is deliberately wide "*so that the money can be found*" and the jurisdiction may be protean. Different considerations may be relevant and different approaches may be just and equitable in different cases. It appears one of the main purposes of this new jurisdiction is to ensure that the "*pot is filled promptly*" so that remedial work can be carried out and/or public money from grant funding can be recovered promptly, as he suggested, where it is just and equitable to do so.

350. We agree the developer is a key target, at the top of the hierarchy of liability (or waterfall). We are therefore in no doubt that a RCO should be made against R1 in view of the nature of their residential conversion works and the relevant defects in this building. We would say that even if it were not for the negative factors noted above, such as the untrue warranty in the sale contract, failure to deal with those fire safety defects which were identified in 2017/2018 and failure to ensure the sprinkler system was commissioned. However, it appears R1 has little or no remaining assets and may soon be subject to administrative strike off for failure to file documents. In the sale contract, R1 gave an indemnity, but that does not mean that associates must be treated as if they had given indemnities or share any blame with R1.

351. It was agreed that the power to make RCOs against associated bodies corporate and partnerships is a radical departure from normal company law, but does not pierce the corporate veil because it does not expose the individual members to unlimited personal liability. As noted in Triathlon, the Act "*…erodes and elides corporate identity and deprives it of some of its main advantages, but does so for specific purposes and within specific limits. It does not permit the normal consequences of incorporation to be ignored for different purposes*." [252]. The relevant provisions are limited to (broadly speaking):

a. certain high residential buildings which were the subject of relevant works during the retrospective 30-year period (or remedial works thereafter); and

b. bodies corporate or partnerships which had a specified association with the landlord/developer on 14 February 2022 (before the Act was proposed) or during the critical preceding five-year period, which begins a few months before the Grenfell Tower tragedy (or have a specified association with the current landlord).

352. We agree with Mr Hickey and Mr Birch that impecuniosity or otherwise of any of the Respondents is not a significant reason for or against making an order in this case. It was noted in Triathlon that it will be an unusual case where the source or extent of a respondent's assets or liabilities would carry much weight when deciding whether it is just and equitable to order it to bear the cost of remediation [255].

353. As noted above, Mr Morris argued that as a matter of statutory interpretation we should have regard to the "*expropriatory*" nature of this jurisdiction. Mr Hickey argued this was not expropriation, but a fair allocation of responsibility for meeting the costs of making certain types of buildings safe. Mr Morris accepted that the state was not taking money for itself, but observed that it was creating a power to recover public money or transfer money from one party to another. Since this involved "*some degree of*" interference with established rights (against companies which would otherwise have no legal liability to the Applicant), there must be clear authority of law and strict construction, or alternatively we should keep in mind the principle against doubtful penalisation. We note the observations in Triathlon about the nature of this jurisdiction, but we will assume Mr Morris is right because in this case it makes no difference to what we consider to be just and equitable in relation to each Respondent. The wording of the Act and its purposes are very clear, particularly following the amendments noted above.

354. Mr Morris emphasised that the jurisdiction was to order a "*contribution*" towards costs of remedying certain relevant defects, not to give an indemnity. He observed that associates may not share any fault of the developer and may be as innocent as a (new) landlord. He argued that the Applicant needed to go further than common directors or shareholders or intercompany loans. No forensic accountancy advice had been sought. He referred to the protestations from Mr Davila and Mr Miller that they had nothing to do with Vista Tower and had no benefit from it. Section 124, he said, did not exist to punish for poor bookkeeping, possible non-compliance with company law or accountancy duties, or otherwise. He observed that under regulation 5 of the model articles directors may lawfully delegate matters to others, such as accountants.

355. Mr Warwick argued that where the hurdle for association is a low one, such as common directorships, we should require substantial grounds to make a RCO against the associate. His submissions, that the touchstone must be linkage with the relevant development, were generally adopted by Mr Morris, Mr Knight and the other active Respondents. Mr Warwick argued that the widest scope of what would be "*just and equitable*" was companies that directly or indirectly participated in the development or received any remuneration from it. This was not a matter of looking for "*breadcrumbs*", he said, but actual proceeds and a tight band of people, with parents and subsidiaries. We asked about the point of association by common directorship if there must also be a parent and subsidiary relationship within the other types of association under section 120. He said there should be sufficient flexibility to counter an avoidance scheme in relation to a parent and subsidiary. If we were looking for a test, it should be abuse or something close to abuse. The wider the erosion of corporate identity, the greater the risk of uncertainty, so we should keep this to a minimum, he argued.

356. As noted above, the Greenwood Respondents observed that association by directors was ignored for the purposes of calculating the net worth of a landlord under Schedule 8 to the Act. Mr Knight reminded us that R22, Balstraw Limited, was a charity. MVI was not a Respondent, its only involvement had been in the 2014 purchase of an office building and the total benefit it had received from Vista Tower was limited to £386,459.47 over two and a half years, he suggested. We asked about this, since the building was said to have been identified and purchased as a part-vacant office building specifically intended for residential development (as described in the promotional document noted above, which had sought funding from Leslie Frankel and others). Mr Knight suggested the building could have been run as an investment if it was not developed. He accepted that if MVI had contributed to the development it might be difficult to resist a RCO if it were a Respondent, but observed that it was not.

357. We are not persuaded that there is an automatic presumption that any associate must be made liable unless they can show good reasons why they should not have to pay, particularly where they are associated only by common directorship. We agree that some circumstances will suggest additional linking factors (which may be short of linkage with the development or evidence of abuse) and those may call for an explanation and/or evidence of countervailing factors. Ultimately, these cases will be very fact-sensitive and this is a matter for our discretion.

358. We agree with Mr Hickey and Miss Gillies that this jurisdiction is a non-fault remedy (as noted in Triathlon at [261]) and does not call for something akin to a tracing exercise, at least in a case like this. The Applicant cannot be expected to know enough about the affairs of these Respondents, particularly when Respondents have tended not to demonstrate the candour or rigour which might have helped them,

while arguing that they have been ambushed when they cannot explain the gaps and inconsistencies in their own documents and declarations to Companies House. Some have explained as little as possible at each stage, even about those behind and benefitting from the development. Some have been misleading, or economical with the truth (about the involvement of MVI, for example). Save for R2, they all explained very little about each Respondent or the other investors said to be involved in their developments. What they did disclose appears incomplete and in parts unreliable, as noted above.

359. We recognise that, as Mr Warwick argued, the association provisions in section 121 could include very remote associates. He gave examples, such as a director of the lessee-owned freeholder of the building they live in who is also a director of completely different bodies. However, this is not a case where the wide association provisions have caught many completely unrelated companies who are operated by others and merely happened to have the wrong director at the wrong time.

360. For the following reasons, we consider that whether (loosely, as in the explanatory notes to the Act) called a group, or wider corporate structure, or something else, almost all of the remaining Respondents have links in addition to association by common directorship during the specified period which are sufficient to call for an explanation and/or evidence of countervailing factors. It does not follow that a RCO should be made against every such Respondent. However, since the parties have pleaded and given their evidence by reference to whether this was a wider corporate or group structure, we take that as a relevant consideration. We give this sensible scope; we do not accept that only ultimate beneficial ownership by a single person would be sufficient. We mean that some or all of the same relevant beneficial owners are involved (with or without others) and/or there are other factors of similar significance to indicate a wider corporate structure or connection such that a very substantial RCO may be just and equitable.

361. First, unless otherwise indicated in Schedule 1 below, it appears that the business of each of these companies involved the property, property development and/or building sectors.

362. Second, most of those with the "*Edgewater*" name were presented to potential funders and/or third parties as if they were part of a group, let alone a wider corporate structure, as noted above.

363. Third, as Mr Hickey argued, these Respondents are all linked by the Frankel and/or Dreyfuss families. When they did not catch themselves, Jack Frankel and Jacob Dreyfuss had a tendency to describe their families and other investors as "*partners*", and "DFS" as referring to the Dreyfuss, Frankel and Spitzer families (not solely to Jacob Dreyfuss, Jack Frankel and Leo Spitzer). In any event, Jack Frankel and/or Jacob Dreyfuss were (at least some of the time) directors of all of the Respondents and apparently had day to day control (whether or not they delegated this to others) over how most of the companies were

run. At least one of them is also shown as a person with significant control of most of the Respondents.

364. Mr Dreyfuss' wife, Rivkah Dreyfuss, was a director/shareholder of many of the Respondents. She did not give evidence. We give some weight to her interests, since it was said that she was an investor in her own right. However, she was linked with the Vista Tower development, as the ultimate beneficial owner of a relatively small share in relation to R1. The BNI Respondents said her share was 3.5% "at most". They said that she was sole shareholder/owner of R26 (Lingwood Properties Ltd). That company held 50% of the shares in R67 (Waterpeak Ltd), which held 35% of the shares in R77 (DF (Stevenage) Ltd), which held 20% of the shares in R1. That indicates an indirect interest of exactly 3.5%, save to the extent this is shared with her husband, Jacob Dreyfuss. She was also (at least later) one of those with significant control of Southgate House Stevenage Limited, a company which had initially been involved with R1's purchase of Vista Tower, but that may not itself be a significant link (as noted above).

365. Further, Rivkah and Jacob Dreyfuss seem to have held companies between themselves, or one for the other, as noted in Schedule 1. For example, Jacob Dreyfuss and Jack Frankel gave evidence that R67 was their joint vehicle through which they received their money (their "*other them*", as Mr Roth called it), but Mr Kornbluh understood and it appears that R67 is shown as ultimately owned by Jack Frankel and Rivkah Dreyfuss, not Jacob Dreyfuss. It appears R67 is owned equally by R71 (Portland Limited, owned by Mr Frankel) and R26, Lingwood Properties Ltd (said by Mr Kornbluh to be owned by Rivkah Dreyfuss, who is shown as sole shareholder). Similarly, Jack Frankel had given evidence that Lingwood Properties Ltd was used by Jacob Dreyfuss to hold his shares in other companies, when it is shown as owned by Rivkah Dreyfuss. Further, Rivkah Dreyfuss was part of or involved with the property investment/development businesses of her husband, Jacob Dreyfuss, and Jack Frankel, as noted above and in Schedule 1.

366. In the circumstances, we consider that Rivkah Dreyfuss' involvement is not as significant as if the relevant shares were held in the name of Jacob Dreyfuss or Jack Frankel, but is still a significant linking factor. Her links with them and with the Vista Tower development call at least for a good explanation in relation to the business and source of funds of each relevant company (of which Mr Frankel or Mr Dreyfuss was a director during the relevant period, and she is or was shown as a shareholder) and evidence as to why an order should not be made.

367. Deborah Roth was linked by her husband, Zalman Roth, and her brother, David Rokach, who were closely involved with the Vista Tower development project for and with Jacob Dreyfuss and Jack Frankel, but we see these links as more remote and not necessarily enough by themselves to call for an explanation or countervailing evidence. However, her claimed involvement with companies was seldom declared at Companies House. We give significant weight to her

interests where she is shown as a shareholder, given that she may have invested (in Respondents other than R1) with her own or separate family money and did not give evidence, but less weight where her interests were not declared at Companies House (for the same reasons as described later below in relation to other investors).

368. Leslie Frankel (Jack Frankel's father) was a very experienced and apparently successful property investor. We accept that in practice he, not Jack Frankel (or Jacob Dreyfuss), had day to day control of the Greenwood Respondents, although Jack Frankel had at least the notional right to influence how these companies were run. At least some of Leslie Frankel's companies received money from R1 and other Edgewater projects, and owned/controlled other Edgewater entities, as noted above and below. His company or companies (probably R25, Scoperule Limited, as indicated in the structure chart used almost a year after the acquisition to seek bank finance, or if not MVI) provided a large part of the funds needed to acquire the Vista Tower office building in the first place. They, or he, funded many developments for Jack Frankel with or without Jacob Dreyfuss, enabling his/their business model. As noted above, MVI sat behind some of the Respondents, apparently owes substantial sums to some of the Respondents, and received substantial sums from the Vista Tower development. It is not itself a Respondent, but appears a linking factor in the circumstances.

369. Fourth, the Respondents are likely to be linked by financial or other dealings and their records are opaque and/or do not appear reliable (although again we see this as a matter of poor and disorganised practice, not dishonesty). Mr Hickey argued that the disclosed documents and Companies House records showed a complex and interconnected web of relationships and interdependencies. The relationships are obviously complex and part of the community connections which may be based on trust and which we may not fully understand, not least because little has been explained about them. In any event, as was suggested, it appears many of the relevant Respondents were not actually run as carefully separated SPVs but as part of a fluid, disorganised and blurred network or structure, controlled by Jack Frankel and/or Jacob Dreyfuss. This (or they, or those working for them) probably had a tendency to take from whichever company had money when it was needed by another (as a loan or otherwise) and at least sometimes repaid it, at least in part.

370. The substantial changes in the declared financial position of R27 (Clockwork Estates Ltd), substantial sums shown owed to R28 (Gavewell Ltd) and apparently misleading description of a substantial payment to R1 from the client account of their property solicitors as "*professional fees*" which it then paid to Clockwork/wise, as noted above, shows how likely it is that loans might not be repaid or sums might not properly be accounted for. The approaches described by Jack and Leslie Frankel and Jacob Dreyfuss, of using other companies to make payments on behalf of (or through them for) others or paying

direct to "*investors*" or "*partners*", and the recent loans apparently taken by Jack Frankel from R6 to fund costs of this litigation, as noted above, give a similar impression. Further, the paper accounting and other records for the Respondents often seemed to bear little relation to actual transactions, sometimes because a company did not yet exist or did not have a bank account at all. This is all consistent with the very loose approach to actual transactions and documentation observed above.

371. With the exception of R2, which had genuinely independent declared majority shareholders and professional advisers, at least some of the Respondents do not appear to have operated in a way that a prudent property developer looking to ring fence assets and liabilities in an SPV might.

372. We give the interests of apparently external investors great weight. It is obvious that the RCO sought by the Applicant would be disastrous for their interests in the relevant Respondent(s), as it would be for any shareholder/funder particularly if they do not hold security over the assets of a company. However, we give much less weight to those investors who were said to be beneficial owners but not declared to Companies House, with their shares said to be held on trust by the registered shareholders. We do so whether the reason for not disclosing their involvement (or continuing involvement) was that bank funders would not accept more than a modest proportion of overseas or corporate investors, or otherwise. Generally, we consider it just and equitable to assess matters by reference to how the companies and shareholders appeared or were presented to the public (and so probably those dealing with the companies) in the statutory information filed by (or for) the officers of each company with Companies House.

373. In view of the general and specific linking factors noted above, and the additional specific reasons noted in Schedule 1 below, we consider it just and equitable to make, and have decided to make, a RCO in the joint and several terms described below against the Respondents marked "Yes" in the last column of Schedule 1 below. In relation to these companies, the linking factors outweigh the factors against making an order.

374. There is real force in Mr Hickey's argument that it should be for these Respondents (or the relevant members of the Frankel and/or Dreyfuss families) to ensure that sufficient funds are found, when there has been no real explanation in relation to the sources of their funds and their businesses, including those who are said to have independent investors who have not been declared at Companies House, and the publicly available (and disclosed) information is opaque. Having provided only limited information as to why they say it would not be just and equitable to make an order against them, it appears just and equitable to make them all responsible. We hope they will be able to arrange for those more closely linked to pay so that independent investors do not

suffer, but in this case these Respondents must know that they are each liable for the entire sum if the others do not pay.

375. For the avoidance of doubt, we would include these Respondents whether or not R17 is also made the subject of a RCO in future.

376. We are not satisfied that it would be just and equitable to make such a RCO against those marked "No", for the reasons explained in this decision and/or the table.

377. As noted above, we had been invited to make a single RCO (or RCOs in a single document) based on the draft provided by the Applicant, which would require each of those Respondents jointly and severally to make specified payments. For those we have decided to include, this will amount to a very substantial sum, of just over £13,262,119.

378. Mr Warwick and Mr Morris had argued that, in any event, we could not or should not make such an order, only individual orders against each company for a specified share from each company. Mr Morris referred to "*a specified body corporate*" (singular), and Mr Warwick contrasted this with "*make payments*" (plural), in the language of section 124. We had asked about the final order in *Triathlon*, since it seemed likely that had been a single order against two companies. Mr Morris suggested the point had not been an issue in those proceedings.

379. When these submissions were made, we asked about section 6 of the Interpretation Act 1978, which provides that in any Act, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular. Mr Morris warned by reference to Bennion on Statutory Interpretation (8th Ed.) [19.12] that this can give rise to uncertainty. We do not agree with his submission that the natural and ordinary meaning of the wording only allows a singular order, and this cannot be joint and several because those or similar words are not spelled out. We do not accept that a contrary intention appears from "*payments*" (an order against a single respondent may be more likely to require several payments in respect of different matters or times, so using the plural here makes sense), section 124(3) or the other wording of the Act. Nor do we accept that reading the Act in the way it would normally be interpreted creates uncertainty. We consider that a single RCO (or a number of RCOs in a single document) may be made against specified bodies corporate or partnerships and such order(s) may require them to make payments jointly and severally if the tribunal considers that just and equitable in a given case.

380. Further, we accept the submission from Mr Hickey that, in this case, this is the just and equitable approach. We do not accept that the Applicant should be confined to a limited share from each relevant Respondent, or should have to wait to see whether a given Respondent is solvent (or how much they can pay) before they move on to the next, even if some kind of top up machinery could be included in the wording

of a RCO to accommodate this as Mr Morris suggested. It would obviously mitigate the huge impact on each Respondent, but would be impractical for an applicant. It does not seem consistent with the purpose of this jurisdiction, as noted above. We accept Mr Hickey's submission that in this case it leaves a grave risk that assets which should be included will be missed. In any event, there are questions about the reliability of the accounts and related documents in relation to the Respondents (which again we regard simply as matters of blurred divisions between company affairs and finances and/or inadequate administration and record keeping). Even if assets are shown in the last filed accounts of a given Respondent and those accounts were accurate, it may now genuinely have none left. Those Respondents we have included appear sufficiently linked for us to consider it just and equitable to expect them to arrange between themselves what contributions should be made by each company, on the basis described above.

381. We also accept the submission from Mr Hickey that in this case the fair approach is an "all or nothing" one. We had been concerned about the position of R2, for example. If a RCO is not made against R2, the value of the 20% shareholding linked with the Frankel/Dreyfuss families will be missed. However, in view of the amounts involved, the properly declared 70-80% of shares held by others who appear genuinely independent and the detailed explanation given by Mr Miller of the relevant Brighton development (which we accept), we do not consider it just and equitable to make a RCO against R2, even if this is limited to 20% of the total payable by R1 and others. No protective provisions have been proposed (even if any could help with an order of this size) and such an order may cause unforeseen complications, as Mr Hickey noted. In this case, the RCO needs to be as simple as possible.

Other terms of the RCO

382. On the last day of the hearing, Mr Morris applied under rule 18(2)/6(3)(d) for an order for disclosure of the Applicant's settlement agreement with R63 and any other settlement agreements with anyone within the association provision in section 121. He referred to Heaton & Ors v AXA Equity and Law Life Assurance Society PLC & Anor [2002] UKHL 15 and Cadogan Petroleum PLC & Ors v Tolley & Ors [2009] EWHC 3291 (Ch). The TS Respondents suggested at least limited disclosure/inspection, or a witness statement setting out the global sum(s).

383. Mr Hickey opposed this. There had been only one settlement, he said, with R63, who it appeared had objected to the request made the previous day for disclosure because the agreement was confidential. Confidentiality was a relevant factor and this was a matter for our discretion, he confirmed, referring to Cadogan at [21]; Heaton was a case about joint tortfeasors. Disclosure was not necessary to conduct the defence. The question of anything paid under the settlement agreement would arise later.

384. We directed the TS Respondents to notify Colman Coyle (for R63) of the application with copies of their reasons (as an extract from the transcript or otherwise) and warn them that any reasons for objecting must be sent within seven days. We do not appear to have heard anything from Teacher Stern confirming that they have done so, or anything from Colman Coyle objecting.

385. In any event, we refuse the application. It was made late, we still have the pending application in relation to R17 and other settlements with Respondents or others may be possible. We consider that, if this needs to be dealt with outside any enforcement proceedings, it should be included in the balancing machinery in the RCO.

386. The general terms of the accompanying RCO are based on the final draft produced by the Applicant, taking into account the amendments proposed by Respondents to the terms of the Applicant's earlier draft RCO and the points noted above. Save as follows, we have not given an immediate general liberty to apply because that seems to risk confusing matters where so many Respondents have been made the subject of the RCO. The Applicant should be able to enforce and deal with any disputes about enforcement of the RCO in the usual way, particularly while the remedial works are ongoing and not expected to finish until the latter part of 2025 at the earliest.

387. It seems to us that the RCO should contain balancing provisions which any relevant party can trigger after the end of 2026 (which seems consistent with their proposed provision for the Applicant to account for any surplus 12 months after practical completion of the current remedial works, which we have incorporated). If triggered, the Applicant will need to produce a witness statement detailing costs, recoveries and repayments and any of the relevant parties can apply as set out in the RCO.

388. However, since the parties may have good reasons for seeking a general liberty to apply or different provisions, or be able to propose better wording, we have included permission for the parties to apply to vary these general terms of the RCO. If such application is made, it will be considered as set out in the RCO.

Costs

389. Mr Oestreicher (and potentially others) indicated that they wished to apply for costs orders. The tribunal is generally not a cost-shifting jurisdiction and should not be taken to be encouraging any such application, particularly in view of the matters noted above. However, any such application would need to be made as set out in rule 13 within 28 days after this decision is sent, informed by and dealing with any relevant matters set out in this decision.

Judge David Wyatt **24 January 2025**

Rights of appeal

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

SCHEDULE 1 - Respondents

No	Respondent and any specific details or reasons (in addition to those explained above)	RCO (yes/no)
1	EDGEWATER (STEVENAGE) LTD	Yes
Represented by BCLP		
2	EDGEWATER (BRIGHTON) LTD The reasons for not including R2 are set out in [381] above.	No
TS Respondents (other than R1)		
3	EDGEWATER (CHILDS HILL) LIMITED Incorporated in 2008. Jack Frankel and Daniel Davila declared at Companies House as persons with significant control, each with not more than 50% ownership of shares. Used the Edgewater name, but does not appear to have been among the projects described in the 2015 "*A taste of Edgewater*" brochure. The property was acquired years before the Vista Tower development. We accepted the evidence of Mr Davila as summarised above. He appears to have been a properly declared independent investor throughout. We consider this on the borderline, where only a brief explanation was given and the value of Mr Frankel's shareholding should otherwise be included. There is real force in Mr Hickey's argument that it should be for Mr Frankel and Mr Dreyfuss to ensure sufficient funds are found by the other Respondents so that people like Mr Davila do not suffer. However, we are being asked to make an immediate joint and several order against all. In view of the likely impact on R3/Mr Davila of a RCO of this size, we are not persuaded that it would be just and equitable to include R3. For the same reasons, we do not include R12 below.	No
4	EDGEWATER (EAST GRINSTEAD) LTD Incorporated in 2014. Linked to R1 and R16 (below) and the Vista Tower project as noted above. In addition to Jacob Dreyfuss and Jack Frankel, R16 and	Yes

	R17 (main initial funders of the Vista Tower project) are declared as persons with significant control. The East Grinstead project was described in the "*A taste of Edgewater*" brochure. Jack Frankel said that MVI provided a loan to/through DF (East Grinstead) Ltd, which appeared to hold the other shares in R4, and would therefore have a proportion of its shares. MVI is declared as a person with significant control over DF (East Grinstead) Ltd from March 2017, in place of R25 Scoperule Ltd (2016 to 2017). R1's "Account QuickReport" of transactions [J/15/113] shows substantial transfers to and from R4 (such as payments totalling £235,000 in August 2015, what appear to be repayments totalling £345,000 in late 2015 and early 2016, and then payments totalling £130,000 later in 2016 and in 2017). When asked about this, Mr Frankel said that R1 and R4 were "*cross collateralised*"; the projects and profits were interdependent. The 2020 accounts record without further explanation that creditors are a "*group undertaking*" (£402,658) and "participating interests" (£108,221). Mr Dreyfuss confirmed that transfers relating to the East Grinstead project were made in 2019 through R67 (Waterpeak Ltd) to R26 (Lingwood) and R71 (Portland).	
5	EDGEWATER (HAMPSHIRE) LTD Incorporated in December 2016, during the Vista Tower development. R67 Waterpeak Ltd (see below) was the sole shareholder on incorporation. Jack Frankel and Rivkah Dreyfuss (from 2021) were declared at Companies House as persons with significant control. Each now holds 50% of the shares in the company. The involvement of Jeap Investments Ltd was not apparent because R5 held the property on trust, as noted above. Jack Frankel accepted that money from the Vista Tower development was paid to R67 Waterpeak Ltd. It was put to him that some such money flowed into R5 and he was asked why bank statements had not been disclosed. He said that R5 had no remaining assets, which had all been sold off, and they had provided all bank statements they had been advised to provide.	Yes

6	EDGEWATER (HARROW) LTD Incorporated in 2020. Jack Frankel, R71 (Portland Limited, see below), MVI (from 2021) and Jeap Investments Ltd (from 2021) declared at Companies House as persons with significant control. Jack Frankel confirmed that Jeap Investments Ltd is another company which Leslie Frankel runs. Leslie Frankel required his interest in R5's property to be held on trust for Jeap Investments Ltd, as noted above. Jack Frankel accepted that R6 has a bank account and had funds from time to time.	Yes
7	EDGEWATER (PHOENIX HEIGHTS) LTD Incorporated in 2013. Jack Frankel, Jacob Dreyfuss, Martin Stimler (initial funders/beneficiaries of the Vista Tower project), R17 (main initial funders/beneficiaries of the Vista Tower project) and DF (Phoenix Heights) Ltd (see below) declared at Companies House as persons with significant control. The project was described in the "*A taste of Edgewater*" brochure. 2014 accounts refer to £40,000 acquisition fees payable to directors (then Jack Frankel, Jacob Dreyfuss, Jack Silver and Martin Stimler) and £46,337 payable to R67 Waterpeak Ltd (see below). 2018 accounts refer: • under debtors, to £26,238 relating to DF (Phoenix Heights) Limited (R67 Waterpeak Ltd and MVI were declared at Companies House as persons with significant control of that company); and • under creditors, to £199,733 owed to group undertakings and undertakings which have a participating interest in the company, and other creditors including Clockwork Estates Ltd (said to be owed £20,001). Mr Frankel was not sure why the accounts referred to "group undertakings". He suggested not much profit was made in the end after paying the bank and investors. Waterpeak "*and therefore Jacob and myself*" made a very small amount of money, he said. MVI was declared as a person with significant control	Yes

	of DF (Phoenix Heights) Ltd. Mr Frankel said that MVI probably holds 65% of the shares, normally his father's profit share after his priority return. The rest of the shares were held by Waterpeak, which was how Mr Dreyfuss (through Lingwood) and he (through Portland) took their shares and profits if any.	
8	EDGEWATER (POOLE) LTD Incorporated in 2013. Jacob Dreyfuss, Jack Frankel, MVI and R67, Waterpeak Ltd, declared at Companies House as the persons with significant control. A Poole project was described in the "*A taste of Edgewater*" brochure. Jack Frankel said that everything had been distributed to the funders who invested. He said these were "*Karim*" from Israel (an unfamiliar name) and one of his father's companies. He said that, after the project had been sold out, Leslie Frankel's company had bought the freehold. MVI has some of the shares and Waterpeak has some of the shares, he said.	Yes
9	EDGEWATER (SWINDON) LTD Incorporated in 2021. Jack Frankel sole director and declared at Companies House as the person with significant control. The last filed accounts (to May 2023) show over £500,000 in remaining assets. The creditors of £368,800 (unexplained in the accounts) were said by Jack Frankel to be an investor, Benzine Noe. It was said that 70% of the shares are held on trust for him. Mr Frankel was asked why Mr Noe was not registered as shareholder or declared as a person with significant control. Mr Frankel said he did not think they had to register Mr Noe. He said that "*we"* (apparently meaning Jack Frankel and those working for him) *"per se*" run the company. We give significant weight to the claimed 70% interest of this investor, who is not obviously connected to the Frankel or Dreyfuss families, but since he was not declared as a person with significant control this is outweighed by the factors described above, even apart from the fact that again very little has been explained about this company or project.	Yes

10	EDGEWATER (SWINDON) SUB LTD Incorporated in 2021. R9 (Edgewater (Swindon) Ltd) declared at Companies House as person with significant control. It was not disputed that R9 and R10 are parent and subsidiary. R10 should be included for the same reasons as R9.	Yes
11	EDGEWATER (TREVER) LTD Incorporated in 2022. Jack Frankel declared at Companies House as the person with significant control. No accounts filed.	Yes
12	EDGEWATER (TUDOR COURT) LIMITED Incorporated in 2019. R3 declared as person with significant control/shareholder. We do not include R12 for the same reasons we do not include R3.	No
13	EDGEWATER (WEYBRIDGE) LTD Incorporated in 2015. Jacob Dreyfuss, Jack Frankel and DF (Weybridge) Ltd were declared at Companies House as persons with significant control. Jacob Dreyfuss, Jack Frankel, R67 Waterpeak Ltd (see below) and MVI were declared as persons with significant control of DF (Weybridge) Ltd. Jack Frankel was asked about the involvement of MVI. He said that he could not remember, this project was long gone and sold out. He was fairly positive there would be a suite of documents, but they had not been provided. Again, he said they had been advised to use a DF company as a vehicle for their funds to come through for each project.	Yes
14	EDGEWATER (WOKINGHAM) LTD Incorporated in 2016. Jack Frankel, Jacob Dreyfuss (until 2020), R67 Waterpeak Ltd (until 2021), Rivkah Dreyfuss (from 2021) and Jacob Silver (until 2022) were declared at Companies House as persons with significant control.	Yes
15	JACKSONS (CHELSEA) LTD Named Edgewater (Chelsea) Ltd on incorporation in 2021. Name immediately changed. Jack Frankel declared at Companies House as the	Yes

	person with significant control.	
16	DFS THREE LTD Incorporated in 2013. Holds 80% of R1 and R4. Linked with the Vista Tower project and said to have funded and received funds from it. Controlled by R17 (Midwest Holdings AG), the main initial funder and a beneficiary of the Vista Tower project, as explained above. The other shareholders were (directly or indirectly) Jack Frankel, Jacob Dreyfuss and the other funders/beneficiaries of the Vista Tower development, as explained above.	Yes
Pending		
17	MIDWEST HOLDING AG	To be decided
Greenwood Respondents		
18	KEYTHORPE PROPERTIES LIMITED Incorporated in 1992. Directors Leslie Frankel, Zisi Frankel, Jack Frankel (since 1995), Esther Frankel (until 2022) and Joel Frankel. R21, Worldhold Limited (see below) declared at Companies House as person with significant control. The filed accounts indicate that R18 has financial links with MVI (a substantial debtor in 2019, owing over £600,000), a beneficiary of the Vista Tower project, and R25 (a creditor) in 2019, and with R71 Portland Limited (Jack Frankel's company, a debtor) in 2010.	Yes
19	PRIMECASTLE LIMITED Incorporated in 1992. Identical directors to all of R18-25 except R22 and R24. R21, Worldhold Limited (see below) declared at Companies House as person with significant control. The last filed accounts show debtors of over £2 million, owed by unspecified "*group undertakings*".	Yes
20	SBH PROPERTIES LIMITED Incorporated in 1992. Identical directors to all of R18-25 except R22 and R24. R21, Worldhold Limited (see below) declared at Companies House as person with significant control.	Yes

	The accounts to 2018 and 2020 show links to MVI and R24 (as debtors). The accounts to 2020 also show links to R25 and R71 (as debtors). The later accounts are less specific, but show debtors of over £3 million including amounts owed by "*group undertakings*".	
21	WORLDHOLD LIMITED Incorporated in 1991. Not described as a property or development company; business described as "*activities of head offices*". Parent of R18-R25 (except R22). Identical directors to all of R18-25 except R22 and R24. From 2016 until 24 October 2023, Jack Frankel, Esther Frankel, Joel Frankel, Ezriel Frankel, Maurice Frankel and Ephraim Frankel were declared at Companies House as persons with significant control, each with 25-50% share ownership with control over the trustees of a trust. Since October 2023, Leslie Frankel and Zisi Frankel are the only declared persons with significant control. The 2023 accounts show debtors of £6,247,662, owed by group undertakings, and creditors of £2,525,100, about half of which is shown as owed to group undertakings. A disclosed list explaining the latter figure includes £413,548 owed to MVI [K/260.4/1]. The 2019 accounts show debtors as £1,543,852 owed by group undertakings and undertakings in which the company has a participating interest, and creditors of £1,482,679. £571,730 of that is shown as owed to group undertakings and undertakings in which the company has a participating interest. The other creditors include MVI (£482,184, said to have been owed the same amount the previous year) and Leslie Frankel.	Yes
22	BALSTRAW LIMITED Incorporated in 1971. Not described as a property company ("*activities of religious organisations*"). Until 2024, the directors/trustees were Jack Frankel (from 1996 until October 2024), Leslie Frankel, Zisi Frankel, Joel Frankel, Ephraim Frankel and Maurice Frankel. Leslie Frankel was not sure whether or when there were any non-Frankel directors/trustees. This is a registered charity, although it has a trading	No

	subsidiary (Nirlake Investments Limited) involved in property development. Jack Frankel had been a director of Nirlake, but it seems only between 1999 and 2000. We see this as a case near the borderline. No real explanation has been given about the funding and circumstances of this private charity and there is a property subsidiary. As noted above, Leslie Frankel confirmed the charity did not solicit public donations and accepted that tax relief on donations was the reason he set up the charity. We acknowledge the argument that the RCO in this case is intended largely to recover public money used to remediate Vista Tower and at least part of the assets R22 holds would otherwise have been payable to the public purse in tax by Leslie Frankel or other members of his family or property companies. However, R22 is long established (for over 40 years before the Vista Tower development). The assets of the charity have probably built up slowly over the decades. Its charitable status and activities appear a very weighty factor against making an order. No specific link with the Vista Tower development or the relevant companies was apparent. In the circumstances, we are not satisfied that it would be just and equitable to make an order against this charity.	
23	LESBRIDGE ESTATES LIMITED Incorporated in 1992. Identical directors to all of R18-25 except R22 and R24. R21 Worldhold Limited declared at Companies House as person with significant control. The accounts to 2023 show debtors of over £900,000 owed by "*group undertakings*".	Yes
24	CALLALOT INVESTMENT CO. LTD Incorporated in 1959. The directors are Leslie Frankel, Zisi Frankel, Jack Frankel (since 2001) and Joel Frankel. Leslie Frankel was declared at Companies House as the only person with significant control. The 2019 accounts indicate links with MVI (a debtor owing more than £1.8 million), R21 (a debtor owing over £400,000) and R35 (a debtor owing £125,000,	Yes

	apparently owned by Jack Frankel; see below). We recognise that R24 is long established. However, in a case where no real explanation has been given about this company and many of the Respondents we have decided to include may have limited or no assets, it appears just and equitable to include R24 to seek to recover such assets to contribute towards the payments required by the RCO for the same general reasons as R25.	
25	SCOPERULE LIMITED Incorporated in 1993. Identical directors to all of R18-25 except R22 and R24. Leslie Frankel and Zisi Frankel declared at Companies House as the persons with significant control. R25 probably provided funds needed to acquire the Vista Tower building in July 2014, since it was named in the structure chart used in June 2015 as the vehicle holding or intended to hold the interests of Leslie and Zisi Frankel in the Vista Tower development. The 2023 documents show over £1.9 million owed by MVI to R25. DF (Poole) Ltd is a smaller debtor, owing R25 £74,665. The 2018 accounts showed similar links, again with over £1.9 million owed by MVI and over £148,000 owed by DF Poole Ltd, and creditors which include R8, Edgewater (Poole) Ltd. Again, it appears just and equitable to include R25 to seek to include these sums, particularly if R25 did provide initial funding for Vista Tower which was repaid to MVI and in any event because MVI and/or Leslie and Zisi Frankel benefited from the Vista Tower development.	Yes
BNI Respondents (and others)		
26	LINGWOOD PROPERTIES LTD Incorporated in 2009. Jacob Dreyfuss, Rivkah Dreyfuss and Jacob Silver (until 2022) declared as persons with significant control. R26 benefited or received funds from the Vista Tower development, as noted above. It was used by Jacob/Rivkah Dreyfuss to receive their funds. Mr Dreyfuss said that because R26 holds 50% of R67 (Waterpeak Ltd) it received some of the £440,000 said to have been received by R67, listing [D/12/8] various payments between 2017 and 2020 to R26, R71 and one	Yes

	payment to "*J Frankel*". He said that only "*around £60,000*" was the profit for R26, and the balance was held on trust "*for JF and I in respect of our share entitlement in R16*". Mr Kornbluh said that he had been told that the shares in R26 were (or were now) actually held by or on trust for Rivkah Dreyfuss alone.	
27	CLOCKWORK ESTATES LTD Incorporated in 2000. Jacob Dreyfuss and (until 2021) Jacob Silver were declared persons with significant control. Mr Dreyfuss said the "money movements" through R27 in relation to Vista Tower were as managing agent, not benefitting from the profits. In view of the matters noted above, we do not accept that; there were substantial payments apparently to R27 misdescribed as "Clockwise" and the sudden reduction in 2023 from substantial to modest figures in the accounts is not consistent with the affairs of a managing agent. Even if the three sets of earlier accounts were mistaken, they had been approved by Mr Dreyfuss and made available through Companies House. In any event, in this case it is sufficient that R27 was involved with the development (with Mr Cik apparently working for it at least at some points), received various funds in relation to the development (even if only to pass them on to others) and is connected to Mr Dreyfuss, with no-one else said to be involved.	Yes
28	GAVEWELL LTD Incorporated in 2002. Rivkah Dreyfuss and Jack Frankel sole directors. Rivkah Dreyfuss and Jack Frankel declared to Companies House as persons with significant control. Please see above in relation to the evidence of Jack Frankel about the detail. The last filed accounts indicate that substantial unexplained sums are owed to R28.	Yes
~~29~~	~~CASTLEWOOD PROPERTIES LTD~~	NA
30	EUROCENT GROUP LTD Incorporated in 2019. Jacob Dreyfuss and Rivkah Dreyfuss declared to Companies House as persons with significant control. R26 Lingwood Properties Ltd	Yes

	(until 2022) and Zalman Roth (until 2020) had previously been declared as such. Mr Dreyfuss said that 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss and Deborah Roth, producing a document dated 2022 stating that 50% of the ordinary shares in R30 are held on trust for Deborah Roth. We give weight to this, but in view of the links with Deborah Roth and lack of explanation, and particularly because she was not declared as a person with significant control (or otherwise, it seems), this does not outweigh the factors in favour of including R30.	
31	EUROPEAK PROPERTIES LTD Incorporated in 1999. Jacob Dreyfuss and Rivkah Dreyfuss were declared to Companies House as persons with significant control. Rivkah Dreyfuss appears to be the only person declared as shareholder. Mr Dreyfuss said that 40% of the shares are held on trust for "*Mr Mier Benedikt*". Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss and Mier Benedikt. We give weight to the claimed interest of Mr Benedikt, but this is a minority interest and particularly in the absence of any real explanation about the circumstances or apparent disclosure at Companies House of his interest, we consider this is outweighed by the factors in favour of including R31.	Yes
~~32~~	~~SAMMY ESTATES LTD~~	NA
33	EUROVIEW ESTATES LTD Incorporated in 2001. Jacob Dreyfuss and Rivkah Dreyfuss were declared to Companies House as persons with significant control. Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss.	Yes
34	OCEAN HS LIMITED Incorporated in 2016. Israel Kohn and Jacob Dreyfuss are the directors.	Yes

	Jacob Dreyfuss (until 2019) and Rivkah Dreyfuss were declared to Companies House as persons with significant control. Rivkah Dreyfuss was shown as the sole shareholder. Mr Dreyfuss said that 50% of the shares are held on trust for Israel Kohn. Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss and Israel Kohn. Mr Kohn worked with Mr Dreyfuss and he or his company appeared to have been involved at least peripherally with the Vista Tower property, as noted above, but this factor alone has little weight. We give weight to the claimed interest of Mr Kohn, but particularly in the absence of any real explanation this is outweighed by the factors in favour of including this Respondent. Mr Kohn was a director, with Mr Dreyfuss, but it appears neither of them declared to Companies House that Mr Kohn was a person with significant control or a shareholder.	
35	ASPERN LIMITED Incorporated in 1997. Jack Frankel is sole director and was declared to Companies House as the person with significant control. Mr Kornbluh indicated that he understood all the shares were held by Jack Frankel. Mr Frankel explained that he used this company to hold his property, as noted above.	Yes
36	EUROCENT (BURDETT) LTD Incorporated in 2018. Bina Dreyfuss (born in 2003, the daughter of Mr and Mrs Dreyfuss, as noted above) was appointed director in September 2021, replacing Mr Dreyfuss, Zalman Roth and Jacob Silver. Bina Dreyfuss (from September 2021) and Jacob Dreyfuss (until September 2021) were declared to Companies House as persons with significant control. Bina Dreyfuss is shown as sole shareholder from that time, when she was about 18 years old. Since again no explanation was given, it seems likely that (as was put to Mr Frankel) she was not an independently minded investor; she probably did not purchase the shares but was given them and/or was holding them for Mr and/or Mrs Dreyfuss (save as follows). Since Bina Dreyfuss has been the sole director for years, we give weight to any interest she may have, but	Yes

	this does not outweigh the links with her parents which incline us towards including this company, particularly when the business of this property company and her involvement with it have not been explained. Mr Dreyfuss said that 50% of the shares are held by Bina Dreyfuss on trust for Deborah Roth. Mr Kornbluh repeated this, producing a deed of trust dated 2021 stating that 50% of the shares are registered in her name, 50% are held for Deborah Roth and Bina Dreyfuss has no beneficial interest in these shares. We give weight to this, but in view of the links with Deborah Roth and lack of explanation, and particularly because Deborah Roth was not declared as a person with significant control (or otherwise, it seems), this still does not outweigh the factors in favour of including this Respondent.	
37	GLENMARSH ESTATES LTD Incorporated in 2007. Rivkah Dreyfuss was declared to Companies House as person with significant control. Mr Dreyfuss said 75% of the shares are held on trust for The Nachlas Yakov Trust. Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss and The Nachlas Yakov Trust. The Nachlas Yakov Trust had been declared as a person with significant control, but it was declared to Companies House that they had ceased to be with effect from 16 November 2021. The high 75% interest asserted, in line with the undisputed evidence of Mr Perlstein (noted above), has significant weight. However, it is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company and, in particular, the Trust has for years not been declared at Companies House as a person with significant control (or at all, it seems).	Yes
38	NOIR NOIR FASHION LTD Incorporated in 2018. Jacob Dreyfuss (2018-2020), Toba Dreyfuss, Yitty Halpern and Yehoshua Horowitz (all from 2020) were declared to Companies House as persons with significant control. Mr Dreyfuss said that in fact he was never a	No

	shareholder of this company, and has not been a director since 2020. He said that it was not a property company. That appears to be right. The business is described as manufacture/wholesale of clothing and the like. The accounts to 2020 record loans from directors of over £180,000 in 2019 (when only Mr Dreyfuss was a director) and over £150,000 in 2020. The Applicant suggested this indicated that the business was seeded with money from Jacob Dreyfuss. That may be right, but given that this was not a property company and the declared interests of these largely (it seems) external persons with significant control, we are not satisfied that it would be just and equitable to include R38.	
39	CABLEWELL ESTATES LTD Incorporated in 2008. Jack Frankel and R67, Waterpeak Ltd (see below), were declared to Companies House as persons with significant control. Jack Frankel said in his witness statement that 50% of the shares are held on trust for Mrs Gail Bude of Silvase Ltd. He said documents to demonstrate that should be with their accountants; they were not produced. There was a long history with Cablewell, starting with Norman Bude, the (now deceased) brother of one of the partners in Bude Nathan Iwanier. Mr Frankel accepted that if 50% is being held on trust HMRC should be advised. He said that Jack Silver of Precision was the accountant. Mr Frankel said that half of all profits had been paid to "Norman", and not that much since he passed away. They, he said, put in 100% of the money and got 50% of the profit. We give weight to the claimed interest of Mrs Bude and/or Silvase Ltd. However, this is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company and, in particular, they were not declared at Companies House as person(s) with significant control (or at all, it seems).	Yes
40	EUROCENT (LONDON 1) LTD Incorporated in 2010. Jacob Dreyfuss, Rivkah Dreyfuss (from September 2024), Jack Frankel (until 2019) and R41, DFS Properties Limited (until 2019) declared to Companies House as persons with	Yes

	significant control. R41, DFS Properties Ltd, is linked as described below, although they are no longer declared as a person with significant control. Mr Dreyfuss said that 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss and Deborah Roth, producing a document dated 2019 stating that 50% of the shares are held by Rivkah Dreyfuss are held on trust for Deborah Roth. Again, we give weight to this, but in view of the links with Deborah Roth and lack of explanation, and particularly because Deborah Roth was not declared as a person with significant control (or otherwise, it seems), this does not outweigh the factors in favour of including this Respondent.	
41	DFS PROPERTIES LIMITED Incorporated in 2009. R17, Midwest Holding AG (the main funder and a beneficiary of the Vista Tower project, as noted below), and R59 (see below), declared to Companies House as persons with significant control.	Yes
42	TRISTAR ASSOCIATES LIMITED Incorporated in 2018. Jack Frankel declared to Companies House as person with significant control and shown as sole shareholder. Mr Frankel said that 35% of the shares are held in trust for Deborah Roth. Mr Kornbluh indicated that he understood all the shares were held by or for Jack Frankel and Deborah Roth. Again, we give weight to this claimed beneficial interest in the shares in this company, but it is a minority interest. Given that, the links with Deborah Roth and lack of explanation, and since it seems Deborah Roth was not declared at Companies House, this does not outweigh the factors in favour of including this Respondent.	Yes
43	TIMEGROVE LTD Incorporated in 2004. Jacob Dreyfuss and Rivkah Dreyfuss declared to Companies House as persons with significant control.	Yes

	Mr Dreyfuss said that 50% of the shares are held on trust for Zeev Pollack, a director (Mrs Dreyfuss' brother, as mentioned above). Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss and Zeev Pollack. The claimed 50% interest has significant weight. However, it is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company and, in particular, Mr Pollack was not declared at Companies House as a person with significant control (or at all, it seems).	
R44 (represented by Mr Oestreicher)		
44	GATEPALM LTD Incorporated in 2002. Abraham and Solomon Oestreicher declared as persons with significant control since 2016, with Jacob Dreyfuss ceasing in 2018. We accept the undisputed evidence of Mr Oestreicher about the transaction which led to them purchasing the shares in R44 to acquire the development property held by it (from Mr Dreyfuss and/or Mr Frankel), with Mr Dreyfuss remaining temporarily as a director to satisfy the bank funder. This, and the ownership by Petley Limited (which holds 100% of the shares in R44) of what appears likely to be a minority interest in R60 (see below) are not sufficient links to make it just and equitable for a RCO to be made against R44.	No
Other BNI Respondents		
45	EUROCENT (SELSDON) LTD Incorporated in 2021. Rivkah Dreyfuss was declared to Companies House as person with significant control. Jacob Dreyfuss and Jacob Silver had also been declared as such, until 2022. Mr Dreyfuss said that 50% of the shares are held on trust for R85 (Barak Investments) and 25% is held on trust for Deborah Roth. Mr Kornbluh indicated that he understood all the shares were held by or for Rivkah Dreyfuss, Barak Investments and Deborah Roth. These interests have significant weight, particularly	Yes

	the 50% said to be held for Barak Investments. However, again, these are not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company and, in particular, Barak Investments was not declared at Companies House as a person with significant control (or at all, it seems). Deborah Roth had the other links noted above and was not declared to Companies House either so, again, we give her claimed interest less weight.	
46	TOOTING 204 LTD Incorporated in 2009. Jacob Dreyfuss and Rivkah Dreyfuss were the only persons with significant control declared to Companies House. They are the only people who appear to have been declared as shareholders. Isaac Perlstein had been one of the directors, from 1 June 2010 to 2 July 2020. Mr Dreyfuss said 75% of the shares are held on trust for The Nachlas Yakov Trust. Again, the high 75% interest asserted, in line with the undisputed evidence of Mr Perlstein and the previous directorship noted above, has significant weight. However, it is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company and, in particular, the Trust was not declared at Companies House as a person with significant control (or at all, it seems).	Yes
47	DFS COREL LTD Incorporated in 2009. Jacob Dreyfuss and R41 (owned by R59, below) declared to Companies House as persons with significant control.	Yes
R48 (represented by Lawrence Stephens)		
48	SPINNAKER HS LTD Incorporated in 2016. Glenpath Ltd has been declared as the only remaining person with significant control since 2017 (Rivkah Dreyfuss and Yisroel Kohn ceased in 2017 and Jacob Dreyfuss ceased in May 2018). Since 2018, the only directors have been members of the Feldman family. We accept the explanation given in R48's statement of	No

	case that, having been introduced by Israel Kohn, Mr and Mrs Feldman purchased the shares in R48 as part of a transaction to acquire the relevant property (Spinnaker House in Basingstoke) in early 2017 to develop, with Mr Dreyfuss remaining as a director until May 2018 to satisfy the bank funder.	
Other BNI Respondents		
49	BROWNHILL RD LTD Incorporated in 2010. Rivkah Dreyfuss was declared to Companies House as person with significant control from November 2021. Mr Dreyfuss said 75% of the shares are held on trust for The Nachlas Yakov Trust. Mr Kornbluh indicated he understood the shares were held by Rivkah Dreyfuss for herself and for The Nachlas Yakov Trust. Isaac Perlstein and The Nachlas Yakov Trust had been declared as persons with significant control, but it was declared to Companies House that they had ceased to be with effect from November 2021. We give the claimed 75% interest, in line with the undisputed evidence of Mr Perlstein and the previous declaration(s) noted above, significant weight. However, this is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company or any changes in ownership, particularly when it has been declared to Companies House since late 2021 that Rivkah Dreyfuss is the only remaining person with significant control.	Yes
50	MARKET PLACE NEWBURY LTD Incorporated in 2012. From March 2024, Rivkah Dreyfuss was declared as the only person with significant control. Previously, the Nachlas Yakov Trust (until 2021, as owner of 75% or more of shares), Jacob Silver (until 2022), Isaac Perlstein and Jacob Dreyfuss (both until March 2024) were declared as persons with significant control. Mr Dreyfuss said 75% of the shares are held on trust for The Nachlas Yakov Trust. We note that Mr Perlstein's name remained as a	Yes

	person with significant control until March 2024, but it was declared that the Trust had ceased to be a person with significant control from January 2021, indicating that Mrs Dreyfuss was the only remaining person with significant control. Again, we give the claimed 75% interest, in line with the undisputed evidence of Mr Perlstein and the previous declaration(s) noted above, significant weight. However, this is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company or any changes in ownership, particularly when it has been declared to Companies House since late 2021 that Rivkah Dreyfuss is the only remaining person with significant control.	
51	EUROCENT (DORKING) LTD Incorporated in 2021. Jacob Dreyfuss and Rivkah Dreyfuss (and Jacob Silver until 2022) declared at Companies House as persons with significant control. Mr Dreyfuss said 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. Mr Kornbluh indicated that the owners are Rivkah Dreyfuss and Deborah Roth, producing a document dated 2021 indicating that Rivkah Dreyfuss holds 50% of the shares on trust for Deborah Roth. Again, we give weight to this, but in view of the links with Deborah Roth and lack of explanation, and particularly because Deborah Roth was not declared as a person with significant control (or otherwise, it seems), this does not outweigh the factors in favour of including this Respondent.	Yes
52	EDGEWATER (CRAWLEY) LTD Incorporated in 2014. Jacob Dreyfuss, Joel Frankel (who resigned as a director in 2019), R71 (Portland Ltd, see below) and Jeap Investments Limited (a Leslie Frankel company, as noted above) were declared to Companies House as persons with significant control. This company used the Edgewater name and a Crawley project was described in the "*A taste of Edgewater*" brochure. Mr Kornbluh indicated that the shares are held by or for "*Ponland Limited (owned by Jack Frankel)*". We	Yes

	expect he meant R71, Portland Ltd.	
53	WATEREDGE (WALLINGTON) LTD Incorporated in 2020. Jack Frankel was declared to Companies House as person with significant control, and said by Mr Kornbluh to be the owner.	Yes
54	STAMFORD HILL LTD Incorporated in 2010. Jack Frankel, Jacob Dreyfuss, Jacob Silver (until 2022) and Rachel Assaf (until 2019) declared to Companies House as persons with significant control. Mr Kornbluh indicated that the shares are held by or for "Rachael Assaf". No explanation has been given, but Rachael Assaf of 32 Castlewood Road, London, was declared to have ceased in 2019 to be a person with significant control. We will assume the claimed interest of Rachael Assaf has significant weight, particularly because it is being suggested that all of the shares in this company are held for her. However, this is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company or any changes in ownership, particularly when it has been declared to Companies House that Jack Frankel and Jacob Dreyfuss are the only remaining people with significant control.	Yes
55	TOOTING LTD Incorporated in 2010. Jacob Dreyfuss, Rivkah Dreyfuss, Nachlas Yakov Trust and Isaac Perlstein (until 2020) were declared as persons with significant control. Mr Dreyfuss said 75% of the shares are held on trust for The Nachlas Yakov Trust. Mr Kornbluh understands that the shares are owned by Rivkah Dreyfuss and that Trust. Mr Perlstein had said that 20% of the shares (in R37, R46, R49, R50 and R55) are registered in the name of the Trust and Rivkah Dreyfuss holds the remaining 55% for the Trust. In the absence of any real explanation about the company or the circumstances, this remains near the borderline. However, in view of the claimed high 75%	No

	shareholding and/or beneficial interest of the Trust and the continuing declaration that they are a person with significant control (at least with the right to appoint or remove directors), we are not satisfied that this is outweighed by the other factors in favour of making an order.	
56	EUROCENT (BEDFORD) LTD Incorporated in 2017. Jacob Dreyfuss and Rivkah Dreyfuss declared at Companies House as persons with significant control. A Bedford project was described in the "*A taste of Edgewater*" brochure, but we do not know whether this property was involved with that project because there was no explanation about this. Mr Dreyfuss said 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. Mr Kornbluh understands that the shares are owned by Rivkah Dreyfuss and Deborah Roth, producing a document dated 2018 stating that Rivkah Dreyfuss holds 50% of the shares in R56 on trust for Deborah Roth. For the same reasons as noted above in relation to the other such companies, we consider it just and equitable to include this company.	Yes
57	HIGH 59 LTD Incorporated in 2016 (then named P4I Construct Limited). Property for Investments Limited was declared at Companies House as person with significant control. The directors are Jacob Dreyfuss and Yisroel Kohn. The sole shareholder is said to be Property for Investments Ltd, which appears ultimately to be controlled by Yisroel Kohn. We recognise that Mr Kohn had at least peripheral links, as noted above, but we are not satisfied that these are sufficient to make it just and equitable to include this company.	No
~~58~~	~~2016 VENTURES LIMITED~~	NA
59	FEDERAL PROPERTY INVESTMENTS LIMITED Incorporated in 2009. Jacob Dreyfuss, Jack Frankel, Leslie Frankel, R71 (Portland Ltd), Pre2let Ltd and R26 (Lingwood Properties Ltd) declared as persons with significant control.	Yes

	Leslie Frankel did not remember his role in this company or why he was a director (with Jack Frankel and Jacob Dreyfuss). He said that he had no day to day involvement. He was asked why he was a person with significant control together with the others noted above. He could not comment, he said. Mr Kornbluh understood the owners were Rivkah Dreyfuss, Jack Frankel, Leslie Frankel, "*Ponland Ltd (owned by Jack Frankel)*", Lingwood Properties Ltd and Pre2let Ltd. As with the other companies which include references to Pre2let Ltd (or Joel Frankel), we are not satisfied (particularly in the absence of any explanation about this company) that any independent minority interest they may have outweighs the factors in favour of including this company.	
60	KINGFISHER WALTON LIMITED Incorporated in 2014. Jacob Dreyfuss, Jack Frankel, DF (Kingfisher) Ltd and Petley Limited were declared to Companies House as persons with significant control. Mr Kornbluh asserted that the owners of the shares were Jacob Dreyfuss, Jack Frankel, DF (Kingfisher) Ltd, Petley Limited, "*Pini Ringer, Evan Hoff and L Strassman*". We recognise that DF (Kingfisher) Ltd is likely to be a vehicle for the relevant members of the Frankel/Dreyfuss families, but it seems likely that it holds no more than 50% of the shares in this company. In the absence of any real explanation about the company or the circumstances, this remains near the borderline. However, since at least Petley Limited was declared as a person with significant control and the other shareholders appear to have been declared to Companies House, we are not satisfied that it would be just and equitable to include this company.	No
61	JACKSONS (BOUNDARY) LTD Incorporated in 2020. Jack Frankel declared as person with significant control. Jack Frankel is the sole director and sole shareholder declared at Companies House. Jack Frankel said that all shares are held on trust for	Yes

	Michael Frankel. We will assume this claimed interest has significant weight, particularly because it is being said that all of the shares in this company are held for Michael Frankel. However, this is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company or why shares are held for Michael Frankel, particularly when it has been declared to Companies House that Jack Frankel is the only person with significant control.	
62	EUROCENT (EARDLEY) LTD Incorporated in 2018. Rivkah Dreyfuss and Jacob Dreyfuss (and Bina Dreyfuss, until June 2023) declared as persons with significant control. Mr Dreyfuss said 50% of the shares are held on trust for Deborah Roth. Mr Kornbluh indicated that the owners are Rivkah Dreyfuss and Deborah Roth, producing a document dated 2021 stating that 50% of the shares are held by Bina Dreyfuss on trust for Deborah Roth. For the same reasons as the other such companies noted above, we give weight to the claimed interest of Deborah Roth but consider it just and equitable to include this company in the absence of any explanation and significant control (or it seems any) declaration at Companies House.	Yes
R63 (withdrawn)		
~~63~~	~~ROCKERBAY LIMITED~~	NA
Other BNI Respondents		
64	EUROCENT (BURDETT) SUB LTD Incorporated in 2021. R36 (Eurocent (Burdett) Ltd), Rivkah Dreyfuss (until 2022) and Jacob Silver (until 2022) declared as persons with significant control. Mr Kornbluh understood that the shareholder was Eurocent Burdell (we assume he means Burdett), "*owned by Bina Dreyfuss*". We include R64 for the same reasons that we include R36, its parent.	Yes

65	EUROCENT (FREEHOLDS) LTD Incorporated in 2018. Jacob Dreyfuss, R40 Eurocent (London 1) Ltd, Rivkah Dreyfuss (until 2022), Jacob Silver (until 2022), Eurocent Group Ltd (until 2020) and Golde Rokach (until 2020) declared as persons with significant control. Mr Kornbluh confirmed the owner was R40. We include R65 for the same reasons as its parent.	Yes
66	EUROCENT (ANERLEY) LTD Incorporated in 2018. Yispoel Dreyfuss (from July 2024), Rivkah Dreyfuss and Jacob Dreyfuss (both until July 2024) declared as recent persons with significant control. Mr Dreyfuss said 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. Mr Kornbluh indicated that the owners are Rivkah Dreyfuss and Deborah Roth, producing a document dated 2020 stating that 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. In the absence of any real explanation about the company or the circumstances, we do not consider that any independent interest of Yispoel Dreyfuss or any interest of Deborah Roth (who is linked as noted above) are sufficient to outweigh the factors in favour of including this company.	Yes
67	WATERPEAK LTD Incorporated in 2010. Jacob Dreyfuss, Rivkah Dreyfuss, Jack Frankel and Jacob Silver (until 2022) declared as persons with significant control. Mr Kornbluh understood the owners of R67 were Rivkah Dreyfuss and Jack Frankel. Mr Dreyfuss confirmed that the shareholders of R77 (which held 20% of the shares in R1) are R67 with 35% and MVI with 65%. Mr Dreyfuss listed [D/12/7] payments totalling £682,094.34 said to have been received by R67 from R1. He said that £241,459.47 of this was "redirected" to MVI and the balance of about £440,000 was distributed. He said the reason R67 received more than its entitlement was that Jack Frankel and Mr Dreyfuss were both entitled to more profits from their shares in R16 (DFS Three Ltd), so they were sent to R67, their "*joint company*", for their	Yes

	personal benefit and not as dividends to R67.	
68	JMRD TRUST Incorporated in 2006, a company limited by guarantee. Not described as a property company: "*other professional, scientific and technical activities*". Jacob Meir and Rivkah Dreyfuss (and Jacob Silver until 2022) were declared as persons with significant control. The Respondents gave no real explanation of the activities of this company, but it appears to be a vehicle for Mr and Mrs Dreyfuss to make charitable donations. The accounts filed for the year to September 2023 state that R68 is a charity, with J M Dreyfuss and Mrs R Dreyfuss the trustees. The main objective of the charity is "*...relief of poverty amongst the persons in conditions of need, hardship and distress in the Jewish Community, the advancement of the Orthodox Jewish Religion, the advancement of education according to the tenets of the Orthodox Jewish Faith*". The income of the charity is donations "*from various associated companies*", stating that donations of £92,000 (£98,100 in 2022) were received. Like R22, this company is near the borderline. The Respondents told us almost nothing about R68 or its activities, beyond confirming that it is not a property company. The Applicant pointed out that the bank statement disclosed for R68 [K/719.2] shows donations received by it from R30, Eurocent Group Ltd (which we have decided to make a RCO against, as explained above). However, R68 does appear to be a registered charity. Its charitable status/activities are a very weighty factor against making an order. In the circumstances, we are not satisfied that it would be just and equitable to make an order against this charity for the same general reasons that we have not made an order against R22 above.	No
69	ENVOY (RUISLIP) SUB LTD Incorporated in 2022. Envoy (Ruislip) Ltd declared as person with significant control. In March 2024, Jacob Dreyfuss resigned as director and Zeev Dreyfuss became a director. Mr Kornbluh had been informed that Envoy Ruislip Ltd is owned by Zeev Dreyfuss, who	Yes

	was declared person with significant control of that company from March 2024. Jacob Dreyfuss was declared to have ceased to be a person with significant control in March 2024. In the absence of any explanation for these recent declared changes in ownership, or otherwise about R69, it seems likely that this company remains sufficiently linked to Jacob and Rivkah Dreyfuss and it is just and equitable to include it.	
70	ENVOY (BOVILL) LTD Incorporated in 2020. Jacob Dreyfuss and Rivkah Dreyfuss declared as persons with significant control. Mr Kornbluh understood the owner was Rivkah Dreyfuss.	Yes
71	PORTLAND LIMITED Incorporated in 1997. Jack Frankel shown as shareholder, declared at Companies House as person with significant control. Mr Dreyfuss said that because R71 holds 50% of the shares in R67, Waterpeak Ltd, it received some of the £440,000 said to have been received by R67 in relation to the Vista Tower development, listing [D/12/8] various transfers between 2017 and 2020 to R26, R71 and one to "*J Frankel*". He said that only "*around £60,000*" was the profit for R71, and the balance was held on trust "*for JF and I in respect of our share entitlement in R16*".	Yes
72	EUROCENT (BATTERSEA) LTD Incorporated in 2021. Jacob Dreyfuss and Rivkah Dreyfuss declared as persons with significant control. Mr Dreyfuss said 50% of the shares are held on trust for Mr Barak Hass/Barak Investments (of Israel) and 25% are held on trust for Deborah Roth. Mr Kornbluh understood these shares were held by Rivkah Dreyfuss and the balance were hers. For the same reasons as explained above in relation to other such companies, we give significant weight to these interests but they are not sufficient to outweigh the factors in favour of making an order against this company, in the absence of any real explanation and declaration of their interests at Companies House.	Yes

73	EUROCENT (FARQUHAR) LTD Incorporated in 2020. Jacob Dreyfuss and Rivkah Dreyfuss declared as persons with significant control. As with R72, Mr Dreyfuss said 50% of the shares are held on trust for Mr Barak Hass (of Israel) and 25% are held on trust for Deborah Roth. We include R73 for the same reasons that we include R72.	Yes
74	EDGEWATER (NORTH CIRCULAR) LTD Incorporated in 2013. R67, Waterpeak Ltd, Feige Schischa and R24, Callalot Investment Co. Ltd, were declared as persons with significant control. Assuming Feige Schischa is an independent investor, their shareholding is a weighty factor against making an order, particularly because they were declared at Companies House as a person with significant control. However, in view of the other shareholdings, this seems likely to be a minority (one third or in any event less than 50%) interest. In the absence of any explanation about this company and since it seems likely that most of the shares were held by R67 and R24 (against which we have decided to make an order), we consider it just and equitable to include R74.	Yes
75	ENVOY (LYNDHURST) LTD Incorporated in 2019. Jacob Dreyfuss declared as person with significant control. Mr Kornbluh understood the owner was Rivkah Dreyfuss.	Yes
76	ENVOY MANAGEMENT LTD Incorporated in 2019. Jacob Dreyfuss declared as person with significant control. Mr Kornbluh understood the owner was Rivkah Dreyfuss.	Yes
77	DF (STEVENAGE) LTD Corporate details above. Mr Dreyfuss confirmed that the shareholders of R77 are R67 Waterpeak Ltd with 35%, and MVI with 65%. Mr Dreyfuss confirmed R77 was 20% shareholder of R1. He said that it never had a bank account so never received dividends; instead "*its entitlement to 20% of the profits was sent directly to its shareholders (by*	Yes

	way of dividend distribution)".	
78	PINEMETRO LTD Incorporated in 2013. Jacob Dreyfuss, Rivkah Dreyfuss and Yisroel Kohn declared as persons with significant control. The last filed details indicated that, of 100 shares in the company, 50 were held by Rivkah Dreyfuss and 50 by Yisroel Kohn. Mr Kornbluh understood the owners were Rivkah Dreyfuss and Israel Kohn. In the absence of any real explanation about the company or the circumstances, this remains near the borderline. However, since it appears Mr Kohn was properly declared as holder of 50% of the shares, we are not satisfied that it would be just and equitable to include this company.	No
79	JACKSON (DESBOROUGH) LTD Incorporated in 2021. Jacksons (Chelsea) Ltd (from July 2022) and Jack Frankel (until July 2022) declared as persons with significant control. Mr Kornbluh understood the owner was "*Jacksons (Chelsea) Ltd (owned by Jack Frankel)*".	Yes
80	FD BURDETT ROAD LTD Incorporated in 2012. Rivkah Dreyfuss, Jacob Dreyfuss and Jack Frankel declared as persons with significant control. Mr Kornbluh understood the owners were Jack Frankel and Rivkah Dreyfuss. It is not clear whether this company is involved with the Burdett Road property described in the "*A taste of Edgewater*" brochure noted above.	Yes
81	NORWOOD 58 RTM COMPANY LTD Incorporated in 2011. Jack Frankel declared as person with significant control. Jack Frankel sole director. Mr Kornbluh understood the owner was Jack Frankel (amending at the hearing the evidence in his second witness statement, which said the owner was Rivkah Dreyfuss). The filings with Companies House do not appear to disclose any other shareholder and have	Yes

	declared the company dormant for many years. This does not appear to be an active right to manage company; the last filed accounts are for a dormant company.	
82	EUROPEAK VENTURES LIMITED Incorporated in 1995. Jacob Dreyfuss and Rivkah Dreyfuss declared as persons with significant control. Mr Kornbluh understood the owner was Rivkah Dreyfuss.	Yes
83	EUROCENT (GIPSY ROAD) LTD Incorporated in 2022. Rivkah Dreyfuss and (from January 2024) Deborah Roth were declared as persons with significant control. Mr Dreyfuss said 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. Mr Kornbluh indicated that the owners are Rivkah Dreyfuss and Deborah Roth, producing a document dated 2022 stating that 50% of the shares are held by Rivkah Dreyfuss on trust for Deborah Roth. In the absence of any real explanation about the company or the circumstances and the links with Deborah Roth as noted above, this is on the borderline. However, since it appears she was declared as a person with significant control, we are not satisfied that it would be just and equitable to include this company.	No
84	EUROCENT (POOLE) SUB LTD Incorporated in 2021. Eurocent (Poole) Ltd declared as person with significant control. The Applicant said that company was owned by Jacob Dreyfuss. Mr Kornbluh said the owner was "*Eurocent (Poole) Ltd (owned by Rivkah Dreyfuss)*". We include R84 in view of the connection with Rivkah Dreyfuss and/or Jacob Dreyfuss.	Yes
85	BARAK INVESTMENTS GROUP LTD Incorporated in 2021. Rivkah Dreyfuss declared as person with significant control. Jacob Dreyfuss is sole director. No other person appears to have been declared as a shareholder.	Yes

	Mr Dreyfuss said 100% of the shares are held on trust for Mr Barak Hass (of Israel). No other evidence of this seems to have been provided. In any event, the involvement of Mr Hass as beneficial owner or otherwise does not appear to have been disclosed through Companies House. We will assume this claimed interest has significant weight, particularly because it is being suggested that all of the shares in this company are held for Mr Hass. However, this is not sufficient to outweigh the factors in favour of making an order when no real explanation has been given about this company or why shares are held for Mr Hass, particularly when it has been declared to Companies House that Rivkah Dreyfuss is the only person with significant control.	
86	EUROCENT (ASCOT) SUB LTD Incorporated in 2021. Jacob Dreyfuss sole director. Eurocent (Ascot) Ltd declared as person with significant control. Mr Kornbluh understood the owner was Eurocent Ascot Ltd "*(owned by Rivkah Dreyfuss)*".	Yes
87	ENVOY (GILLINGHAM) SUB LTD Incorporated in 2020. Zeev Dreyfuss (from February 2024), Jacob Dreyfuss (until February 2024) and Jacob Silver (until 2021) directors. Envoy (Gillingham) Ltd declared as person with significant control from March 2023 (and between 2020 and 2021). Previously Rivkah Dreyfuss (until March 2023) and Jacob Silver (until 2022). Mr Kornbluh understood the owner was "*Envoy Gillingham Ltd (owned by Rivkah Dreyfuss)*"	Yes
88	WHITE LION CLOSE LTD Incorporated in 2019. Jacob Dreyfuss sole director. Rivkah Dreyfuss declared as person with significant control. Mr Kornbluh understood the owner was Rivkah Dreyfuss.	Yes
89	PRIMEDAY ESTATES LTD Incorporated in 2006. Jacob Dreyfuss sole director. Jacob Dreyfuss (significant influence or control), Rivkah Dreyfuss (not more than 50% ownership of	No

	shares) and Eli Levin (not more than 50% ownership of shares and company secretary) declared as persons with significant control. Mr Kornbluh understood the owners were "*Rivkah Dreyfuss and E Levine*". In the absence of any real explanation about the company or the circumstances, this is on the borderline. However, since it appears Eli Levin was declared as a person with significant control, we are not satisfied that it would be just and equitable to include this company.	
90	BOLDGATE ESTATES LTD Incorporated in 2004. Jacob Dreyfuss director. Jacob Dreyfuss and Rivkah Dreyfuss declared as persons with significant control. Mr Kornbluh understood the owner was Rivkah Dreyfuss.	Yes
91	EUROCENT (GREAT DUNMOW) SUB LTD Incorporated in 2021. Directors Zeev Dreyfuss (from September 2022) and Jacob Dreyfuss (until then). Eurocent (Great Dunmow) Ltd (from June 2022), Eurocent (Oldridge) Ltd (until then) declared as persons with significant control. The Applicant pointed out that, until February 2022, Eurocent (Great Dunmow) Ltd was owned by Jacob Dreyfuss, who had passed this to Zeev Dreyfuss. It appears Zeev Dreyfuss (from February 2022) and Rivkah Dreyfuss (until then) were declared as persons with significant control of that company. Mr Kornbluh understood the owner was Eurocent (Great Dunmow) Ltd "*(owned by Zeev Dreyfuss)*". The Applicant pointed out that Zeev Dreyfuss was said to have been born in December 1999 and that the bank statement disclosed for R91 [K/883] shows a loan from R30 (against which we have decided to make an order). It also shows a larger payment from R91 to R92. The Applicant referred to the similar more recent transfer to Zeev Dreyfuss in relation to R69, as noted above.	Yes

	In the absence of any explanation for the change in ownership to another family member, who appears to have been in his early 20s at the time, it seems likely that this company remains sufficiently linked to Jacob and/or Rivkah Dreyfuss to make it just and equitable to include it.	
92	EDGEWATER (CROYDON) LTD Incorporated in 2022. Jack Frankel sole director and declared as person with significant control (ownership of 75% or more of shares and voting rights). Mr Kornbluh said in his second witness statement that the owner was Jack Frankel. He amended this at the hearing, referring to Pinchas Olsberg and "Highgrove" (apparently meaning Highzone). Please see above in relation to the evidence given by Mr Olsberg. The claimed trust arrangement with and involvement of Highzone Holdings Limited (or its owners) were not disclosed in any of the records at Companies House in relation to R92. Without the statement from Mr Olsberg, apparently even Mr Kornbluh could not discover their involvement. We will assume Highzone's claimed 70% interest has significant weight. However, this is not sufficient to outweigh the factors in favour of making an order when only a very limited explanation has been given, the company used the Edgewater name and it has been declared to Companies House that Jack Frankel is the only person with significant control.	Yes
93	HASTINGWOOD 10 LTD Incorporated in 2021. Jacob Dreyfuss sole director, declared as person with significant control. Mr Kornbluh understood the owner was Jacob Dreyfuss.	Yes
94	LINGWOOD BAKE LTD Incorporated in 2018. Not described at Companies House as a property company ("*other service activities not elsewhere classified*"), but named Bluejay Estates Limited until 2019. Jacob Dreyfuss is sole director and declared as person with significant control. Mr Kornbluh understood the owner was Yispoel Dreyfuss. In the absence of any explanation, any	Yes

	interest of theirs does not outweigh the factors in favour of making an order, when this appears at least earlier to have been a property company and the only person declared at Companies House as having significant control over the company was Jacob Dreyfuss.	
95	BLISS INTERNATIONAL LTD Incorporated in 2019. Not described as a property company (wholesale of food, beverages and tobacco). Jacob Dreyfuss and Mordechai Chaim Perlberger directors and each declared at Companies House as persons with significant control (not more than 50% ownership of shares and voting rights). Mr Kornbluh understood the owners were Jacob Dreyfuss and Mordechai Chaim Perlberger. Since this was not a property company and 50% of the shares appear throughout to have been held by Mr Perlberger, who was declared as person with significant control and not shown to have other links, we are not satisfied that it would be just and equitable to include R95.	No
R96 (unresponsive)		
96	FLANDERS ESTATE LTD Incorporated in 2021. No statement of case was filed, despite the unless order requiring this. R96 was barred from further participation in the proceedings and did not apply to lift the bar or attend the hearing. In the absence of any answer to the Applicant's statement of case, we make an order against R96 summarily as warned in the unless order. We consider it just and equitable to do so.	Yes

SCHEDULE 2 - key names

Applicant

ADI - previous proposed external remedial works contractor

CHPK Limited – fire engineers

Lancer Scott – external remedial works contractor

Miller Knight – internal remedial works contractor

Tuffin Ferraby Taylor ("TFT"); Alan Pemberton – project managers for Applicant

Wintech Limited – façade engineers

Respondents

BBS Building Control – building control inspectors engaged for R1

Chaim Cik – consultant/assistant, described as project manager

DF (Stevenage) Ltd ("R77") – 20% shareholder in R1

DFS Three Ltd ("R16") – 80% shareholder in R1

Edgewater (Stevenage) Ltd ("R1") – developer

Jacob Dreyfuss – director/shareholder

Rivkah Dreyfuss – wife of Jacob Dreyfuss/shareholder

Jack Frankel – director/shareholder

Leslie Frankel – Jack Frankel's father

Zisi Frankel – Jack Frankel's mother

Joel Frankel – Jack Frankel's brother

Freemans Solicitors - solicitors who acted for R1 in relation to Vista Tower

Gould/George Baxter Associates ("Gould"), designers/architects/surveyors for the Vista Tower conversion works

Charles Harding – surveyor/architect at Gould

Philip Klein – manager at KMP Solutions, managing agents for R1

Maida Vale Investments Limited ("MVI") – funder/investor, controlled by Leslie Frankel and/or his family

Tim Mole – surveyor/architect at Gould

Procare Building Services Ltd ("Procare") - building contractor for the conversion works

David Rokach – director of Oak Tree Property Management, involved with some fire safety work to Vista Tower in relation to the sale of the freehold to the Applicant

Zalman Roth – consultant/assistant

Deborah Roth – wife of Zalman Roth, sister of David Rokach

Jack Silver – Precision accountants – accountant/bookkeeper

Leo and Yuri Spitzer – father and son, said to be beneficial owners of R17, Midwest Holding AG, funder/investor

Martin Stimler – funder/investor, through J Stimler Limited

END