

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS AT MANCHESTER
BUSINESS LIST (ChD)

Date: 04/07/24

Before:
His Honour Judge Halliwell sitting as a Judge of the High Court at Manchester

Between :

PAPISS DEMBA CISSE

Claimant

- and -

(1) SANDRA DIENE

(2) MADOU DIENE

Defendants

Mr Simon Goldberg KC and Ms Abigail Cheetham (instructed by **Savage Silk**) for the
Claimant

Mr Sharaz Ahmed (instructed by **Green Law Solicitors**) for the **Defendants**

Hearing dates: 13 - 17 May 2024

JUDGMENT

This judgment was handed down remotely at 10.00am on 04 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ Halliwell :

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(1) Introduction

1. The Claimant (“**Mr Cissé**”) is a professional footballer, originally from Senegal. For several years, the Second Defendant (“**Mr Diene**”) acted as Mr Cissé’s agent in the UK and Senegal. Mr Diene is himself from Senegal. The First Defendant (“**Mrs Diene**”) is Mr Diene’s wife.
2. During his career as a professional footballer, Mr Cissé has opened several bank accounts and acquired properties in England and Senegal. For several years, this was with Mr Diene’s collaboration and assistance. However, Mr Cissé now contends Mr Diene did not act in his best interests. There are multiple issues between them including disputes about the ownership of such properties and use of Mr Cissé’s bank accounts. By these proceedings, Mr Cissé sues Mr Diene for a declaration he is the sole beneficial owner of one such property and an order setting aside, for undue influence, a declaration of trust (“**the Declaration of Trust**”) in Mr Diene’s favour. He also seeks an account of the rents and profits of the property and an account of a series of transactions on his bank accounts.

3. The trial took place before me on 13-17 May 2024. Following trial, the parties delivered written closing submissions dated 24 May 2024, 31 May and 4 June 2024. For the avoidance of doubt, I have taken the parties' written closing submissions into consideration.
4. Mr Simon Goldberg KC and Miss Abigail Cheetham, of counsel, appear on behalf of Mr Cissé. Mr Sharaz Ahmed appears on behalf of the Defendants.
5. This is my judgment following the trial.

(2) Background

6. On 17 January 2012, Mr Cissé signed for Newcastle United. By then, he already had experience playing professional football in mainland Europe. This included playing in the Bundesliga for SC Freiburg. However, he could not speak or read in English. His native languages were Wolof and French.
7. His contractual remuneration was substantial. In addition to a "basic wage [of] £45,000 per week payable by monthly instalments in arrears", he was entitled to rewards under the Club's bonus and incentives scheme. However, he wasn't financially sophisticated and, upon arrival in England, did not find management of his day-to-day affairs straightforward. Newcastle United set up a bank account for him at Barclays Bank but he was in need of additional support.
8. At an early stage, Mr Cissé was introduced to Mr Diene by another Senegalese professional footballer and close acquaintance, Mr Mame Diouf. Mr Diouf provided him with Mr Diene's phone number as a Senegalese friend, living in England, who would be able to help if needed. Mr Cissé then contacted Mr Diene on his phone and, after his first or second match with Newcastle United, Mr Diene collected him, by car, to stay for the weekend at his home in Manchester. Not long afterwards, Mr Cissé contacted Mr Diene in connection with an issue relating to his contract of employment. Mr Diene referred him to Mr Robin Winkell ("**Mr Winkell**"), a solicitor and partner of Square One Law, who provided Mr Cissé with legal advice. In 2013, Mr Winkell assisted Mr Cissé in attending to the termination of his contract with an agent, Mr Guido Nickolay. The football club's contractual obligation to pay Mr Nickolay an annual fee of £85,800 was transmuted into a loyalty bonus, subsequently credited to Mr Cissé himself.
9. Mr Diene provided Mr Cissé with more general assistance in relation to the management of his affairs. Early in 2013 or thereabouts, he helped Mr Cissé in connection with the purchase of his first house at Darras Hall, Ponteland. The house was purchased with a loan

from Coutts Bank and Mr Diene helped Mr Cissé with some of the formalities, including setting up a bank account with Coutts. More generally, Mr Diene was on hand to explain and translate for Mr Cissé when help was required.

10. Between January 2012 and July 2016, Mr Cissé was contracted to Newcastle United and remained resident in the UK. In July 2016, he signed for Shandong Luneng in the Chinese Super League. He remained in China until August 2018 or thereabouts when he signed for Alayanspor in the Turkish Super League. However, throughout this period and, indeed, afterwards, he held bank accounts in England. Having opened bank accounts with Barclays and Coutts, Mr Cissé opened a bank account with Investec when he moved to China in 2016. This was arranged by Mr Diene on Mr Cissé's behalf. Mr Diene was provided with full access to each of these bank accounts and could thus freely enter into transactions on each. Indeed, he was better placed to do so than Mr Cissé himself since he was more familiar with internet banking and had exclusive use of at least some of the electronic codes and passwords. He was also provided with Mr Cissé's debit card to the Barclays Bank account and appears to have obtained a card with Coutts. Unlike Mr Diene, Mr Cissé did not personally make use of electronic or personal banking. He was only able to access his Barclays account by attending the Bank in person and had no direct access to his Investec account. He did not receive bank statements and did not take steps to read the electronic records.
11. Mr Cissé gave evidence that he regarded Mr Diene as his "rock, like an older brother and I felt I owed him a great deal for all the support he gave me when I came to the UK". He says that Mr Diene "was not a football agent as he had nothing to do with my contractors with the clubs or transfers but he helped me navigate my way in England and from 2013 [Mr Diene] looked out for my future for me by finding investments for when I retired". This included identifying suitable properties and other investments, obtaining finance and liaising with professional advisers and agents and attending to the acquisition of such investments. However, it was not confined to investments. In due course, it involved expenditure on other assets, such as cars, and works of maintenance or improvement to his properties. Mr Diene also made arrangements, for money to be paid out of Mr Cissé's bank accounts to meet his outgoings and liabilities.
12. Mr Cissé accepts that, when Newcastle United's contractual obligation to pay Mr Nickolay an annual fee of £85,800 was transmuted into a loyalty bonus, Mr Cissé himself agreed to remit to Mr Diene, as consideration for his services, the net amount payable to him by the

Football club after deducting tax and National Insurance. However, Mr Diene contends that Mr Cissé agreed to pay him the gross amount. Mr Diene also contends that Mr Cissé agreed to pay him a monthly fee of £4-5000 which fluctuated according to the amount credited, from time to time, to one of Mr Cissé's bank accounts.

13. When Mr Cissé first met Mr Diene, Mr Diene was resident in a flat on a development at Riverside Lodge in Didsbury, Manchester. In 2014, another flat in the development, Flat 3 ("**3 Riverside Lodge**"), was marketed for sale and Mr Diene maintains that he drew this to the attention of Mr Cissé. It was at least implicit in Mr Cissé's evidence that he has no recollection of an occasion on which the flat was drawn to his attention in this way. However, he was interested in the acquisition, in due course, of a portfolio of properties and content for Mr Diene to instruct solicitors on his behalf in connection with the acquisition of such properties providing them with such information as the solicitors might need to progress the transactions. On this basis, Square One Law were instructed as Mr Cissé's solicitors in connection with the purchase of 3 Riverside Lodge and, on 6 February 2015, Mr Cissé exchanged contracts for the purchase of the property. The leasehold title was transferred into Mr Cissé's sole name and he was registered as sole leasehold proprietor. The transaction was funded, in part, from monies advanced by Coutts secured by a charge over the property.
14. In some of the draft contractual documentation, Mrs Diene was entered with Mr Cissé as joint purchaser. Mr Diene maintains this was initially their joint intention but it subsequently became apparent they would not be able to obtain a mortgage jointly and Mr Cissé thus agreed the property would be purchased in his sole name. However, this is alleged to have been on the understanding Mr Cissé would hold it on bare trust for Mr Diene himself. Mr Cissé contests each element of this narrative.
15. Mr Cissé joined Shandong Luneng in the Chinese Super League under contractual documentation issued by the Club on 7 July 2016 (local time). Mr Cissé's signing on fee was €3,000,000. He was also entitled to an annual salary of €2,000,000. In recognition of their role in presenting and introducing him to the Club, Mr Cissé entered into a written agreement dated 6 July 2016 with Sports Management Limited, a company incorporated in Portugal, to pay €1,330,000 out of his signing on fee and further sums of €1,330,000 out of his annual salary.

16. Mr Winskell acted as an intermediary on behalf of Newcastle United in the contractual negotiations. Mr Diene contends that Mr Winskell advised him that agency fees or commission would be payable in the aggregate sum of €6,000,000, made up of three yearly sums of €2,000,000 divided between himself and two other individuals, Mr Mendes and Mr Qi. He would thus be entitled to three payments of €666,666 on 31 July 2016 and 31 January 2017 and 2018. This is disputed.
17. On 25 May 2017, a transaction was purportedly completed under which the registered title to freehold property at 16 Packsaddle Park, Prestbury (“**16 Packsaddle Park**”) was transferred into Mr Cissé’s sole name. Mr Cissé contends that, at the time, he knew nothing of this transaction and his signature on the transfer instrument was forged. Mr Diene contends it was a genuine transaction, concluded with Mr Cissé’s full knowledge and approval. Mr Diene also contends that he personally observed Mr Cissé sign the relevant contractual documentation and witnessed his signature on the registered transfer. Mr Diene maintains that Mr Cissé’s purported signature was entered on the document on 17 May 2017 or thereabouts when Mr Cissé was in China. It follows that, if Mr Diene witnessed the signature in person, he must have done so in China.
18. In any event, the transfer was delivered to HM Land Registry and, on 6 June 2017, Mr Cissé was registered as freehold proprietor. Although the putative transfer did not contain a declaration of trust, Mr Diene contends Mr Cissé signed the transfer with the intention that he would hold the property on trust for Mr Diene. There is, of course, no room for any such suggestion if, as Mr Cissé maintains, he was entirely unaware of the transaction.
19. Following acquisition of 16 Packsaddle Park, Mr and Mrs Diene took up residence there. They remain in residential occupation to this day.
20. In due course, properties in Mr Cissé’s registered ownership – including 3 Riverside Lodge and 16 Packsaddle Park - were subsequently used as security for additional borrowing on 1 September 2017 (£300,000), 8 November 2017 (£260,000), 15 June 2018 (£400,000), 24 June 2018 (£315,000) and 30 November 2018 (£511,494.02). Mr Cissé contends that he was entirely unaware of the first four of these transactions. Where the relevant documentation bears his signature, he contends his signature has been forged. If, as his agent, Mr Diene seeks to maintain the proceeds of the loans were applied for Mr Cissé’s benefit, it is for Mr Diene to show that this is so. On Mr Cissé’s behalf, it is submitted that, if they were made aware his title to the properties was impressed with trusts in favour of

Mr Diene, the Bank would at least have required Mr Diene to authorise the transactions and postpone his right to the Bank as a pre-condition for any advance.

21. On 11 May 2018 or thereabouts, Mr Cissé signed the Declaration of Trust. He did so whilst still in China on the occasion of a visit from Mr Diene in the presence of Mr Diene and a long-term acquaintance, Mr Famoud Sonko (“**Mr Sonko**”). Mr Diene brought the document to Mr Cissé for his signature. The Declaration of Trust was in the following form.

“I, the undersigned Papiss Demba Cisse... (the “Nominee”) do hereby acknowledge and declare that I hold all those assets listed in the annexed Schedule 1 (the “Assets”) registered in my name as nominee of and trustee for and on behalf of Madou Diene of 16 Packsaddle Park, Prestbury... (the “Beneficiary”).

I hereby irrevocably undertake not to transfer, deal with or dispose of the Assets save as the Beneficiary may from time to time direct in writing or at the direction of his executors.

I hereby irrevocably assign to the Beneficiary the right to receive any and all benefit from the Assets including all rights to income of any sort which may be receivable from the Assets from time to time and all other rights including rights to capital and voting rights.

I hereby declare that with the exception of the obligation to hold and dispose of the Assets and its income only at the direction of the Beneficiary I have otherwise received the Assets free from any and all obligations including but not limited to the payment of unpaid capital (if any) and the payment of taxes which shall remain the exclusive obligation of the Beneficiary.

I hereby expressly and irrevocably undertake that on receipt of written instruction from the Beneficiary I will promptly transfer the legal title of Assets to the Beneficiary or to any other third-party as he may direct.

I further undertake not to conduct or present myself to any third-party as the beneficial owner of the Assets nor to cause or allow any charge, lien or mortgage over the Assets save at the express instruction of the Beneficiary in writing.

I expressly declare that all the above undertakings are made irrevocably and that save for the legal title I have absolutely no interest in or rights over the Assets.

Dated this 11th day of May, 2018.

Papiss Demba Cisse.

Appendix

Schedule 1 “Assets”

1. Packsaddle Park, Prestbury...
2. Apartment 3, Riverside Lodge, 208 Palatine Road, Manchester M30 2WF

Dated 11th May 2018

Papiss Demba Cisse”

22. The Declaration of Trust raises issues at the heart of these proceedings. Mr Cissé seeks an order setting aside the Declaration of Trust for undue influence. He contends that he signed the document without properly understanding the nature or significance of the document and did so because he reposed trust and confidence in Mr Diene and Mr Diene advised him to do so.

23. Mr Cissé remained in China until August 2018 or thereabouts when he signed for Alayanspor in the Turkish Super League. Mr Cissé maintains that Mr Diene was not involved in the transfer negotiations. Mr Diene contends otherwise. He also says Mr Cissé agreed to pay him €250,000 for his role in the negotiations, payable in four instalments of €62,500 on 30 October 2018, 30 April 2019, 30 October 2019 and 30 October 2020.
24. Mr Cissé's case is that, in November 2018 or thereabouts, Mr Diene advised him, in general terms, that his agent Mr Robert Thompson ("**Mr Thompson**") had obtained "a good deal on refinance so that my properties in the UK would be mortgage free by the time [his] contract in Turkey ended". On this basis, he "would be mortgage free by 2020". However, he contends that he was not provided with any details about the refinancing package and was content to rely on Mr Diene's general advice. On his case, he was never made aware of the earlier arrangements to refinance his debt.
25. It is at least implicit in Mr Cissé's case that he was first alerted to the possibility Mr Diene might not be acting in his best interests in January 2019 or thereabouts. This was when he received a call from an acquaintance in Newcastle, Mr Mohammed Wafi. Mr Wafi owned a shisha bar in Newcastle. In his call, Mr Wafi advised Mr Cissé that Mr Diene had transferred him almost £200,000 from monies held for Pakao Agro, a company operated on Mr Cissé's behalf in Senegal. Mr Cissé immediately contacted Mr Diene for an explanation and was advised that this was the only way in which to transfer money from Senegal. This money was required to buy farm machinery. After further inquiries, he sought legal advice from Mr Winskell. Later, in 2019, he advised Mr Diene that he must "no longer...control and access anything [on Mr Cissé's behalf] and he was taking over everything. I told him I needed to return all my bank accounts and anything else to me both in Senegal and in the UK".
26. Having done so, Mr Cissé contends that a series of financial irregularities came to light. It became apparent a substantial amount of debt had been incurred in his name and loan documentation forged. Monies had also been misappropriated. He discovered that the property at 16 Packsaddle Park had been acquired in his name with a mortgage in his name using forged documentation. He also discovered that a farm acquired for him in Senegal was actually held by a company for Mr Diene and was made aware that money had been transferred to England using fraudulent invoices in respect of agricultural products and machinery.

27. Solicitors were instructed on behalf of each of the parties and, after the exchange of correspondence under the Pre-Action Protocol, Mr Cissé issued proceedings.
28. In January 2021, he commenced proceedings against Mr and Mrs Diene for possession of 16 Packsaddle Park (“**the Possession Proceedings**”). They relate, in their entirety, to 16 Packsaddle Park only. The Possession Proceedings were issued in the County Court at Stockport under Claim no. H00SK098.
29. On 22 July 2022, Mr Cissé issued the proceedings now before me. These were issued in the Business and Property Courts at Newcastle (Circuit Commercial List) and transferred to the Business and Property Courts Manchester (Business List) pursuant to an order made by HHJ Pearce on 5 September 2023. They are currently listed under Case No. BL-2024-MAN-00008.
30. The two sets of proceedings have never been consolidated nor have there been directions for them to be case managed or heard together.
31. The Possession Proceedings were listed for trial before HHJ Evans in the County Court at Manchester on 20-24 March 2023. Mr Cissé’s claim was advanced on the basis that, whilst not a signatory to the registered transfer of 16 Packsaddle Park, he was entitled to the legal estate as registered proprietor. Having taken possession of the property without his consent, Mr and Mrs Diene were trespassers and Mr Cissé was entitled to an order for possession. In their Defence, Mr and Mrs Diene took issue with the allegation that the Mr Cissé’s signature was a forgery and maintained that, by virtue of the Declaration of Trust, Mr Cissé held the property on trust for them.
32. Following oral argument, HHJ Evans gave judgment in favour of Mr and Mrs Diene on the second day of the trial. She did so following counsel’s opening submissions without first inviting the parties to call their witnesses. This was on the basis Mr Cissé’s claim must inevitably fail since he was bound by the Declaration of Trust. In reaching this conclusion, the judge observed that the Particulars of Claim did not include a claim for an order setting aside or rescinding the Declaration of Trust. Whilst Mr Cissé had filed a Reply asserting that he was entitled to rescission, this should have been pleaded in the Particulars of Claim. It was not open to Mr Cissé to advance such a case in his Reply. Having adjudged that it was destined to fail, HHJ Evans formally dismissed the claim by order dated 24 June 2023. Mr Justice Constable has given Mr Cissé permission to appeal. As yet, the appeal has not been heard.

(3) Witnesses

33. The parties each gave evidence personally. Mr Cissé also called Mr Winskell as a witness. Mr and Mrs Diene called Messrs Thompson and Sanko. They also sought to call as a witness, Mr El Hadji Tacko Seck.

(a) Mr Cissé

34. Mr Cissé confirmed that he first signed for Newcastle United in January 2012. He then gave evidence about his career, from that time, as a professional footballer, his evolving relationship with Mr Diene and the management of his affairs. He confirmed that, from July or August 2013, he allowed Mr Diene to fully manage his financial affairs. No doubt mindful that, as a professional footballer, he could have no expectation of a long career, he sought to invest in a school and farm in Senegal, to buy properties there and acquire flats in the UK. He left much of this to Mr Diene, confirming that he did not know where the flats were or what they were called.

35. Following acquisition of 3 Riverside Lodge, Mr Cissé appears to have visited Mr Diene at the flat without appreciating it belonged to himself personally. Although he signed the contractual documentation, he did not appreciate that this was the property he had acquired and was thus unaware Mr Diene was residing there without paying him rent. He was also unaware that, in May 2017, 16 Packsaddle Park was purchased in his own name and he confirmed that he did not sign any of the legal documents relating to the purchase of this property, including the contract, transfer, the legal charge and the drawdown notice.

36. Mr Cissé accepted that he signed the Declaration of Trust when Mr Diene visited him in China. He also accepted that Mr Thompson spoke to him about it. However, he did not understand the document – he was incapable reading it in English - and he only signed it after Mr Diene explained it was for his benefit. The gist of the advice appears to have been that he would thus be released from liabilities in respect of property that was not in his ownership. He confirmed that he signed the document because he trusted Mr Diene.

37. Mr Cissé's native languages are Wolof and French. Since 2012, when he first arrived in the UK, he has become increasingly proficient in spoken English. It was obvious when he started to give evidence that he is not proficient in written English. He is now able to speak English to a basic standard but struggles to understand sentences of any complexity.

38. Throughout the hearing, Mr Cissé was fortunate to have the services of an interpreter. He also gave his evidence through the interpreter although, on occasion, he intervened to

answer the more simple questions directly in English. Moreover, his witness statement was provided with the assistance of an interpreter.

39. By *Paragraph 18.1 of Practice Direction 32*, it is provided that that a witness statement must, if practicable, be in the intended witness's own words and, in any event, drafted in his own language. By *Paragraph 23.2*, it is provided that where a witness statement is in a foreign language, the party wishing to rely on it must have it translated and file the foreign language witness statement with the court.
40. In the present case, English and French versions of Mr Cissé's witness statement were admitted before the court, in each case supported by a statement of truth. The French version was electronically signed by Mr Cissé on 22 December 2022. On the same day, his solicitor, Ms Angie Pappriill signed certificates of formality confirming that the witness statements complied with *Practice Direction 57AC* and *Paragraphs 18.1 and 18.2 of PD 32* and the Statement of Best Practice in the *Appendix to PD 57AC*.
41. In Paragraph 2 of the English version of Mr Cissé's witness statement, he confirmed that "this statement has been prepared at a face-to-face meeting with the assistance of a French interpreter and my solicitor. I was then provided with a draft witness statement in French to read, amend and agree by email and an English version was prepared to match this as approved". If this leaves any room for ambiguity about the order in which they were prepared, this is eliminated in the French version which states, in terms, that "une version anglaise a été préparée pour correspondre à cette version approuvée". The English version was thus prepared so as to correspond with the French version.
42. Mr Cissé was cross examined at length. When cross examined on the preparation of his statement, Mr Cissé stated that "the statement comes from me" and it was in "my words". He confirmed that the information in his statement was provided in French; his interpreter then translated it into English.
43. In Paragraph 7 of his closing submissions dated 31 May 2024, Mr Ahmed suggests that Mr Cissé's French witness statement was translated from English. He does so on the basis that, in his certificate issued before the witness statements were signed and approved, Mr Philippe Alan Muriel stated that "to the best of my knowledge" the "document belonging to Mr Papiss Demba Cissé and referenced as "FR_draft witness statement PDC J30MA160 2 (French)" in the French language represent an accurate and complete translation of the original English language document". On the basis that Mr Muriel was initial translator,

this plainly indicates that the English document was prepared first. However, the point was not taken prior to delivery of written closing submissions nor was the admissibility of Mr Cissé's witness statement challenged when he gave his evidence. Moreover, in his witness statement and in cross examination, Mr Cissé's evidence was clearly to the contrary and, subject to Mr Muriel's certificate, there is no convincing evidence to suggest otherwise. Whilst Mr Cissé's recollection was often vague and lacking in detail, I can see no good reason for him to have misremembered the process by which his witness statement was prepared or perceived that it would somehow be in his interest to give a misleading impression about it. It was obvious during the trial that Mr Cissé is much more proficient in French than English. Not surprisingly, he is also more comfortable communicating in French than in English. If it is being suggested Mr Cissé's witness statement should be excluded from consideration owing to a breach of the *Paras 18 and 23 of Practice Direction 32*, I am not persuaded there is a sound basis for doing so. Moreover, had I surmised that there may have been a breach of the *Practice Direction* and thus been predisposed to take a contrary view, it is in my judgment too late for Mr Ahmed to take this point now having cross examined Mr Cissé at length on his evidence, including the contents of his witness statement, without first seeking an explanation for the formula in Mr Muriel's certificate or identifying it as an issue. Mr Cissé's evidence and the account given by him in his witness statement has been tested at length and, on this basis, I have evaluated his evidence. If and to the extent it is being submitted I should now exclude Mr Cissé's witness statement, I reject this submission.

44. In a remarkable passage in his closing submissions, Mr Ahmed also challenged Mr Cissé's witness statement on the basis that it had allegedly been prepared by Mr Winskell whose professional integrity was undermined by his relationship with Mr Cissé. This was presented as follows in Paragraph 3 of Mr Ahmed's Closing Submissions.

“The relationship between Robin Winskell ‘RW’ and C was exposed in the words of C, who repeated(sic) referred to knowing only one solicitor – RW; RW was responsible for the preparation of his witness statement(s). The independence of RW is compromised as to the reliability of his evidence, there is a personal and a financial relationship between C and RW. The outcome of these proceedings benefit RW”.

45. I shall address Mr Winskell's evidence more fully later. Mr Winskell and Mr Cissé are well acquainted personally and it is possible they have met on social occasions although this was not the subject of evidence. However, I am satisfied the relationship between Mr

Winskell and Mr Cissé was essentially professional in nature at all times. There is no evidence that, in his dealings with Mr Cissé, Mr Winskell transcended professional boundaries nor, indeed, have I seen anything to impugn Mr Winskell's professional integrity. In cross examination, it was not put to Mr Winskell that he has a financial interest in the outcome of the litigation and there is no reason to believe he has such an interest. Mr Winskell is a consultant at Savage Silk, the solicitors instructed by Mr Cissé in the current proceedings. However, the litigation is being conducted through their litigation partner, Ms Angie Paprill, not Mr Winskell. Whilst the point was not specifically taken in cross examination and the surrounding issues were thus left unexplored, I have no reason to doubt Ms Paprill has overall responsibility for the litigation and, in the absence of evidence to the contrary, I shall infer that she was primarily responsible for the preparation of Mr Cissé's witness statement. When Mr Ahmed asked Mr Winskell whether he had assisted in the preparation of Mr Cissé's witness statement in the Possession Proceedings, Mr Winskell confirmed that, having been instructed to examine the issues relating to Mr Cissé's relationship with Mr Diene, he presented his findings but "had very little input" in relation to the preparation of witness statements. Mr Ahmed did not take issue with Mr Winskell in his answer to the question or pursue the matter further and I have no reason to believe Mr Winskell's answer was incorrect. In my judgment, there is no room for any suggestion Mr Winskell has done or said anything to undermine or vitiate the quality of Mr Cissé's witness statements in this litigation and the Possession Proceedings. Indeed, in the absence of clear and compelling evidence to the contrary, it was inappropriate to submit otherwise.

46. In cross examination, Mr Cissé lacked confidence. He had not assimilated or properly understood significant aspects of the historical detail and, at times, his powers of comprehension were limited. Sometimes, he was also prone to guess rather than reflect carefully before answering the questions put to him or, indeed, qualify his answers to ensure they made sense. For example, in answer to a question early in cross examination, Mr Cissé stated that he hadn't read his statement until "a few days" prior to the trial. It was implicit he had not re-read his witness statement since he authorised it to be electronically "docu-signed" on 22 December 2023, not that he did not read his witness statement before signing it. However, this is not how he put it when giving his evidence in cross examination.

47. Nevertheless, in my judgment Mr Cissé was generally an honest witness and, where he gave evidence about the evolution of his relationship with Mr Diene and events for which

he had good reason to have a specific recollection, his evidence was generally reliable. This would include, for example, his recollection of the occasion on 11 May 2018 when Mr Diene visited him in China and asked him to sign the Declaration of Trust. Following the discussions in a call with Mr Thompson in which he was advised that the Deed related to the ownership of some properties in the UK and his conversation with Mr Diene in Wolof, it is likely Mr Cissé formed a vague understanding he was signing a document which related to the ownership of property which did not belong to him and would operate to release him from liabilities in the UK in respect of the property.

48. Conversely, I am also satisfied that, had Mr Diene visited Mr Cissé in China on the occasion on which Mr Cissé is alleged to have signed a suite of contractual documents in connection with the purchase and acquisition of 16 Packsaddle Park, Mr Cissé would have had at least some recollection of the occasion and could have been expected to confirm that this was so when making his witness statement and giving his evidence. He did not do so.

49. Where Mr Cissé's account is inconsistent with the evidence of Mr Diene, I have generally preferred Mr Cissé's evidence.

(b) Mr Winskell

50. Mr Winskell is a solicitor. He is currently employed by Savage Silk as a consultant. However, from July 2011 to 30 April 2020, he was a partner, then consultant, of Square One Law. From 27 June 2012 to 8 May 2019, he was registered with the Football Association, as a lawyer, to provide services to football players and clubs in connection with transfers and contract re-negotiations.

51. He first met Messrs Cissé and Diene during the spring of 2012 when he was instructed to act on Mr Cissé's behalf in relation to the dispute with his former agent, Mr Guido Nickolay. This dispute was resolved following commencement of an arbitration under the rules of the Football Association. Mr Nickolay's right to the payment of fees came to an end when, in July 2013, Mr Cissé signed a new contract with Newcastle United.

52. Mr Winskell acted as an intermediary for Newcastle United in connection with the transaction in which Mr Cissé signed for Shandong Luneng. This was achieved with the assistance of Pedro Mendes, of MNM Sports Management Limited, and a Chinese intermediary, Gao Qi. Mr Cissé entered into a written agreement with MNM Sports Management Limited for the payment of commission under the agreement. Mr Diene contended that he was also entitled to commission and suggested that this could be shared

with Mr Winskell. However, Mr Winskell advised Mr Diene that he was being separately remunerated by Newcastle United. He also reminded Mr Diene that, in the absence of a representation agreement, Mr Diene would not be permitted to receive commission under the FA and FIFA Regulations.

53. Mr Winskell was not cross examined at significant length. However, it was put to him that Mr Cissé and Mr Diene visited him in connection with the purchase of 3 Riverside Lodge and, in accordance with Mr Diene's testimony, there was a conversation between them in which it was suggested that, whilst held in Mr Cissé's name, the property would belong to Mr Diene. Mr Winskell specifically denied such a conversation took place. I am entirely satisfied his evidence on this issue was correct.
54. Mr Winskell was a confident witness. His evidence was clear, straightforward and precise. Whilst his evidence was not tested at length in cross examination, I am satisfied that he provided an honest and reliable account. Where inconsistent with Mr Diene's evidence, I have no hesitation in preferring Mr Winskell's evidence.

(c) Mr Diene

55. Although Mr Diene was called to give evidence after his wife, Mrs Diene, and Mr Thompson, I shall deal with his evidence next since it ranged significantly more widely than the evidence of any of the Defendants' other witnesses.
56. In his witness statement, Mr Diene described himself an intermediary or agent for various professional football players, "mainly from Senegal" and including players such as Mame Biram Diouf and Mamadou Diarra. He also stated that he had played a part in Mr Cheikhou Kouyate's transfer to Crystal Palace Football Club. It was put to him, in cross examination, that to act as an FA registered agent, he would have been required to hold FIFA Agent Licence. He was then asked whether he held such a licence. In reply, he implicitly accepted such a licence was required and stated that he did not work as a football agent between 2012 and 2018.
57. He stated that he reached agreement with Mr Cissé, at the outset, to act for Mr Cissé on the understanding he would be reimbursed for transactions on Mr Cissé's behalf and remunerated at a monthly fee of between £4,000 and £5,000 per month. In due course, he also became entitled to payments from Mr Cissé of £85,800 in 2014, 2015 and 2016.
58. From as early as the middle of 2012, Mr Diene was undertaking tasks such as the payment of bills and the transfer of funds to Mr Cissé's family and friends in Senegal. Towards the

end of 2012, he accepts Mr Cissé provided him with his Barclays debit card. Mr Diene also stated that, from this time, he began to mix their monies together. From 2013, he also started to identify investment opportunities for Mr Cissé.

59. Mr Diene had moved into a flat at Riverside Lodge, Didsbury as long ago as 2010. He identified Flat 3 as a suitable purchase when it was placed on the market in 2014 or 2015. He negotiated the price himself and agreed to buy the property with the intention that it would be his property but approached Mr Cissé because he couldn't get a mortgage in his own name. Initially they agreed Mr Cissé would buy the property in the joint names of himself and Mrs Diene but "for some sort of reason this didn't go through" so Mr Cissé agreed to buy it in his name, subject to mortgage, on the understanding that he would hold it for Mr Diene's benefit and transfer it to Mr Diene when requested. They allegedly attended a meeting with Mr Winskell in which they advised him of this. The transaction was funded from Ms Cissé's bank account but it was Mr Diene's money.
60. During the negotiations for Mr Cissé to join Shandong Luneng, Mr Diene contends that he instructed Mr Winskell to "negotiate hard to increase [Mr Cissé's] wages from... €3,000,000 to €4,000,000 per annum and we were successful in achieving this". Mr Winskell advised him that there would be agency or commission fees of €2,000,000 per annum payable over the following three years, divided into four units. Mr Diene's share was €500,000. However, Mr Diene was unhappy with this and Mr Winskell returned to him with a revised arrangement under which the commission would be divided between Mr Mendes, Mr Qi and himself at €666,666 each. Mr Diene contends that he then used his first yearly instalment of €666,666 to buy land in Senegal and a car. He also cleared the mortgage of 3 Riverside Lodge.
61. Mindful that, when 16 Packsaddle Park was acquired, Mr Cissé was in China and thus maintains he could not have signed the transfer or, indeed, any of the contract documentation, Mr Diene gave evidence that he made a personal visit to China at the time. He says that he produced the relevant documentation in draft and obtained Mr Cissé's signature at the time. This was how he put it when, on 18 February 2022, he made his witness statement in the Possession Proceedings. However, he chose to deal with the transaction more shortly in his witness statement dated 5 January 2024 contending, in Paragraph 62, that he bought the property in Mr Cissé's name for around £735,000 in May 2017 with a loan Mr Cissé took out on Mr Diene's behalf and used his 2017 share of €666,666 to pay back the loan.

62. Mr Diene also contends that Mr Cissé authorised each of the transactions, in 2017 and 2018, when 3 Riverside Lodge and 16 Packsaddle Park were subsequently used as security for additional borrowing.
63. His case in relation to the Declaration of Trust is that he visited Mr Cissé in China in early 2018 when he “began to sense that things were not going well in [their] relationship” and presented the document for Mr Cissé to sign after Mr Thompson had spoken to him about it in a phone call in the presence of Mr Sonko. He states that Mr Cissé “understood exactly what Mr Thompson had explained to him as he communicated it well in English even though it is not his first language”.
64. Mr Diene came across as an astute and forceful witness. However, I regret to say that his evidence was highly unsatisfactory and, on several of the contentious issues, he can only have given such evidence when fully aware his answers were false or misleading. In substance, significant parts of his evidence were implausible when assessed with reference to the evidence as a whole, including the contemporaneous documentation, notwithstanding substantial gaps in the documents which he had chosen to disclose. His evidence was also unsatisfactory because he was prone to evasion and argument. At times, he also sought to interrupt the questions, his answers were internally inconsistent and his account shifted to accommodate latent issues which were drawn to his attention in the course of cross examination. I have thus exercised a high degree of caution when assessing Mr Diene’s evidence as a whole. Where uncorroborated, I have generally given minimal weight, if any, to Mr Diene’s evidence.
65. When Mr Diene was cross examined on his case that Mr Cissé entered into a contractual agreement, at the outset, to pay him a monthly fee of between £4,000 and £5,000 per month, Mr Diene stated the monthly fee was not fixed in a specific amount since they agreed that, for any given month, the amount payable would depend on the amount credited at the time to Mr Cissé’s bank account. In my judgment, it is implausible that the parties entered into contractual commitments upon these terms. Mr Diene’s evidence was imprecise as to the day in the month in which his bank account was to be assessed. He appeared to suggest that, if there was less than £5,000 credited to the bank account, he would be entitled to less than £5,000 but he did not suggest there was otherwise any scheme for determining the amount of his monthly remuneration. It is very unlikely that the parties would have entered into a contract on these terms and, all the more surprising, for them to have done so at such an early stage in their relationship. No doubt, Mr Diene will have been mindful of the

amounts credited to Mr Cissé's bank account when choosing how much to draw out for his personal use. However, there is no evidence upon which I can conclude Mr Diene had a contractual right to debit Mr Cissé's bank account with such amounts nor, indeed, that he was entitled to any amounts that he may have purported to draw from Mr Cissé's bank in respect of such remuneration. His case in this respect contradicts the amounts he declared to HMRC for such remuneration in his tax returns for the years ending on 5 April 2014 and 2016 (see [66] below).

66. Mr Diene stated that, in addition to his contractual right to a fluctuating monthly sum of £4-5,000, Mr Cissé subsequently agreed to credit him with the *gross* amount, £85,800, of his transmuted loyalty bonus following the termination of Mr Cissé's contractual commitment to Mr Nickolay. This is in contradiction to Mr Cissé's evidence that he agreed only to credit Mr Diene with the *net* amount received by Mr Cissé himself after the deduction of Income Tax and National Insurance. It is also inconsistent with Mr Diene's tax returns for the years ending on 5 April 2014 and 2016 showing that his income in these years was respectively £27,000 and £71,900. No return for the year ending on 5 April 2015 has been disclosed. In the event of a conflict between the evidence of Mr Cissé and Mr Diene, I generally prefer Mr Cissé's evidence. Quite apart from this, I can see no good reason why, having received only the net amount, Mr Cissé would have agreed to credit Mr Diene with additional monies in a sum equal to the amounts deducted on behalf of HMRC.
67. It is not without significance that, whilst Mr Diene maintains he chose to "mix" his own monies in Mr Cissé's bank accounts, Mr Diene held personal bank accounts himself with Barclays Bank and Investec. In these proceedings, he has not disclosed bank account statements in respect of these bank accounts or any other bank accounts he may have held.
68. Mr Diene's case in relation to the acquisition of 3 Riverside Lodge was also implausible. It is more than conceivable he identified the property as a suitable purchase and was involved in the contractual negotiations. It also appears that, at some point, Mrs Diene's name was entered on the draft contractual documentation, perhaps on Mr Diene's instructions. However, Mr Cissé could have had no reason to purchase the property jointly with Mrs Diene nor, indeed, to acquire the property as a nominee or trustee for Mr Diene. Had it been intended Mr Cissé would hold the property on trust for Mr Diene, I would have expected to see at least some indication, in the contemporaneous documentation, that this was so. There is no such indication. There was no declaration of trust in the TR2. It is also contrary to the SDLT return in which it was stated that Mr Cissé was not acting as trustee.

When, on Mr Diene's behalf, it was put to Mr Winskell that Messrs Cissé and Diene had advised him the property was to be held on trust for Mr Diene, Mr Winskell denied that this was so. He did so confidently and without hesitation.

69. Mr Winskell was not cross examined on his testimony that, upon the transfer of Mr Cissé to Shandong Luneng, he declined to enter into an agreement with Mr Diene for the payment of commission. However, in the absence of contemporaneous written evidence, I do not accept Mr Diene's evidence that Mr Winskell visited China to negotiate on Mr Diene's behalf for the payment of commission and achieved a deal on his behalf.

70. Mr Diene's case in relation to the execution of the contract documentation for 16 Packsaddle Park fell apart when tested in cross examination. In Paragraphs 73-76 of his witness statement dated 18 February 2022 in the Possession Proceedings, Mr Diene stated as follows.

“73. On 14th or 15th May 2017, I was on holiday with my wife in Thailand when Mr Thompson contacted me to say that they were expecting the documents of the Property any time soon. I am referring to the documents that the Claimant says he did not sign namely, the TR1 dated 25 May 2017, the contract of sale, the Facility agreement with Westfoot dated 25th May 2017, the legal charge in favour of Westfoot dated 25th May 2017 and the drawdown notice.

74. On hearing this news, I decided to travel to China from Thailand around 15th May 2017 with the intention of getting the Claimant to sign the documents so I could return to the UK with them. My wife returned to the UK. I was in China on 17th May 2017 when Mr Thompson emailed the documents to me.

75. When I received these documents, I told Mr Sonko, the Claimant at the Claimant's apartment in China that the documents had arrive. They already knew I was expecting some documents for the Property as I had been talking about the Property. I cannot remember whether I told them at the same time or at different times but at some stage everyone in the apartment knew that the documents had arrived.

76. I then printed the documents and gave them to the Claimant to sign. The Claimant signed the documents in the living room of his apartment in China and I witnessed it. I am not sure whether Mr Sonko and Mr Coly were present in the room but they became aware when I told them that the Claimant had signed the documents”.

71. It is significant that, in this witness statement, Mr Diene drew no distinction between the drawdown notice and the other documents he gave to Mr Cissé to sign on the occasion of his visit to China.

72. It can be seen Mr Diene was, indeed, in Thailand on 15 May 2017. This is supported by at least one entry on Mr Cissé's Barclays Bank statement (to which Mr Diene's debit card applied). Moreover, it appears from Mr Diene's travel records that he travelled from Bangkok to Istanbul on 16 May 2017 and from there to Manchester on 17 May 2017. Mr Thompson has confirmed he subsequently met Mr Diene in the UK on 18 May 2017.
73. However, there is no entry to show Mr Diene travelled from Thailand to China over this period nor, indeed, is there any other documentary evidence to suggest he did so. Moreover, the documents were emailed to Mr Diene by Mr Thompson. It is inherently unlikely Mr Thompson attended to this before 15 May 2017 at 10.29 am since only then was he prompted to advise Mr Diene's conveyancing solicitors, Schofield Sweeney, that he had just identified the relevant documentation saying "Oops!!! They are attached" to an earlier email. Mr Thompson then emailed the documentation to Mr Diene at 12.32pm on 17 May 2017. The documents included the contract, TR1, legal charge, facility agreement and drawdown notice. Signed copies of each of these were returned by 22 May 2017 with the exception of the drawdown notice. When, Mr Thompson discovered the drawdown notice had not been signed, he asked Mr Diene to arrange for it to be signed. Mr Diene attended to this and forwarded a signed copy at 1.07 pm on 22 May 2017. This is, of course, some time after his alleged visit to China when Mr Cissé is alleged to have signed the documentation and provided it to Mr Diene.
74. In view of the fact that, in all likelihood, it was only on 17 May 2017 that Mr Diene was provided with the documents with a view to execution, it is unlikely that he decided to travel to China to get the documents signed on 15 May 2017. If, as the records demonstrate, he travelled from Bangkok to Istanbul on 16 May 2017, it is also unlikely he was in China on 17 May. He has never suggested he was a transit passenger in China *en route* to Istanbul. Moreover, the drawdown notice does not appear to have been signed until 22 May 2017. Certainly, there is no contemporaneous evidence to suggest Mr Cissé signed it before 22 May 2017 but it was somehow mislaid. It is thus likely Mr Diene's evidence in Paragraphs 73-77 was deliberately contrived to create a false account drawing on the fact that he was fortuitously in the Far East at around the time the relevant documentation was signed in Mr Cissé's name.
75. When this was put to him in cross examination, Mr Diene was unable to provide a satisfactory explanation. At one point, he alleged Mr Thompson forwarded the

documentation to him earlier on WhatsApp, on 13 May 2017. Mr Diene made this allegation for the first time during cross examination. This was after Mr Thompson had already been examined and released from giving further evidence. It was apparently made with a view to suggesting that the documentation might have been signed earlier than the emails suggest. However no contemporaneous documentary evidence to support the new allegation has been disclosed. In contrast to other WhatsApp messages, Mr Diene contended that he had been unable to retrieve these particular messages. In the absence of evidence of such a message, the email messages constitute the best available contemporaneous evidence and they do not lend any support to the new allegation. At another point of his examination, Mr Diene stated that he had witnessed Mr Cissé signing documentation over a video call. However, it again appears he made this allegation for the first time during cross examination with a view to rescuing his case from the abyss into which it had been plunged when tested on the contemporaneous documentation. It is not possible to reconcile this new allegation with Mr Diene's earlier evidence and, in the absence of supportive contemporaneous documentation, it is implausible.

76. Of course, Mr Cissé does not deny signing the Declaration of Trust. When giving his evidence about the circumstances in which Mr Cissé signed the Declaration of Trust, Mr Diene confirmed that Mr Thompson explained the contents of the Declaration of Trust to Mr Cissé and Mr Cissé "understood exactly what Mr Thompson had explained to him". When asked whether he was required to understand the conceptual difference between a legal and beneficial owner, Mr Diene implausibly stated, without hesitation, that Mr Cissé would have understood this.

77. In cross examination, Mr Diene accepted that he also spoke to Mr Cissé about the document in Wolof. It was put to Mr Diene that he advised Mr Cissé that, if he signed the document, Mr Cissé would not be covering Mr Diene for his house, Mr Cissé would be out of everything, Mr Diene would pay for it all himself and Mr Cissé would have no costs. The gist of these propositions was that, if he signed the document, Mr Cissé would be released from his liabilities in respect of some properties in the UK. Mr Diene did not accept that this was so but he did not provide clear and coherent explanatory evidence.

78. Whilst it is correct that Mr Thompson spoke to Mr Cissé about the Declaration of Trust, he did so in a short conversation of no more than five to ten minutes by mobile phone.

At the time of the conversation, Mr Thompson was in the UK and Mr Cissé was at his flat in China in the presence of Messrs Diene and Sanko. Mr Cissé and Mr Diene were each able to hear Mr Thompson over the phone's loud speaker. Mr Sanko was also present and may have been able to hear some of the conversation. However, in my judgment it is unlikely that he understood most of the conversation between Mr Diene and Mr Cissé in Wolof. Contrary to Mr Diene's evidence, I am not persuaded Mr Cissé understood the differences between a legal and beneficial owner nor am I persuaded that Mr Thompson provided anything more than the most limited explanation of what it is that Mr Cissé would be signing. Indeed, it is highly unlikely that Mr Cissé properly understood the nature and significance of the document. Following his conversation with Mr Diene in Wolof, it is likely that Mr Cissé had a vague understanding he was signing a document which related to the ownership of property which did not belong to him and would operate to release him from liabilities in the UK in respect of the property. However, he was content to sign the document on the basis he could rely upon Mr Diene not to present a document for him to sign which was contrary to his best interests.

79. Mr Diene contends that, at the time of his visit to China, he believed his relationship with Mr Cissé was changing and he was thus seeking to take steps to protect his interest in the properties. He maintains that this started when Mr Cissé's wife sought to take control. In the absence of corroborative evidence, I do not accept this evidence. It is conceivable that he had then become more astute to entrench his interests mindful that Mr Cissé's wife might seek to take a more pro-active role or encourage Mr Cissé to do more to look after his own interest. However, this is no more than speculation. There is no evidence of any fundamental change at this stage to the relationship between Mr Cissé and Mr Diene and, more specifically, the trust and confidence which Mr Cissé reposed in Mr Diene. As it happens, Mr Cissé continued to repose trust and confidence in Mr Diene throughout 2018. He was thus willing to sign the Declaration of Trust in May 2018 and authorise Mr Diene to continue as his agent for the rest of the year.

80. There was no significant change in the relationship between Messrs Cissé and Mr Diene until early in 2019 when Mr Cissé's acquaintance, Mr Wafi, advised him that Mr Diene had transferred some £200,000 to him from funds held for Mr Cissé's Senegal company, Pakao Agro (see Para 25 above). As it happens, the precise amount transferred was £199,839.41. Mr Wafi was in business with Mr Diene in a business

called Oasis Shisha Lounge in Newcastle. The vehicle for the business was a company called Oasis Shisha Lounge Limited, in which they were each registered as directors.

81. Although there was no good reason for the payment, Mr Diene accepted, in cross examination, that he caused this payment to be made. Conversely, when, in cross examination, Mr Diene was taken to two separate but identical invoices, each raised on 10 December 2018 and delivered to Pakao Agro for the same amount in respect of the same items of agricultural equipment, he stated he knew nothing about this. The invoices were delivered in the names of Oasis Shisha Lounge Limited and another organisation, Lexent Partners, the trading name of Adelphi Law, who acted for Mr Cissé in his dispute with the agents who acted for him in connection with the transfer to China in 2016. In cross examination, Mr Diene was able to provide no explanation for the invoices. However, there could be no good reason for Oasis Shisha Lounge or Lexent Services to invoice Pakao Agro for these amounts and, putting it at its lowest, Mr Cisse thus had good reason to question Mr Diene's involvement on the basis that the invoices appeared to have been delivered for the purpose of giving the impression Pakao Agro was liable for the provision of goods that had never supplied.

(d) Mrs Diene

82. Mr and Mrs Diene have been married since May 2016. However, she gave evidence that she first formed a relationship with Mr Diene as long ago as 2010. She has been acquainted with Mr Cissé and, subsequently, his wife, Ms Awa Diallo, for many years. However, she did not have a business relationship with Mr Cissé.

83. The most significant point of contention in her witness statement was in relation to the purchase of 3 Riverside Lodge. She stated that she offered to take out a mortgage in relation to the property with Mr Cissé because Mr Diene was unable to obtain a mortgage himself. She says that Mr Cissé agreed to this but "for some sort of reason it didn't go through". This particular passage mirrors Mr Diene's evidence. She then stated that, once 3 Riverside Lodge, was acquired it was always her understanding that it was Mr Diene's property.

84. In cross examination, Mrs Diene confirmed that she offered to take out a mortgage with Mr Cissé; they applied for one and it was turned down. In the absence of contemporaneous documentary evidence, I do not accept this evidence. It can be seen that her name was entered on the draft contract. It is conceivable this was indeed

discussed with Mrs Diene at the time and, on Mr Diene's instructions, her name was initially entered on the draft contract. However, Mr Cissé was then earning a very substantial salary and no convincing reason has been provided for them to have submitted a joint application. Nor has any explanation been given as to the basis on which the putative joint application was turned down. She provided no details as to the nature of the mortgage or the basis on which Mr Cissé and herself would together hold the property.

85. Whilst Mrs Diene maintained it was her understanding that Mr Diene owned the property, she can have had no knowledge of this independently from Mr Diene himself. Her evidence on this aspect does not significantly add to Mr Diene's evidence.
86. Although she is herself a party to the proceedings and has an interest in the outcome of the litigation in her own right, her interests are aligned with the interests of Mr Diene. Whilst her evidence was limited in scope, it was plainly coloured by their collective interest in the litigation. Where there is a conflict between her evidence and the evidence of Mr Cissé, I prefer Mr Cissé's evidence.

(e) Mr Thompson

87. Mr Thompson is the director of a company, Sports Admin Services Limited, which provides services for sports players. In a broad sense, this includes issues of financial management although he is no longer registered with the FCA as a financial adviser and has not been registered as such since 2012. In May 2013, he was introduced to Messrs Diene and Cissé. From that time, he assisted them in connection with the acquisition of a number of properties, including 3 Riverside Lodge and 16 Packsaddle Park. It also included re-financing transactions. In relation to most of these transactions, Mr Cissé was his client or, at least, he understood Mr Cissé to be his client. However, his instructions came from Mr Diene rather than Mr Cissé himself.
88. Although he is not a qualified lawyer, Mr Thompson prepared the Deed of Trust on Mr Diene's instructions. Mr Diene advised him that he was the owner of 3 Riverside Lodge and 16 Packsaddle Park but Mr Diene was content to allow Mr Cissé to use them as security. However, he wanted Mr Thompson to prepare an agreement showing Mr Diene as beneficial owner on the understanding Mr Diene would present it to Mr Cissé for his signature on the occasion of a visit to China. Mr Thompson downloaded a trust template from the internet, added the relevant details and provided it to Mr Diene.

Later, Mr Thompson spoke to Messrs Cissé and Diene on a phone call to China. They were both present on Speaker Phone. During the course of a conversation lasting no more than 5-10 minutes, he discussed the trust document with them. However, in cross examination, he confirmed that, in the background, there was a lot of conversation in French and Wolof. Moreover, Mr Cissé did not ask any questions with a view to clarifying the nature and effect of the document. Mr Thompson did not indicate that Mr Cissé should obtain independent legal advice. However, he did observe that he was not giving him legal advice.

89. Mr Thompson was a defensive witness. This is not surprising given the nature of his relationship with Mr Diene and his own financial interest in several transactions. Mr Thompson was generally content to take his instructions from Mr Diene without satisfying himself separately of Mr Cissé knowledge and authority. He also earned substantial amounts of commission on transactions in which funds were advanced and loans refinanced at high rates of interest without alerting Mr Cissé or warning the finance companies about Mr Diene's putative beneficial interest. In these circumstances, I have exercised caution in evaluating Mr Thompson's evidence.
90. It emerged in cross examination that some passages in his witness statement were misleading. For example, having confirmed in Paragraph 2 that unless otherwise stated, the facts and matters in his witness statement were within his own knowledge, he accepted in cross examination that he did not attend a meeting at which Mr Cissé was given advice, by anyone, about the legal documentation in respect of the acquisition of 16 Packsaddle Park was discussed with Mr Cissé. This contradicted the observation, in Paragraph 9 of his witness statement that Mr Cissé's solicitors had gone through the paperwork with Mr Cissé himself. When referred to this observation, Mr Thompson accepted it was incorrect as a statement of his own knowledge. He could do no more than suggest he was led to believe this was the case and it was thus true to the best of his knowledge. Even on this qualified basis, Mr Thompson's evidence on the point was unconvincing.
91. Mr Thompson at least displayed a willingness to qualify his witness statement when asked to explain some of the less plausible aspects of his witness statement. Having done so, I am satisfied his account was generally consistent with his understanding based on Mr Diene's instructions. However, he was at all times willing to accept Mr Diene's instructions and, more generally, his narrative of events without submitting it

to independent scrutiny or seeking confirmation from Mr Cissé. No doubt, this wasn't straightforward when Mr Cissé was resident abroad particularly given the limitations on Mr Cissé's understanding of English. Where Mr Thompson's testimony was based simply on information provided to him from Mr Diene, his testimony is obviously to be given no more weight than the evidence of Mr Diene himself. In any event, I have also exercised caution when evaluating Mr Thompson's evidence as a whole particularly on the more contentious issues.

(f) Mr Sonko

92. Mr Sonko is a friend and acquaintance of Messrs Cissé and Diene. He works as a bus driver. Like Mr Cissé, he gave his evidence through an interpreter. He was called principally to give evidence because he was present with Mr Cissé and Mr Diene at Mr Cissé's flat in China on 11 May 2028 when Mr Cissé signed the Declaration of Trust.

93. In cross examination, Mr Sonko confirmed that he does not speak Wolof or English. He was thus unable to understand Mr Thompson's explanation, in English, about the Declaration of Trust. However, Mr Diene sought to interpret, in French, some of Mr Thompson's comments and, where he did so, Mr Sonko was able to understand. He was unable to participate in the discussions between Messrs Diene and Cissé in Wolof. However, he was led to understand that there were houses and property belonging to Mr Diene in Mr Cissé's name. He was a little confused but it was implicit that the Declaration of Trust related to such property.

94. Since he had only limited, if any, comprehension of the discussions in English and Wolow, Mr Sonko's evidence about the occasion on 11 May 2018 when Mr Cissé signed the document, was itself of limited value. It is accepted that he attended trial with a view to assisting the court and his evidence does suggest Mr Cissé was advised that the Declaration of Trust related to the ownership of property. However, his evidence has not substantially assisted me in reaching a conclusion on the main evidential issues.

(g) Mr El Hadji Tacko Seck

95. Arrangements were also made for Mr Seck to give evidence remotely from Senegal. He is an acquaintance of Messrs Cissé and Diene. Unfortunately, serious technical problems were encountered when he sought to give evidence and the line of communication repeatedly broke down. It was not possible for his evidence to be properly tested in cross

examination and his examination was thus aborted. His evidence was only of peripheral significance but I have accorded it minimal weight.

(4) The Critical Issues

96. Mr Cissé is registered as leasehold owner of 3 Riverside Lodge and freehold owner of 16 Packsaddle Park. He initially contended that the Declaration of Trust was not binding upon him and sought declaratory relief to this effect in these proceedings. Alternatively, he sought an order setting aside the Declaration of Trust. This is now his primary claim for relief. Mr Cissé does not otherwise seek relief in relation to his rights relation to 16 Packsaddle Park but seeks a declaration he is sole beneficial owner of 3 Riverside Lodge together with consequential relief in relation to this particular property. He also seeks an account of a series of transactions conducted from Mr Cissé's bank accounts at Mr Diene's direction. These are grouped together under three separate headings, namely (1) transfers from Mr Cissé's Barclays Bank account to specific banks accounts held in Mr Diene's name (2) sums withdrawn by Mr Diene from Mr Cissé's Barclays Bank account; and (3) transfers made from Mr Cissé's Coutts account for the personal benefit of Mr Diene and persons associated with him.
97. Although Mr Cissé does not otherwise claim relief in relation to his title to 16 Packsaddle Park, he contends he is registered as sole proprietor of the property notwithstanding that he was registered as such under a forged transfer. If the transfer was a forgery, it was void as an instrument. However, upon registration, the legal estate would be deemed to have become vested in Mr Cissé under *Section 58(1)* of the *Land Registration Act 2002*. Since the vendors have not been joined as parties to the proceedings and there is no pleaded issue, arising from the putative forgery itself, about the trusts upon which the property is held, it is unnecessary for me to revisit *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd [2002] EWCA Civ 151* and *Swift 1st Ltd v Chief Land Registrar [2015] EWCA Civ 330*. Although Mr Cissé does not seek specific declaratory relief in relation to his title to 16 Packsaddle Park, it remains necessary for me to reach a conclusion about the merits of his case on the alleged forgery to inform my conclusions on the pleaded issues, particularly Mr Cissé's case in relation to the Declaration of Trust and the allegation that it was procured by undue influence.
98. During the course of his opening submissions, Mr Goldberg confirmed that Mr Cissé relies, in the alternative, on actual and presumed undue influence. Although presumed undue

influence is not identified, in terms, such a case was and is implicit in the Amended Particulars of Claim. This includes the allegations, in Paragraph 22(e) that, when he signed the Declaration of Trust, Mr Cissé “reposed a significant degree of trust in [Mr Diene] in particular in relation to his financial affairs” and, in Paragraph 33.2, that “the Declaration of Trust was a transaction which clearly calls for an explanation...”. I canvassed this with counsel before the witnesses were examined and counsel each confirmed that Mr Cissé’s case was to be addressed and tested as a claim based on presumed influence in addition to actual undue influence.

99. Mr Cisse’s claim based on actual undue influence was based on allegations that, when Mr Diene produced the Declaration of Trust for him to sign on the occasion of his visit to Mr Cissé’s flat in China, Mr Diene advised him that he “would not be ‘covering’ [Mr Diene] for his house”, he “would be out of everything”, Mr Diene “would ‘pay it all himself’”; and Mr Cissé “would have no costs”.

100. At the outset, Mr Goldberg confirmed that it forms no part of Mr Cissé’s case that the Declaration of Trust should be set aside for mistake under the principle in *Pitt v Holt [2013] UKSC 26*. No such case has ever been pleaded. Conversely, Mr Goldberg initially sought to advance a case based on misrepresentation and an alternative case that the Declaration of Trust somehow amounted to an “unconscionable bargain”. However, he did not pursue these elements of the claim in his closing submissions. Undue influence has thus been left as Mr Cissé’s only route to challenge the Declaration of Trust.

101. Mr Cissé’s claim for an account is based on the proposition that, as his agent from 2013, if not before, Mr Diene was under a duty to account to Mr Cissé, in equity, for all transactions conducted by him in respect of the funds credited to Mr Cissé’s bank accounts and that, in breach of his duties as agent, he repeatedly failed to do so. It is alleged that Mr Diene entered into a series of transactions to Mr Cissé’s disadvantage; many of which amounted simply to misappropriating Mr Cissé’s assets. Mr Cissé also claims an account of the rents and profits received by Mr Diene from 3 Riverside Lodge.

102. In their Defence, Mr and Mrs Diene contend that Mr Cissé has always held 3 Riverside Lodge and 16 Packsaddle Park on trust for Mr Diene. Moreover he “knowingly signed the Declaration of Trust” with the intention of “divest[ing] himself of his interest in ‘the premises’ on the grounds that he knew that [Mr Diene was] the true beneficial owner...” (Defence Para 21). They deny that Mr Cisse’s “ability to read or understand English was

very limited at the time” and “did not need others to translate or explain documents to him in English”. Mr Cissé’s case based on undue influence was thus disputed.

103. Elsewhere in his Defence, Mr Diene accepted that he was Mr Cissé’s agent, albeit his role was as Mr Cisse’s “football agent” (Para 22 (e)). In this role, Mr Diene trusted Mr Cissé “that he would be honourable and hold ‘the premises’ on trust for him”.

104. In his Defence, Mr Diene also took issue with Mr Cissé’s claim to an account. Whilst he did not dispute the relationship of agency, he stated, in Paragraph 36, that he was “a non-exclusive agent” and “access [to the accounts] was shared between them and or [Mr Cissé] was fully aware and authorise (sic) the use of funds”. In subsequent paragraphs, he repeatedly stated that payments from the relevant bank accounts were made on Mr Cissé’s instructions and “with his knowledge” and “consent/permission”. He also stated that he required “all the bank statements in order to comment on the pleading” (Para 39). On his case, Mr Cissé cannot be entitled to an account of the rents and profits of 3 Riverside Lodge since he holds the property on trust for Mr Diene as beneficial owner.

(5) Analysis and conclusions

(a) Abuse of process

105. In his written closing submissions, Mr Ahmed submitted that, through the current proceedings, Mr Cissé is seeking “to re-litigate matters which were disposed of in [the Possession Proceedings] and, in relation to the issues in respect of 16 Packsaddle Park, this amounted to an abuse of process according to the principle in *Henderson v Henderson* (1843) 3 Hare 100 (Para 174). It is implicit in Mr Ahmed’s submissions that I should strike out these parts of Mr Cissé’s case and enter judgment on them in Mr and Mrs Diene’s favour. No doubt, this includes Mr Cissé’s case in relation to the ownership of 16 Packsaddle Park, the allegation of forgery in respect, at least, of the registered transfer to Mr Cissé and, more generally, his case of undue influence in respect of the Declaration of Trust.

106. The *Henderson v Henderson* principle is engaged when a party seeks to raise issues in litigation which he could and ought to have raised in earlier litigation. The *locus classicus* is the following passage from the speech of Lord Bingham in *Johnson v Gore Wood & Co* [2002] 2 AC 1 at 31.

“...Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The

underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. Thus while I would accept that lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, I would not regard it as necessarily irrelevant, particularly if it appears that the lack of funds has been caused by the party against whom it is sought to claim. While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances. Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice.”

107. In *Dexter Ltd v Vlieland-Boddy* [2003] EWCA Civ 14 at [49], Clarke LJ summarised the principles as follows.

“(i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process. (ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C. (iii) The burden of establishing abuse of process is on B or C or as the case may be. (iv) It is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. (v) The question in every case is whether, applying a broad merits based approach, A's conduct is in all the circumstances an abuse of process. (vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C.”

108. Clarke LJ's summary was implicitly endorsed by the Court of Appeal in *Aldi Stores Ltd v WSP Group plc* [2008] 1 WLR 748. Having observed, in the *Aldi* case, at [30], that "parties are sometimes faced with the issue of wishing to pursue other proceedings whilst reserving a right in existing proceedings", Thomas LJ sought to emphasise, at [31], that "for the future, if a similar issue arises in complex commercial multi-party litigation, it must be referred to the court seised of the proceedings. It is plainly not only in the interest of the parties, but also in the public interest and in the interest of the efficient use of court resources that this is done. There can be no excuse for failure to do so in the future."
109. By the Possession Proceedings, Mr Cissé sought possession of 16 Packsaddle Park and mesne profits on the footing that he was registered as freehold owner and, with their son, Ismaila, Mr and Mrs Diene had entered the Property and remained there without his consent and were thus trespassers. The TR1 was alleged to be a forgery but Mr Cissé relied on his registered title. Mr and Mrs Diene were joined as Defendants with their son. In their Defence, it was alleged that Mr Cissé held the property on trust for them having purchased the same on their behalf and subsequently entered into the Declaration of Trust. In his Reply, Mr Cissé alleged that he was entitled to rescission of the Declaration of Trust for misrepresentation, breach of fiduciary duty or as an unconscionable bargain. He did not advance a case based on undue influence.
110. There was a PTR before HHJ Khan on 20 February 2023 at which the Judge advised Mr Cissé's legal representatives that it was not open to him to seek rescission in his Reply. To advance such a case, it must be pleaded in his Particulars of Claim. Mindful that the trial was listed for hearing the following month, Judge Khan advised them that, if they were to seek permission to amend, this must be attended to promptly. I have not seen a copy of his order but there is a transcript of the hearing in which the Judge stated that it would be open to them to produce an application for permission to amend overnight and send the draft to the Defendants for their consideration. Later in the transcript, he suggested they could submit an application for permission to amend by 4pm on 24 February 2023 although the transcript is ambiguous as to whether this was limited to amendments to the parties' cost budgets.
111. In any event, no application was submitted, on behalf of Mr Cissé, for permission to amend his Particulars of Claim and, on the opening day of the trial before HHJ Evans, Mr Goldberg confirmed that he did not seek rescission.

112. HHJ Evans gave judgment orally but there is a written transcript. At [4], she stated as follows.

“The point I have to decide as a preliminary one is a relatively short one, although the submissions on it occupied the afternoon of the first day of the trial. The question is this: in a case such as this where there is a written Declaration of Trust which declares the beneficial interest in the property as being owned entirely by the First Defendant [Mr Diene] and where the Claimant does not seek in his Particulars of Claim the rescission or setting aside of that Declaration, has the Claimant any prospect of succeeding in his claim for possession?”

113. At [5], Judge Evans then recorded an important concession on behalf of Mr Cissé.

“Mr Goldberg accepts that if the First Defendant is indeed entitled to the entire beneficial interest in the property, the Claimant cannot obtain possession against him”.

114. Following this concession, there was no discussion or argument about Mr Diene’s rights of occupation under *Section 12 of the Trusts of Land and Appointment of Trustees Act 1996*. The first question, as HHJ Evans saw it, was “whether the Declaration of Trust [was] conclusive as to the parties’ interests until and unless it [was] set aside or rescinded” [6]. Consistently with the judgment of Slade LJ in *Goodman v Gallant [1985] EWCA Civ 15*, she determined that the answer to this question was yes. Having reached this conclusion, the second question was whether Mr Cissé had any prospect of success in the proceedings “given the manner in which [his case had] been pleaded” [22]. In the absence of amendment to the Particulars of Claim, Judge Evans concluded that the answer to this question was no. It was not open to Mr Cissé to rely on the allegations in his Reply so as to furnish him with a cause of action.

115. Following counsel’s submissions, HHJ Evans’s conclusions were based only on the pleadings and the Declaration of Trust. She did not hear evidence from the witnesses. More specifically, she did not entertain evidence in relation to the issues of whether the transfer of 16 Packsaddle Park was a forgery and, more generally, whether the Declaration of Trust was binding upon Mr Cissé. Indeed, she did not address the issue, at all, of whether the transfer of 16 Packsaddle Park was a forgery because it was un-necessary for her to do so. Nevertheless, she concluded, on the pleadings in the Possession Proceedings, that the Declaration of Trust must be deemed binding upon Mr Cissé. In the present proceedings, the *Henderson v Henderson* principle is thus engaged since Mr Cissé is now seeking to re-open this issue. However, in my judgment, caution must be exercised in applying the principle where there has been no evidential determination. This is particularly so, where, as in the present case, there was no application to strike out one or more of the parties’

statements of case for an abuse of process in advance of trial. In the present case, the point was taken for the first time in counsel's Closing Submissions after the evidence pertaining to the relevant issue has been admitted and tested in cross examination.

116. I have not been provided with an explanation as to why Mr Cissé and his lawyers elected not to challenge the Declaration of Trust in his Particulars of Claim in the Possession Proceedings. They have thus exposed themselves to criticism, particularly after the issue was brought to their attention by HHJ Khan at the PTR. However, in my judgment, it would be inappropriate for the following reasons to strike out any part of Mr Cissé's case as an abuse of process under the *Henderson v Henderson* principle.

116.1. As Clarke LJ observed in *Dexter Ltd v Vlieland-Body (supra)*, the burden of establishing abuse of process is on the parties who assert it, in this case Mr and Mrs Diene. They have failed to do so.

116.1.1. Firstly, the Possession Proceedings related only to 16 Packsaddle Park, not 3 Riverside Lodge, and they involved a claim for possession and mesne profits only. Conversely, the Declaration of Trust relates to both properties and raises significantly wider issues than Mr Cissé's possessory rights. Mr Cissé was entitled to make a discrete claim for possession of 16 Packsaddle Park without claiming wider relief affecting both properties. To suggest otherwise would be to impose too high a burden on him. By making such a claim without clarifying or disposing of Mr Diene's statutory rights under the *1996 Act*, Mr Cissé exposed himself to the risk that his claim would fail. However, there is no compelling reason why this should preclude him from making a subsequent claim for wider relief in relation to the Declaration of Trust itself.

116.1.2. Secondly, the current proceedings were issued prior to trial in the Possession Claim. The relevant issues in the current proceedings were already before the courts in an extant claim before the Possession Proceedings came before HHJ Evans. It was always open to Mr and Mrs Diene or their legal advisers to apply for directions for each claim to be heard together. They omitted to do so.

116.1.3. Thirdly, Judge Evans ultimately made no evidential determination. She disposed of the Possession Claim on a preliminary pleading point without hearing the evidence.

116.1.4. Fourthly, the current proceedings raise serious issues of dishonesty and forgery against Mr Diene which should not lightly be dismissed on technical grounds without taking into consideration the evidence.

116.2. Mr and Mrs Diene have also failed to demonstrate that the current action involves unjust harassment or oppression in the sense envisaged by Clarke LJ in *Dexter Ltd v Vlieland-Body* (*supra*). No doubt, Mr Cissé commenced the Possession Proceedings first in anticipation that they could be speedily resolved prior to resolution of the wider issues in the current proceedings. Ultimately, this proved to be incorrect. However, there is nothing to suggest the proceedings have been pursued as a device for the unjust harassment or oppression of Mr and Mrs Diene.

116.3. In any event, Mr and Mrs Diene did not issue an application to strike out the current proceedings, whether in whole or in part, prior to trial and it is now too late for them to challenge Mr Cissé's case as an abuse of process given that the evidence of the parties has been fully tested at trial. At this stage, it would be unjust and contrary to the Overriding Objective in *CPR 1.1* to strike out any part of Mr Cissé's case.

117. For the above reasons, I shall not make an order striking out any part of the claim at this stage.

(b) *Beneficial ownership of 3 Riverside Lodge prior to the Declaration of Trust*

118. Mr Cissé is registered as the sole proprietor of 3 Riverside Lodge under Title No. MAN72966. In the contract of sale dated 6 February 2015, he was named as sole purchaser and, in the registered transfer, he was named as sole transferee. The transfer did not contain a declaration of trust. I was not shown a completion statement. However, it can reasonably be surmised Mr Cissé personally funded the transaction, in its entirety, from his own monies and sums borrowed from Coutts Finance Limited. He charged the property to the Bank and made the mortgage repayments. Mr Diene contends it was purchased with monies credited to him by Mr Cissé in respect of his salaried remuneration as Mr Cissé's agent. However, in the absence of contemporaneous documentation or, indeed, compelling corroborative evidence, I reject Mr Diene's case on this in its entirety.

119. Mr and Mrs Diene contend that it was initially envisaged Mr Cissé would purchase the property jointly with Mrs Diene but, since she was unable to obtain a mortgage in her name, the purchase proceeded in Mr Cissé's sole name. However, it appears to be their case that it was purchased with the intention Mr Cissé would hold the property on trust for Mr Diene

and, indeed, that he has continuously held it on trust for Mr Diene as sole beneficiary from the time of acquisition until 11 May 2018 when it was superseded by the Declaration of Trust which operated to create new trusts for the benefit of Mr Diene. Mr Cissé disputes each element of their case.

120. The Declaration of Trust raises separate issues to which I shall turn at Paras [130]-[151] below. However, the Dienes' case is conceptually flawed. It is also unsupported by convincing evidence.

121. *Section 53(1)(b) of the Law of Property Act 1925* provides that “a declaration of trust respecting land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust...” In the present case, Mr and Mrs Diene have not identified a written document, signed by Mr Cissé, in which the putative trust was declared prior to the Declaration of Trust itself. They must thus identify a “resulting, implied or constructive trust” in this period.

122. In the absence of convincing evidence that Mr Diene contributed to the initial purchase price, there is no room for a resulting or implied trust. The bank loan was advanced to Mr Cissé, not Mr Diene. Had it been suggested Mr Diene would acquire a beneficial interest in the property, it is inconceivable the Bank would have advanced funds for the purchase without at least requiring Mr Diene to enter into a separate agreement postponing his interest to the Bank. There is no contemporaneous documentary evidence to show Mr Diene subsequently contributed to the repayment of the mortgage and, in my judgment, it is unlikely that he made any such contribution out of his own assets, whether out of his salaried remuneration or otherwise. However, in the hypothetical event he could show he made such payments, they would not give rise to a resulting trust, see *Curley v Parkes [2004] EWCA Civ 1515*, Peter Gibson LJ at [14].

123. Nor in my judgment, is there any firm evidential basis for a constructive trust. Mr and Mrs Diene contend that the property is held on trust for Mr Diene but their evidence before me, particularly Mr Diene's evidence, was unsatisfactory and unconvincing. In the absence of corroborative evidence, I have no hesitation in rejecting their account. Moreover, whilst their case in relation to the acquisition of the property is unsupported by contemporaneous documentary evidence, it also has conspicuous features for which no convincing explanation has been given notwithstanding that, by nature, they are inherently unlikely to have been present. Firstly, Mr and Mrs Diene seek to rely on a joint agreement or

understanding that the property would be purchased in the names of Mr Cissé and Mrs Diene. They do so without any convincing explanation as to why Mr Cissé was ever minded to buy the property jointly with Mr Diene's wife. Secondly, it is unclear why the Bank would have been unwilling to lend to Mrs Diene in addition to Mr Cissé had they been invited to do so given that, on this hypothesis, Mrs Diene and Mr Cissé would each have been jointly and severally liable on the mortgage. Unsurprisingly, given the scale of his salaried remuneration when compared with the relatively modest purchase price, there is no evidence Coutts displayed any hesitation before offering to advance to Mr Cissé alone the monies required to purchase the property. Thirdly, it is unclear why Mr Cissé would have sought to fund the transaction and assume personal liability on the mortgage for a property in third party ownership. Fourthly, if the property was to be held on trust for Mr Diene, it is unclear why this information was withheld not only from the Bank but also from the solicitors with conduct of the transaction on behalf of Mr Cissé. On this issue, as on most evidential issues in the case, Mr and Mrs Diene's case is entirely fanciful. Not only is it in conflict with Mr Cissé's evidence, it is inconsistent with the contemporaneous documentary evidence and it is inherently implausible.

124. Mr Cissé did not hold his legal estate in 3 Riverside Lodge on trust for Mr Diene at any time prior to the Declaration of Trust.

(c) The acquisition of 16 Packsaddle Park

125. Whilst 16 Packsaddle Park was purchased in Mr Cissé's name and a firm of solicitors, Schofield Sweeney, were instructed to act on his behalf, there is no convincing evidence to suggest that he ever communicated with them directly. Nor is there evidence that anyone at Schofield Sweeney spoke to him to give their advice. It is unfortunate that no one from Schofield Sweeney was called to give evidence particularly given the professional implications. Generally, however, they appear to have obtained their instructions from Mr Thompson who himself relied on Mr Diene to relay Mr Cissé's instructions. Surprising as this may appear, I am satisfied, on the evidence as a whole, that Mr Cissé was unaware of the purchase of 16 Packsaddle Park and was not personally given any advice about it. I am also satisfied he did not personally provide Schofield Sweeney with instructions at any time in connection with the transaction.

126. Mr Cissé's case in relation to the acquisition of 16 Packsaddle Park is founded on serious allegations of dishonesty against Mr Diene involving his role in orchestrating a series of

transactions under which the freehold title was ultimately transferred into Mr Cissé's sole name without his knowledge or approval. The transactions were effected through the execution of a series of documents to which Mr Cissé was purportedly a signatory. This includes the TR1 dated 25 May 2017, legal charge and drawdown notice. Mr Diene alleges that Mr Cissé signed the documents in China, in the presence of Mr Diene himself. Mr Cissé denies that he did so and he denies the documents bear his signature. There is no room for error or misunderstanding. If Mr Cissé is correct, Mr Diene has acted dishonestly and his testimony to the court is knowingly false. This is so regardless of whether Mr Diene personally forged Mr Cissé's signature.

127. The allegations against Mr Diene are sufficiently serious to require cogent evidence. However, the civil standard of proof remains. I must thus be satisfied only on the balance of probability, *Bank St Petersburg PJSC v Arkhangelsky [2020] EWCA Civ 408 at [117] (Males LJ)*.

128. Applying these principles, I am satisfied that Mr Cissé did not sign or approve any of the relevant documentation in relation to the acquisition of 16 Packsaddle Park, including the TR1 dated 25 May 2017. It obviously follows that Mr Diene did not witness his signature. Where Mr Cissé's signature appears on the relevant documentation, it is a forgery. I am advised the issue of forgery was at one stage referred to handwriting experts who were unable to reach a definitive conclusion. However, I am satisfied that the TR1 was forged having considered the evidence as a whole, including Mr Diene's travel records, the timing of the exchange of emails between himself and Mr Thompson (including their emails in relation to the drawdown notice) and the shifting pattern of Mr Diene's answers to questions in cross examination. Once Mr Diene's case is tested with reference to the evidence as a whole, it is highly improbable that Mr Cissé signed the TRI or, indeed, any of the other contractual documents, including the drawdown notice, as he alleges, see Paras [70] – [75] above. In all likelihood, the relevant documents were signed between 12.32 pm on 17 May and 1.07 pm on 22 May 2017 when Mr Cissé was in China and Mr Diene was elsewhere. Having orchestrated the transaction and purported to witness Mr Cissé's signature, Mr Diene is fully aware Mr Cissé's signature on the TR1 is a forgery. On this aspect of the case, as indeed, on most aspects, Mr Cissé is to be preferred as a witness to Mr Diene notwithstanding the imprecision of much of Mr Cissé's evidence. Mr Cissé displayed only a vague understanding of most of the documentation put before him but it is highly unlikely he is mistaken about the occurrence of Mr Diene's alleged visit to China in May 2017.

There is also no evidence to corroborate the suggestion in Mr Diene's evidence that he might have viewed Mr Cissé signing contractual documentation, such as this, on a video call and it is significant this suggestion appears to have been made for the first time when Mr Diene was examined at trial.

129. Although Mr Cissé was not personally aware of the transaction under which 16 Packsaddle Park was acquired and the TR1 is a forgery, the legal estate in the property would be deemed to have become vested in him, under *Section 58(1)* of the *Land Registration Act 2002*, when his name was entered as proprietor on the register. Since there is no pleaded issue as to beneficial ownership and it has not been the subject of argument, I shall not consider the trusts on which the property is held mindful of the conflict of authority on the operation of *Section 58(1)*, see [97] above, subject to the Declaration of Trust.

(d) *The Declaration of Trust*

130. Mr Cissé seeks an order setting aside the Declaration of Trust for undue influence. In this respect, his claim is now limited to this equitable remedy. Wisely, he no longer seeks an order rescinding or setting aside the Declaration of Trust for misrepresentation or "as an unconscionable bargain". Nor does he now submit that, regardless of the outcome of his application for an order setting aside the Declaration of Trust, it is not binding upon him.

131. The editors of *Chitty on Contracts (35th edn)* identify the principles governing the equitable remedy in the following passage, at *Para 11-081*. This statement of law correctly states the law where the doctrine of undue influence is invoked as a result of the abuse of a relationship.

"The equitable doctrine of undue influence is a comprehensive phrase covering cases in which a transaction between two parties who are in a particular type of relationship may be set aside if the transaction is the result of an abuse of the relationship. Normally, the relevant relationship is one of trust and confidence, but it may also include relationships of emotional or physical dependency. If the claimant shows that the other party obtained it by abusing the relationship, this...is often termed 'actual undue influence', but it is better to refer to such cases as one in which undue influence is actually or directly proved. A transaction may also be set aside in the absence of direct proof if claimant shows the existence of a relationship of trust and confidence with the other party, and that the resulting transaction sought to be avoided is one that 'calls for an explanation'. Then there will be an evidential presumption that the transaction was the result of undue influence and unless the presumption is rebutted, the transaction may be set aside".

132. Once undue influence is established, the transaction will be set aside because it “ought not fairly to be treated as the expression of [the claimant’s] free will”, *Royal Bank of Scotland v Etridge (No. 2) [2001] UKHL 44 at [7]*. However, the remedy may be defeated by affirmation, delay, acquiescence, estoppel or change of position. It may also be defeated if restitution ceases to be possible.
133. Mr Cissé seeks to establish undue influence through each alternative route. He implicitly relies on a presumption of undue influence which has not been rebutted. Alternatively, he contends Mr Diene procured him to sign the Declaration of Trust through the exercise of actual undue influence.
134. In my judgment, his case succeeds on each basis.
135. I shall turn first to the presumption of undue influence. Mr Diene’s fiduciary relationship with Mr Cissé as his agent would not, in itself, give rise to a presumption of undue influence, see *Re Coomber [1911] 1 Ch 725*. It is thus necessary for Mr Cissé to prove the *de facto* existence of a relationship under which he generally reposed trust and confidence in Mr Diene and show that the transaction itself “calls for an explanation” or “is not readily explicable by the relationship between the parties”, *Royal Bank of Scotland v Etridge (No. 2) [2001] UKHL 44 at [14] and [21]*.
136. These requirements are amply satisfied in the present case. When, in January 2012, Mr Cissé first arrived in England, he could not speak or read in English, he was not financially sophisticated and would have found it difficult to manage his day-to-day affairs. From an early stage, he thus relied heavily on Mr Diene for the management of his financial affairs. This continued when Mr Cissé moved to China, leaving to Mr Diene the management of his affairs in England, including his properties and bank accounts. Mr Cissé was content to do so because he reposed special trust and confidence in Mr Diene, who he regarded as his “rock, like an older brother [to whom he] felt [he] owed...a great deal for all the support he gave when [he] first came to the UK”.
137. When giving evidence, Mr Diene stated that he “began to sense things were not going well in [their] relationship” in early 2018 and observed that this started when Mr Cissé’s wife decided to personally take control of everything that had to do with [Mr Cissé]. It is thus suggested that, by 11 May 2018, when Mr Cissé signed the Declaration of Trust, he had ceased to repose trust and confidence in Mr Diene. However, in my judgment, there is no convincing evidential basis for any such suggestion.

138. Firstly, there is no evidence, other than in Mr Diene's uncorroborated testimony, that Mr Cissé's wife made a decision, in early 2018, to take personal control of Mr Cissé's affairs, whether in the contemporaneous documentation or otherwise. In the hypothetical event she made such a decision, there is no evidence she acted upon it.
139. Secondly, throughout 2018, Mr Diene continued to manage Mr Cissé's financial affairs in England. He continued to have full access to Mr Cissé's bank accounts and he initiated new refinancing arrangements, on behalf of Mr Cissé, in June and November 2018. Whilst Mr Diene was able to attend to the earlier refinancing arrangements without alerting Mr Cissé, he remained willing for Mr Diene to be placed in a position in which it was open to him to enter into financial commitments on Mr Cissé's behalf.
140. Thirdly, it is overwhelmingly clear from the evidence as a whole that their relationship changed early in 2019, not 2018. The change appears to have occurred when Mr Cissé became aware that, for no good reason, Mr Diene had initiated the transfer of £200,000 from Pakao Agro to Mr Wafi. Once Mr Cissé's suspicions had been excited, he took legal advice and his relationship with Mr Diene broke down.
141. It is conceivable Mr Diene was prompted to take action to entrench his personal interests, in 2018, because he sensed Mr Cissé's wife might seek to become more pro-active in connection with the management of his affairs or persuade him to pay more attention personally to his financial affairs. If so, this would explain the lengths to which Mr Diene himself went, in May 2018, to persuade Mr Cissé to sign the Declaration of Trust. However, there is no evidence that any material change took place during 2018 in the relationship between Mr Cissé and Mr Diene. It is overwhelmingly clear Mr Cissé continued to repose special trust and confidence in Mr Diene when he signed the Declaration of Trust in 2018. On this basis, he signed the Declaration of Trust.
142. The Declaration of Trust also calls for an explanation.
143. When Mr Cissé signed it, he was the legal owner of 3 Riverside Lodge. He held the property free from any trust in favour of Mr Diene. He was also registered as freehold owner of 16 Packsaddle Park although unaware that this was the case. Immediately before he signed the Declaration of Trust, Mr Cissé had no liabilities or commitments to Mr Diene in respect of either property.
144. By signing the Declaration of Trust, he declared that he held the properties on trust for Mr Diene as sole beneficial owner. He undertook not to transfer, deal with or dispose of

the properties otherwise than as Mr Diene might in writing direct and he assigned all rights to income from the properties. He also undertook not to present himself to third parties as the beneficial owner of the properties. This would include the mortgagees to whom he had held himself out as beneficial owner. By signing the Declaration of Trust, he almost certainly committed a breach of the conditions of their security and exposed himself to liability for unlawful alienation or disposal. However, having signed the Declaration of Trust, Mr Cissé remained subject to all liabilities and responsibilities of the legal owner. In the case of 3 Riverside Lodge, he thus remained subject to the covenants of the lease. Since Mr Diene appears to have provided Mr Cissé with nothing substantial in return – an implied right of indemnity from Mr Diene would be of limited value to Mr Cissé - the Declaration plainly calls for an explanation and cannot rationally be explained by their relationship.

145. Mr Cissé is thus presumed to have signed the Declaration of Trust owing to Mr Diene's undue influence. The next question is whether Mr Diene has rebutted the presumption by showing Mr Cissé signed it through the free exercise of his independent will.

146. In my judgment, the presumption has not been successfully rebutted. Indeed, having heard and considered the evidence, I can go further since I am satisfied Mr Cissé did not willingly sign the Declaration with a full and proper understanding of the liabilities and commitments which he would thus assume.

147. Shortly before signing the document, Mr Thompson spoke to Messrs Diene and Cissé to discuss the document. However, this was a brief discussion of no more than 5-10 minutes, on speakerphone, and Mr Cissé's comprehension of English is and was limited. Mr Thompson is not a lawyer and, having heard his answers to questions in cross examination, I was left with serious doubt as to whether he had a full and proper understanding of the document himself. He told Mr Cissé that he wasn't purporting to give legal advice and it is implicit he did not take it upon himself to give unqualified legal advice about the meaning and effect of the document. However, he accepted that he didn't advise Mr Cissé to obtain independent legal advice.

148. In cross examination, Mr Thompson also confirmed that he did not provide comprehensive advice about the provisions of the document. He provided no advice, for example, in relation to the effect of the fourth paragraph. In any event, had Mr Thompson sought to explain, in English, any of the technical expressions in the document, Mr Cissé would have found it almost impossible to understand him. Consistently with this, Mr Cissé

did not ask Mr Thompson any questions seeking clarification about the meaning and effect of the document. At times, Mr Diene spoke to Mr Cissé in Wolof but, where he did so, he cannot be trusted to have provided Mr Cissé with an accurate or honest translation or explanation of Mr Thompson's comments. Mr Thompson accepted that, whilst he was aware that the Declaration of Trust would have been unacceptable to the Bank, he did not alert Mr Cissé to this nor, indeed, did he advise Mr Cissé that, for him to sign the Declaration would be contrary to the requirements of the Bank's security.

149. I accept Mr Cissé's evidence that Mr Diene advised him that the purpose of the Declaration of Trust was to release him from liabilities in respect of properties that were not in his ownership, in particular secondary liabilities, such as guarantees, in respect of properties that might have been in the ownership of Mr Diene. However, Mr Cissé did not identify the properties or do anything to satisfy himself that the Declaration of Trust related only to properties within Mr Diene's ownership. This is the gist of Mr Diene's alleged advice, pleaded in Paragraph 23(b) of the Amended Particulars of Claim that, if he signed the Declaration of Trust, Mr Cissé "would not be 'covering' [Mr Diene] for his house", Mr Cissé "would be 'out of everything'", Mr Diene "would 'pay it all himself'" and Mr Cissé "would have no costs". I am satisfied that this part of Mr Cissé's case is essentially correct; he was advised that, by signing the document, he would be released from any secondary liability in respect of properties owned by Mr Diene. This advice was plainly incorrect and misleading. The Declaration of Trust related to properties in the ownership of Mr Cissé, not Mr Diene, and by signing the Declaration of Trust, Mr Cissé did not release himself from liabilities in respect of the properties, including his liability under the covenants of the lease of 3 Riverside Lodge.

150. Undue influence is presumed and Mr Diene has failed to rebut the presumption. In the absence of a substantial defence based on affirmation, estoppel or other bar to equitable relief, Mr Cissé is thus entitled to an order setting aside the Declaration of Trust.

151. However, in the hypothetical event that I had reached a different conclusion, I am also satisfied that, having induced Mr Cissé to sign the Declaration of Trust by taking advantage of his ascendancy over Ms Cissé, through his superior knowledge, language and financial proficiency, so as to mislead him about the nature and effect of the Declaration of Trust, see [149] above, Mr Diene improperly abused their relationship for his own pecuniary advantage. Had it not been for this, Mr Cissé would not have signed the Declaration of Trust. In *Bank of Credit and Commerce International SA v Aboody* [1990] 1 QB 923 at

967, Slade LJ, delivering the judgment of the Court of Appeal, stated that “...a person relying on a plea of actual undue influence must show that (a) the other party to the transaction...had the capacity to influence the complainant; (b) the influence was exercised; (c) its exercise was untrue; (d) that its exercise brought about the transaction”. In the present case, each of these requirements is satisfied. It follows that, in the absence of a presumption of undue influence, I would have made an order setting aside the Declaration of Trust for actual undue influence. A person who has been induced to enter into the transaction by the exercise of actual undue influence is entitled to have the transaction set aside as of right, *CIBC v Pitt [1994] 1 AC 200 at 209* (Lord Browne-Wilkinson).

(e) *Mr Cissé’s claim for an account*

(i) *The transactions in respect of Mr Cissé’s bank accounts*

152. In his Amended Particulars of Claim, Mr Cissé claims an account in respect of transactions on his bank accounts. This is made against Mr Diene only and it is based on the following allegations.

152.1 Mr Cissé appointed Mr Diene to act as his non-exclusive agent in early 2012 with responsibility for managing his financial affairs in the UK and Senegal and gave Mr Diene access to and/or control of all his bank accounts (Para 8).

152.3 Mr Diene was thus provided with access via online banking or a debit card to Mr Cissé’s bank accounts with Barclays (a/c no. 80510165), Coutts (a/c 09201988) and Investec (a/c no. 9399503) (Para 36).

152.3 Without Mr Cisse’s knowledge or approval, Mr Diene opened, in Mr Cissé’s name, an additional bank account with Coutts (a/c no 03546942) designated in the Amended Particulars of Claim as “the Secret Coutts Account” (Para 37).

153.4 Mr Diene exploited his office as agent to apply or transfer for his own personal benefit substantial amounts of money credited to each of these bank accounts (Paras 39-44), this includes (i) the sum of £489,986 in respect of monies transferred from Mr Cissé’s above Barclays Bank account, itemised in Schedule 1 to the Amended Claim Form; (ii) the sum of £1,189,118.33 in respect of withdrawals from Mr Cissé’s above Barclays Bank account, itemised in Schedule 2; and (iii) the sum of £316,281.50 paid or applied from Mr Cissé’s Coutts Bank account (a/c no 09201988) for the benefit of Mr Diene or persons associated with him, itemised in Schedule 3.

153.5 Mr Cissé has asked Mr Diene to render an account but he has declined to do so (Para 39).

153. In his Defence, Mr Diene denied that he was ever appointed to act as Mr Cissé's "non-exclusive agent" (Paras 8 and 36). However, he accepted he was appointed to act as Mr Cissé's agent for remuneration (Para 8). He did not assert that he was appointed to act as Mr Cissé's "exclusive" agent, whatever that might comprehend, but appears to have taken issue with the reference to his appointment as "non-exclusive agent". Mr Diene accepted that he was provided with access to some of Mr Cissé's bank accounts (Para 8), including Barclays a/c no. 80510165, Coutts a/c no. 09201988 and Investec a/c no. 9399503) (Para 36) but put Mr Cissé to proof in relation to "the Secret Coutts Account", so-called (Para 37). He asserted that he did not understand the schedules (Para 39) and required copies of the bank statements for Schedule 3 (Paras 40-41). The transactions were generally with Mr Cissé's knowledge and approval (Paras 43-49).

154. On most aspects, Mr Diene's case emerged, in more detail, in his witness statement dated 5 January 2024 and when tested in cross examination. In his witness statement, he stated that he was first appointed as Mr Cissé's agent "sometime between April and August 2012 (most likely nearer April)" (Para 13) and used his remuneration, as agent, to buy 3 Riverside Lodge. His role included identifying investment opportunities, setting up businesses and buying property (Para 22). In 2014, he was given joint on-line access to Mr Cissé's Barclays bank account, in 2016 he was given access to Mr Cissé's Coutts Bank account (Para 25) and when, in 2016, Mr Cissé opened an Investec bank account he was given online telephone access to this (Para 24). However, he made no observations other than in the most general of terms about Mr Cissé's claim for an account (Paras 122-123). The gist of his evidence, in Para 23, was that they had a close relationship, Mr Cissé had full access to his account and their "monies were mixed in various accounts, this meant that there were some payments made which related to me".

155. There is thus no dispute that, not long after his arrival in the UK, Mr Cissé appointed Mr Diene as his agent. Initially, Mr Diene assisted Mr Cissé gratuitously on an *ad hoc* basis, advising and assisting him in connection with the management of his financial affairs. Mr Cissé was thus content, at an early stage, to allow Mr Diene access to his Barclays Bank account. During 2013, Mr Diene assisted Mr Cissé in connection with the purchase of his first house in Darras Hall and helped him set up a bank account with Coutts. However, on the balance of probability, Mr Diene did not take on a more

comprehensive role until July 2013 or thereabouts, when Mr Cissé's contractual arrangements with Mr Nicolay were re-negotiated and his annual fee was transmuted to a loyalty bonus which Mr Cissé ceded to Mr Diene as a reward for his services. This is consistent with the evidence of Mr Cissé himself who stated that Mr Diene started to manage his finances more fully in July or August 2013. No doubt, Mr Diene's role evolved further when, in 2016, Mr Cissé moved to China. When, in August 2018 or thereabouts, Mr Cissé was transferred to Alaynspor in the Turkish Super League, Mr Diene continued to act for him as agent. However, it can reasonably be surmised that this changed in 2019 once Mr Cissé was made aware of the financial irregularities which ultimately gave rise to the present proceedings.

156. On the balance of probability, Mr Diene personally had access to Mr Cissé's Barclays bank account at the latest once he took on a more comprehensive role in connection with the management of Mr Cissé's financial affairs, ie from July or August 2013. By this time, he had obtained Mr Cissé's debit card for the Barclays account. Since he was involved, at the outset, in setting up Mr Cissé's Coutts bank account, he had personal access to this bank account from the time it was first opened early in 2013.

157. Mr Diene does not deny he was provided with access to Mr Cissé's bank accounts nor does he deny making transactions on the bank accounts under which funds were debited. However, he contends that each of the transactions were made with Mr Cissé's knowledge and consent. He also contends that, whilst the bank accounts were held in Mr Cissé's name, the funds credited for Mr Cissé were mixed with Mr Diene's monies. I reject Mr Diene's evidence in support of these contentions. Firstly, Mr Cissé did not do anything to check or monitor the transactions on his bank accounts. He trusted Mr Diene to look after them and advise him if there was anything untoward. It is more than conceivable Mr Diene entered into some of the transactions for Mr Cissé's benefit or to implement his instructions. However, it is inherently unlikely that this could be said of all the relevant transactions and it certainly cannot be suggested that each of the transactions were made with Mr Cissé's knowledge or approval. Secondly, Mr Diene did not maintain a record identifying the purpose and application of each or, indeed, any such transaction. Thirdly, in the absence of corroborative evidence, I reject Mr Diene's testimony that the proceeds of the bank accounts were mixed with Mr Diene's own monies. There is no evidence Mr Diene had a substantial source of income separate and independent from his remuneration from Mr Cissé himself. To the extent

he has disclosed his tax returns, these suggest he had no such income. Moreover, notwithstanding that he has declined to disclose bank statements, Mr Diene had access to his own separate bank accounts throughout the relevant period. No explanation has been given for him to have held monies in Mr Cissé's bank account, whether derived from his contractual remuneration or otherwise.

158. Prior to the commencement of proceedings, Mr Cissé's solicitors asked Mr Diene's solicitors for an account. By letter dated 22 April 2022, they asked them for an explanation of payments made to or for Mr Diene's benefit and a full statement of account setting out details of all remuneration received from him to date. They were also asked to provide an explanation of entries on Mr Cissé's bank statements. Mr Diene and his solicitors declined to provide the information requested. He has never provided Mr Cissé with an account of the transactions entered into on his behalf.

159. Mr Cissé's claim is for an account of each of the scheduled transactions (see Para 153.4 above) in addition, more generally, to an account of the sums paid from Mr Cissé's Barclays, Coutts and Investec bank account and, more generally the so-called Secret Coutts Account. The scheduled items are from 1 August 2016 to 4 June 2018 (Schedule 1), 31 December 2015 to 4 June 2018 (Schedule 2) and 12 April 2013 to 11 September 2018 (Schedule 3). They are made up of items shown on Mr Cissé's bank statements. The more general account in respect of all sums paid from the relevant account is implicitly sought on the footing of wilful default.

160. I shall make an order directing the taking of an account in respect of each of the transactions specifically listed in the schedules and, on the footing of wilful default, an account of all sums paid from Mr Cissé's Barclays, Coutts and Investec bank account and, more generally the so-called Secret Coutts Account. However, the more general account in respect of the sums paid from the four designated accounts shall obviously apply only to transactions not itemised in the schedules. Moreover, it must obviously be limited to a fixed period of time. I shall hear further submissions on the mechanics for this when I deal with consequential matters once judgment has been handed down.

161. I shall make an order on these terms for the following reasons.

162. The law can be stated as follow.

162.1 As Mr Cissé's agent, Mr Diene owed him the duties of a fiduciary. In *Bristol and West BS v Mothew* [1998] Ch 1 at 18, Millett LJ described, as follows, the defining characteristics and duties of a fiduciary.

“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter or circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.”

162.2 If a fiduciary holds assets on trust for his principal and mixes the trust assets with his own, the onus is on the trustee to distinguish the separate assets and, to the extent he fails to do so, they belong to the trust, *Lupton v White* (1808) 15 Ves 432, *Tilley's Will Trusts* [1967] Ch 1179.

162.3 An agent is under a duty to keep accurate accounts and be ready to produce them to the principal at any time. If he fails to do so, everything is presumed against him, see *Bowstead and Reynolds on Agency* (33rd edn) Para 6-092 citing *Chedworth v Edwards* (1802) 8 Ves 46, *Pearse v Green* (1819) 1 J&W 135 and *Gray v Haig* (1855) 20 Beav 219 at 226.

162.4 An agent who holds or receives money for the principal is generally bound to pay over or account for that money at the request of the principal notwithstanding third party claims, *Bowstead* (*supra*) Para 6-099.

162.5 The court can be invited to exercise its equitable jurisdiction to order the taking of accounts once it is shown the fiduciary took control of assets in the ownership of the principal or beneficiary and thus came under an obligation to handle such assets for their benefit. The jurisdiction is generally exercised in respect of a specific series of transactions with identifiable transgressions. However, the court may exercise its discretion to direct the taking of accounts, more generally, on the footing of wilful default where the fiduciary is taken to have committed breaches of fiduciary duty not yet known to the claimant or his legal advisers. This will be the case if the conduct of the fiduciary gives rise to a *prima facie* inference of such breaches, see *Snell's Equity* (34th edn) Paras 20-015 and 20-016, *cit. Re Tebbs* [1976] 1 WLR 924.

162.6 There is no statutory limitation period but, again, the equitable remedy is discretionary in nature. If established, defences such as laches and acquiescence are a bar to relief.

163. Applying these principles, Mr Diene owed Mr Cissé all the duties of a fiduciary from the time he was first provided with access to Mr Cissé's bank accounts through his evolving role in connection with the management of Mr Cissé's financial affairs. Having been provided with access to Mr Cissé's bank accounts, he took control of them. His fiduciary duties included duties not to act for his own benefit or place himself in a position where his duty and interest conflict. More specifically, they included a duty to keep and produce accurate accounts when requested to do so and account for monies managed for Mr Diene and applied otherwise than for his benefit.

164. In breach of his fiduciary duties to Mr Cissé, Mr Diene has failed to provide Mr Cissé with accounts when requested to do so. He has also failed to confirm whether he entered into or authorised the scheduled transactions and, if so, the reasons for doing so. The scheduled transactions are based on entries in Mr Cissé's bank statements. In the absence of a proper explanation from Mr Diene, there is preliminary reason to suggest he entered into the transactions without obtaining Mr Cissé's authority and otherwise than for his benefit. Mr Diene can also be taken to have committed breaches of fiduciary duty not yet known to the claimant or his legal advisers. In view of Mr Diene's more general failure to provide him with accounts, Mr Cissé is thus entitled to an account of the amounts paid from Mr Cissé's Barclays, Coutts and Investec bank accounts and the so-called Investec bank account during the period in which Mr Diene had access to the bank accounts on the footing of wilful default. For the avoidance of doubt, when accounts are taken, it will remain open to Mr Diene to advance a case that specific transactions were made for Mr Cissé's benefit or with his knowledge and approval. However, it will be for Mr Diene to prove his case.

165. No equitable defences have been advanced, in principle, to Mr Cissé's claim for the taking of accounts nor is there any identifiable evidential basis for doing so.

(ii) The rents and profits of 3 Riverside Lodge

166. Mr Cissé claims an account of the rents and profits of 3 Riverside Lodge. He alleges that, in July 2019 or thereabouts, Mr and Mrs Diene appointed a letting agent and, on 2 August 2019, they let out the property to Mr Ricardo Soares and Ms Sofia

Maria for term of 12 months at monthly rent of £995. It is at least implicit in Mr Cissé's case that Mr and Mrs Diene have continued to receive the rents and profits from the property since August 2019. His claim for an account is again confined to Mr Diene only.

167. In their Defence, Mr and Mrs Diene do not deny that they have let out the premises nor do they deny they have done so without Mr Cissé's knowledge or consent. However, they implicitly contend they were entitled to let the premises since Mr Diene is beneficial owner. Since it has now been conclusively established at trial that Mr Diene is not and never been entitled to a beneficial interest in 3 Riverside Lodge, this defence now falls away.

168. Mr Diene plainly obtained the opportunity to let 3 Riverside Lodge through his position as Mr Cissé's agent. As his agent, Mr Diene was authorised to manage Mr Cissé's financial affairs including his properties and investments. This included 3 Riverside Lodge.

169. It is a well-established principle of law that, if a fiduciary utilises for his own benefit in this way an opportunity derived from his position as a fiduciary, he commits a breach of his duty of loyalty to the principal. If he thus makes unauthorised profits, he must account for those profits to the principal, *Keech v Sandford (1726) Sel. Cas 61*, *Boardman v Phipps [1967] 2 AC 46*.

170. Having utilised his position as fiduciary to let 3 Riverside Lodge and receive the rents and profits from the property, Mr Diene is liable to account to Mr Diene for the same. I shall make an order providing for Mr Diene to account for the rents and profits of 3 Riverside Lodge.

(6) Disposal

171. Mr Cissé is registered as freehold owner of 3 Riverside Lodge and 16 Packsaddle Park. I shall make an order setting aside, for undue influence, the Declaration of Trust. This encompasses the trusts, declared in Mr Diene's favour, in respect of both properties.

172. In these proceedings, no further relief is sought in relation to the trusts, if any, upon which Mr Cissé holds the legal title to 16 Packsaddle Park. However, he seeks a declaration that he is sole beneficial owner of 3 Riverside Lodge. Although such relief would apply *in rem*, Mr Cissé has joined only Mr and Mrs Diene as parties to the

proceedings. Nevertheless, no third parties have asserted an interest and there is good reason for Mr Cissé to seek declaratory relief. I am satisfied Mr Cissé is sole beneficial owner of 3 Riverside Lodge and it is appropriate for me to make a declaration to this effect.

173. Mr Cissé also seeks mandatory and injunctive relief in relation to his interest in 3 Riverside Lodge. As this has not been fully canvassed in argument, I shall hear further from counsel before disposing of these parts of the claim.

174. I shall make an order directing the taking of an account in respect of the scheduled transactions and, on the footing of wilful default, an account of all sums paid from Mr Cissé's Barclays, Coutts and Investec bank account and the so-called Secret Coutts Account other than in respect of the scheduled transactions.

175. I shall also make an order providing for Mr Diene to account for the rents and profits of 3 Riverside Lodge.

176. I shall make directions for the taking of such accounts once I have heard further from counsel.

177. I shall hear further from counsel before dealing with costs and all consequential issues.