Neutral Citation Number: [2020] EWHC 724 (QB)

Case No: QB-2015-007459

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
CIVIL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2020

Before :

MR JUSTICE FORDHAM

- -

Between :

ROGER LEGGETT and 42 Others	**Claimants**
- and -	
GIAMBRONE LAW LLP (IN LIQUIDATION)	**Defendant**

- -
- -

BARRY COULTER (instructed by **SARACENS SOLICITORS**) for the Claimants
The Defendant did not appear and was not represented

Hearing dates: 3 & 5 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE FORDHAM

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Thursday 26th March 2020 at 10am.

FORDHAM J :

Introduction

1. This case is about 'off-plan' apartments which the 43 claimants agreed to pre-purchase in a proposed development known as the "Jewel of the Sea" in the province of Calabria, southern Italy. Each claimant engaged a manifestation of the legal practice of Avvocato Gabriele Giambrone ("Mr Giambrone") and each seeks to recover losses from the entity Giambrone Law LLP (in Liquidation) ("the LLP"). The story of the case from the claimants' perspective can I think be encapsulated as follows. Having set out on a quest for an overseas apartment complex development, as a solid investment opportunity to secure a solid investment return, they found themselves entangled in an irretrievably flawed and doomed project. The lawyers owing important duties to them, and on whom they relied from the start of their investing, knowingly and consciously failed to protect their interests, as a consequence of which they have sustained significant losses. The development seriously breached planning, environmental and other legal requirements. Criminal and confiscation proceedings ensued. All of the claimants sunk significant investments into the development. Only Mrs Mahoney ever got title to a finished apartment, and her evidence explains how that apartment is "now in the middle of a derelict, abandoned and unmaintained place" so that "my investment has been destroyed".

2. The case came before me as a hearing for the assessment of damages. There are 43 claimants, 41 of which were pursuing damages. The claimants were in many cases couples, identically placed. For that reason, the 23 names I will use in this judgment cover the 41 claimants pursuing damages. A list of the 23 names is: Beagan, Bowker, Clarke, Connolly, Darragh, Donnelly, Fernandes, Hayward, Leggett, Lockwood, Magner, Mahoney, Mitry, Niblett, O'Connor, O'Leary, Paul Smith, Payne, Redmond, Rossi, Smith Green, Tysom and Vickery.

3. In conducting the hearing and producing this judgment, efficiently and proportionately and in accordance with the overriding objective, I needed to rely on the industry and candour of the claimants' legal representatives. I received from them various aide memoire documents, on which it was necessary for me to rely, as good faith summaries of the underlying detailed documented claims. Using suggested illustrative cases, I was able at the hearing to drill down into the material, to test aspects as to the implications and reliability of what had been presented. I did this to an extent which I was satisfied was adequate and appropriate, to be able to arrive at findings of fact in which I could have confidence, applying the balance of probabilities standard. I did not second-guess or interrogate every piece of information supplied to me, by pursuing each through a detailed comparison against underlying primary documents. The task involved an extended hearing, originally fixed with a time estimate pursuant to directions of the court of one day, but which in the event required a further half a day and the submission of various schedules and corrections to existing schedules, at my request. If there had been a contested hearing, I would have been able to look to the parties collectively, to narrow the issues and agree detailed facts and figures. The non-participation by and on behalf of the Firm deprived me of that advantage. The liquidators were entitled not to participate and assist the Court, but they could hardly then complain as to the nature of the exercise conducted in their absence and without their help.

4. The backcloth for this judgment is a judgment in default, entered in a pleaded case. Liability, in all its aspects and with all its consequences and implications, is established and does not fall to be reopened. By particulars of claim dated 29 January 2016 the 43 claimants had sued 3 defendants: the LLP, "Giambrone Law" ("the Firm", also known as Giambrone & Law) and Mr Giambrone himself. On 13 November 2017 judgment in default was entered against the LLP, and the claims against the other two defendants were struck out. Pursuant to directions given on 2 April 2018 the claimants served an expert report and (with agreement as to an extension of time from the liquidators of the LLP) an updated schedule of loss. No defence, skeleton argument, expert evidence or other substantive response has been put forward by the liquidators. The claim in damages, following the judgment in default, is entirely uncontested.

5. The directions included the listing of the trial as an assessment of damages. In circumstances where no point was being disputed by or on behalf of the LLP, Mr Coulter for the claimants described the hearing before me as a disposal hearing. It was listed for one day. The term "disposal hearing" is used in paragraph 12.4 of CPR practice direction 26. At such a hearing I am empowered to decide the amounts payable in consequence of the order giving judgment in default, and to give judgment for those amounts. As the commentary in the White Book (2019 edition, paragraphs 12.4.4 and 12.7.5) explains, the judgment in default is conclusive on liability but damages still have to be proved and a defendant could raise any issue not inconsistent with the judgment. The authority cited is Lunnun v Singh [1999] CPLR 587, where Jonathan Parker J described as remaining open at the damages hearing "all questions going to quantification, including the question of causation in relation to the particular heads of loss claimed", and said: "the underlying principle is that on an assessment of damages all issues are open to a defendant saved to the extent that they are inconsistent with the earlier determination on the issue of liability".

6. Mr Coulter accepts that he needs to prove to my satisfaction that the losses claimed are recoverable and the correct extent of that recoverability, always bearing in mind that all and any points could have been contested by or on behalf of the LLP, had the liquidators wished to do so. So far as causation is concerned, Mr Coulter cited Galoo Ltd v Bright Grahame Murray [1994] 1 WLR 1360 at 1374-1375 and invited me to apply a common sense, effective cause approach as indicated in that passage. I have done so. I am satisfied moreover that no distinction between different formulations of the causation test could or would have made a difference to my conclusions in this case.

7. This case is a sequel to the Jewel of the Sea damages claims which came before Foskett J five years ago in March 2015, culminating in a detailed judgment under the title Various Claimants v Giambrone & Law (a firm) and others [2015] EWHC 1946 (QB), itself unsuccessfully appealed to the Court of Appeal: [2017] EWCA Civ 1193 [2018] PNLR 2. That case concerned claims in damages brought by groups of claimants represented by two firms of solicitors against 6 defendants including the three defendants against whom the present proceedings were subsequently commenced in 2016, on behalf of another group of claimants represented by a different firm of solicitors. Mr Coulter accepted that the claimants in the Foskett J judgment were in a materially identical position to those in the present case. Foskett J at paragraph 9 of his judgment referred to the various proceedings which had at that

time been commenced, raising similar issues to those raised in the proceedings before him. In appendix 1 to his judgment, Foskett J listed 90 generic issues which had been raised in those proceedings. Anyone who wishes a fuller understanding of the underlying circumstances of the present case will benefit, as have I, from the detailed contents of the Foskett J judgment.

8. The framework for my task starts with the pleaded case, as found in the particulars of claim. It ranges far and wide and has far-reaching implications. For the purposes of this judgment it is not necessary for me to set out or summarise the entirety of its contents, but I will indicate its nature.

    i) The particulars of claim pleaded that each of the 3 defendants was a manifestation of the legal practice of Mr Giambrone and that each claimant had made a purchase commitment, instructing the defendants to act as independent legal adviser with specialist knowledge. The pleaded claim described a letter of retainer including an express representation to the claimants by the defendants, that: "we would routinely carry out enquiries to ensure that there are no liens, encumbrances, and rights-of-way in favour of third parties and that the land is legally registered with the urban registry, and furthermore, that the valid planning permission is in place for the project to go ahead".

    ii) The claim alleged express and implied contract terms, of agreements between each claimant and the defendant or defendants, as well as fiduciary duties. The particulars described the non-completion of the development, in circumstances where it never had valid planning permissions, the circumstances leading to a police investigation, prosecution, order for seizure and application for confiscation. The pleaded claim was that the defendants acted in breach of their retainer, and negligently, and made misrepresentations, and committed the tort of deceit. The particulars of breach included the following: that at all material times the defendants knew or ought to have known that the development had and could obtain no lawful planning permission; that the defendants misled the claimants by sending each a report on title recommending entry into preliminary sale agreements; that the defendants failed to undertake due diligence; that they failed to report the problems with the development; that they advised the claimants to enter into the agreements and pay substantial deposits by way of down-payments; that they made deliberate misrepresentations concealing the true facts; and that they were in breach of their contractual obligations and their fiduciary duties.

    iii) The particulars of claim pleaded that "by reason of the defendants' breach of contract of retainer and/or negligence and/or misrepresentation, deceit and deliberate concealment… the claimants have suffered loss and damage". Particulars of loss and damage describing the various heads of loss and damage pursued before me (updated for the hearing in the light of the expert report) were set out in the attached schedule of loss. Interest on recoverable damages was also claimed.

9. It was in the context of that pleaded case that the order was made on 13 November 2017 entering "judgment in default… against [the LLP] with damages to be assessed". The claimants stand vindicated, as to liability, as to each of the substantive

claims which they made in the claim. The assessment of damages proceeds from that starting-point.

10. In order for Mr Coulter to seek to prove the extent of the losses recoverable by each of the claimants, it was necessary to consider relevant elements of the claims against the backcloth of the evidence adduced before the court, including the expert report but also the witness statements of each claimant together with the exhibits to those statements. By taking an element of a claim by reference to typical facts I am able to give rulings accompanied by reasons, which can then readily and reliably be applied to the other equivalent claims made by other individual claimants. I have referred already to the reliance placed on documents prepared by the claimants' representatives. The circulation of this judgment in draft constituted a further stage for the claimants' representatives to satisfy themselves of the correctness of the various figures, matching up to the reasons which I have given, and alert me to any discrepancy or inaccuracy. So, I will turn to the various elements of the claimed losses. At the end of each relevant section I will include a paragraph setting out, by reference to the word "awarded", the amounts which I am satisfied – and find – are recoverable by each claimant by family name. Those paragraphs cumulatively will produce the ultimate figures for a court order awarding damages.

Recovery from the LLP, in respect of breaches by the Firm

11. A first issue for me to consider arises out of the situation where a claimant purchaser had instructed the Firm (Giambrone & Law) and was only subsequently described as being represented by the LLP. This arises because the judgment in default is against the LLP, and not against the Firm. Does this impede the recovery of damages?

12. This scenario was exemplified in the submissions before me by taking the case of Mrs Beagan who purchased unit 40G. The evidence is, in essence, as follows. Mrs Beagan relied on a development prospectus and confirmed a number of reservations signing a reservation form and paying reservation fees. Immediately after signing the reservation form, she received the retainer letter (19 March 2007) from the Firm, whose services she accepted. Several months later, relying on their advice and the Report on Title which the Firm provided, Mrs Beagan entered into a preliminary sale agreement, transferring a further sum which (combined with the reservation fee) amounted to 50% of the purchase price for the unit. The reservation fees and 50% deposits are a uniform feature of the cases before me, and I will need to deal with them in due course. Completion and the deed of purchase were due to occur by 30 June 2009. On 7 April 2008 Mrs Beagan received a letter telling her that the Firm was "from today" to "begin trading as" the LLP, "continuing our relationship", which meant "nothing changes" as to "the way we work, and our staff". Her evidence is that from then she regarded herself as represented by the LLP.

13. I am satisfied that in such a scenario as this, the claimant is entitled to recover damages against the LLP, in respect of any breach of contract on the part of the Firm occurring in relation to the proposed purchase and preceding the 7 April 2008 letter. I am also satisfied that breach of contract, as embodied in the pleaded case and the judgment in default, is a sufficient basis for a judgment on each and any relevant legally recoverable loss arising out of the action and inaction of the Firm. At paragraphs 455-456 of his judgment in the Various Claimants case, Foskett J accepted that: "any liability of Giambrone & Law to a claimant in contract arising out of any

breach of duty or want of care that had occurred before the transfer would be transferred to and borne by the LLP and that the LLP would indemnify the claimant in respect of any loss caused by any breach of duty or want of care (of any kind) by Giambrone & Law committed before the transfer". That was a key part of Foskett J's ruling answering issues 3-6 in that case, and it was a ruling which remained intact following the unsuccessful appeal in that case. There is no reason why I should not, and every reason why I should, accept and apply the same conclusion. I do so.

The deposits (leaving aside reservation fee components)

14. I am satisfied – and find – that the deposits (less their pre-paid reservation fee components) are recoverable from the LLP. I am satisfied – and find as a fact – that each claimant entered into the preliminary sale agreement in reliance on the retainer with, and moreover in reliance on the Report on Title from, and in any event in reliance on the advice which was given by or failed to be given by, the Firm. The evidence is again exemplified by the witness statement of Mrs Beagan (paragraph 21-22). I am satisfied on the question of causation, and I find as a fact that there was causation in every case. The deposits were an intimate and integral part of the transaction on which the Firm was acting as adviser. I find that no question of remoteness arises. Material breaches of contract on the part of the Firm were alleged in the particularised claim and embodied therefore in the judgment in default.

15. The judgment of Foskett J (in an aspect scrutinised by the Court of Appeal) analysed the deposits generically as monies paid to the Firm and held by it on trust, such that those monies could not lawfully be paid on by the Firm absent suitable guarantees in relation to the development. That was part of the generic analysis, on the facts and arguments as they were advanced under the identified issues in that case. In my judgment, nothing in Foskett J's analysis casts doubt on the prospect that a breach of contract analysis could give rise to liability in respect of which the deposits paid in reliance on the Firm and its actions, inactions and advice would be recoverable. On the contrary, paragraph 464 of Foskett J judgment speaks in terms of deposits as recoverable "if it is established in an individual case that but for the breaches of duty the deposit would not have been paid out" and goes on to talk about refundability where the claimant is acting in "reliance on the Firm's advice".

16. In the present cases the pleaded case, and the liability embodied in the judgment in default, involved the contentions that claimants were each relying on the Firm and the Firm's advice (present and absent) in paying the balance of their deposits. In my judgment, in these circumstances where liability is the subject of a judgment, the recoverability of the deposits straightforwardly follows. On this issue, I accept the submissions of Mr Coulter. I record that (here, as elsewhere in the analysis) no counter-argument has been advanced by or on behalf of the LLP and, if there is some argument or point to be made to the contrary, it has not been identified.

17. Deposits awarded: Beagan (€45,250), Bowker (€57,450), Clarke (€173,695), Connolly (€53,765), Darragh (€43,450), Donnolly (€44,450), Fernandes (€92,900), Hayward (€251,442), Leggett (€197,734), Lockwood (€46,950), Magner (€48,750), Mahoney (€125,000), Mitry (€47,950), Niblett (€68,602), O'Connor (€44,950), O'Leary (€42,950), Paul Smith (€45,250), Payne (€49,950), Redmond (€48,275), Rossi (€73,750), Smith Green (€50,250), Tysom (€44,950) and Vickery (€57,250).

Expenditure on Trips

18. The next element of the claims with which I will deal concerns expenditure on trips to Italy. The important point in relation to the recoverability of damages for this expenditure is one of timing. An example of a trip which would not produce a recoverable loss would be the inspection trip within 21 days of the signing of the Reservation Form, with a view to deciding whether to proceed with the purchase and sign a real estate purchase form. I find that expenditure of this kind would have been incurred independently of any breach by the Firm, and moreover that it would not have been recovered as a refund by a properly advised client. I am not therefore satisfied that the travel costs claimed in the Fernandes case are recoverable losses. There, the trip was 19 November 2007, the reservation fee was incurred on 22 November 2007 and the retainer was dated 30 November 2007. The same is true of the 23 February 2007 trip taken by Mrs Beagan and her brother in law Mr Paul Smith, in respect of which Paul Smith claims €1,289.12. That is not recoverable. Mr Paul Smith's reservation fee was incurred on 28 March 2007 and the retained was dated 19 March 2007.

19. An example of a trip undertaken at a later stage arises in the case of Mrs Beagan who in a witness statement refers to "wasted expenditure incurred in visits to Italy in the amount of €856.57". The contemporaneous documents show this travel to have taken place in October 2012. I am satisfied – and find – that this loss would not have been incurred had the Firm discharged its duties; it was expenditure caused by relevant breach; it was foreseeable; it is recoverable. It falls squarely within the description which Foskett J gave in his judgment (paragraph 465) of the following recoverable loss: "Expenditure trips to Italy reasonably undertaken to check on progress and/or to consult either the Firm or others about what was happening after the Firm had been consulted… particularly if it related to seeking advice about what to do and/or how to extricate a claimant from a contract". I am also satisfied that the cost of a trip is recoverable in the case of Hayward and Rossi (where the retainer was 10 August 2007 and the trip 16 August 2007), because in each case I am satisfied – and find as a fact – that the trip was undertaken after the Firm should have been warning the claimant against investing, and would not have been undertaken had the client's interests properly been protected by the Firm.

20. The Beagan 2012 trip was illustrative of another point which concerned a difficulty with the expert report, exposed at the hearing. This item was included in the expert report, but the expert included it as part of the calculation of the "price paid" by Mrs Beagan on 19 November 2007. That was an error. The updated schedule of loss included that calculation of the "price paid". It also included the originally pleaded €2000 for wasted expenditure incurred in visits to Italy. That was another error. The sum of €2000 was not pursued. Such problems needed to be ironed out. This illustrates why I could not simply adopt the figures given in the expert report. Careful analysis, by item of loss, was called for.

21. Trips expenditure awarded: Beagan (€856.57), Clarke (€3000), Hayward (£997.60) and Rossi (€90).

Italian legal costs

22. The next relevant item concerns what Mrs Beagan's witness statement describes as: "Italian legal costs incurred in relation to the contract in the amount of £1112.50". In Foskett J's judgment at paragraph 465, "reasonably incurred legal costs" for the purpose of "seeking advice about what to do and/or how to extricate claimant from a contract", and in the act of consulting "either the Firm or others about what was happening after the Firm had been consulted" were treated by Foskett J as, prima facie, recoverable losses. The present claims go further, and extend earlier in the chronology, in that they include components which relate to the Firm's charges in relation to the execution of any purchase, described by Mr Coulter as conveyancing-related legal fees. In one case, there is a further fee component, as I will explain.

23. I am satisfied that any legal fees, including those which were paid by a purchaser to the Firm of the Firm in respect of conveyancing matters, but which were subsequent to – or related to services provided subsequent to – the provision to a purchaser of the Report on Title, are legal fees which are recoverable in law. That is because, on the logic of the pleaded claims and the judgment in default, the provision of the Report on Title was an act of contractual breach by the Firm, in purporting to be an independent act of due diligence giving a verified clean bill of health to the project. The logic of the claim, and the judgment, is that the Firm was at that stage in contractual breach in not advising a purchaser client of the 'red flags' known to the Firm and concealed from the client. In the case of Mrs Beagan, as an illustrative example, I was shown the documentary invoice dated 17 April 2007 levying the charges of £1112.50 for professional services and disbursements. The professional services are described as follows: "Advice given in relation to the purchase of a property in Italy; drafting and execution of the Preliminary Contract". The disbursements are described as "Land Registry Searches". There is also a Telegraphic Transfer Fee. It is possible that the Firm included, or could have included, within these invoiced services the very provision of the Report on Title which should have given the 'red flag' advice. Had it done so, there could have been a charge for the correct advice. I am, however, satisfied – and I find – that no such deduction falls to be made from the invoice for legal costs.

24. I say that for the following reasons. I am in no position, and the LLP and those representing the liquidators have not put me in any position, to be able to identify what such component was or would have been. The Report on Title document was a generic document relating to the development as a whole. Given the way the cases pleaded, there should have been no question of drafting or executing a preliminary contract, perusing the land registry, or making a telegraphic transfer. I find that nothing that was done and described in the exemplar invoice constitutes work which would have been done or chargeable by the Firm, or any firm, acting in compliance with its duties. I find that the entirety was caused by breach. I find that, on the face of it, there is no allowable component and the Firm has failed to identify any.

25. I add this. This analysis is congruent with the justice of the case. In all the circumstances of this case, it would be an affront to justice were there an allowance of an unidentifiable amount, reflective of sound legal advice, from a firm directly interwoven with a development known and understood to be one on which a properly advised client would not embark. I find that this characterisation is well within the scope of the pleaded claim, in respect of which the claimants have a judgment in their favour, which it is not the function of any damages assessment hearing to reopen.

26. Legal and other fees awarded: Beagan (£1,112.50), Bowker (£1,112.50), Clarke (£2917.50), Connolly (£1,112.50), Darragh (£1122.50), Donnelly (£1,112.50), Fernandes (£1112.50), Hayward £4417.50), Leggett (£2657), Lockwood (£1,112.50), Magner (£1117.80), Mahoney (€5910.10 plus €21,107.07 = €27,017.17), Mitry (£1177.50), Niblett (£1,112.50), O'Connor (£1,112.50), O'Leary (£1700), Paul Smith (£1770), Payne (£1,122.50), Redmond (£922.50), Rossi (£1430.33), Smith Green (£1,112.50), Tysom (£1,112.50), Vickery (£1,112.50) and Vickery (£1,112.50).

Reservation fees

27. I next consider the recoverability of the reservation fees paid by claimants as prospective purchasers. I have referred to reservation fees above, and explained how they were carried forward to form part of the 50% deposits for the apartments. I left them out of account in analysing recoverability of deposits. I return to them now. I have described the case of Mrs Beagan, whose witness statement says she signed the reservation form and paid reservation fees, and was then immediately contacted with the proposed retainer letter from the Firm, which she accepted.

28. There is a difficulty so far as recoverability of a reservation fee is concerned, if and insofar as it was irrevocably committed as a non-returnable fee, prior to any relevant engagement of or action by the Firm, and could not have been recovered by way of refund. The reservation fee was described in the judgment of Foskett J as the "acconto" at paragraphs 111 and 117. At paragraph 464 Foskett J expressed the conclusion that the reservation fee would be recoverable only if "paid after material advice from the Firm had been given" or if "refundable and the individual claimant would have been able to recover it but for reliance on the Firm's advice".

29. The expert report includes the reservation fees within the deposits paid. But that does not assist me in answering the recoverability question, as Mr Coulter accepts. It is necessary to consider the evidence. The picture presented by the evidence, so far as the reservation fees are concerned, is not a uniform one. There are various variables, including as to the sequence of events and the passage of time, and as to what documents were signed by which claimants. There are, however, groupings of claimants as I shall explain. I am satisfied that the claimants, through their representatives, have candidly disclosed such contemporaneous documents as they hold. The non-participation in these proceedings by and on behalf of the LLP means (here, as elsewhere) that contemporaneous documents which it could have contributed to the assessment of the facts, and any points arising out of the facts and circumstances, have not been placed before the court. I intend to approach the issue of recoverability of the reservation fees by considering a series of scenarios which arise on the evidence.

30. Mr Coulter's submission is that, in the case of each claimant, the court can be satisfied as to the recoverability of each reservation fee. Alternatively, if and insofar as there is in any case a relevant out, he submits that recoverability should be approached by assessing the loss of a chance of recovering the reservation fee, and he submits that the relevant chance should be assessed on the evidence as a high degree of likelihood of such recovery.

31. I find that the date of the retainer is to be taken as the date of the retainer letter written to the client by the Firm. I am satisfied – and find – that nothing turns on any lapse of

time in the letter being delivered or the retainer being accepted. I make that finding in the absence of any evidence or contention to the contrary raised by or on behalf of the LLP. I find as a fact that the retainer letters were supplied promptly and were accepted promptly on receipt. I find that, from the date of writing the retainer letter, the Firm was holding itself out to the prospective purchaser – who in the event promptly accepted the Firm as their independent adviser – as being the independent reliable due diligence legal firm that would promptly and properly communicate any known 'red flag' regarding the development. I find, based on the judgment in default on the pleaded case, that the Firm deliberately withheld at the time of writing the retainer letter the information that it knew about the flawed development project.

32. A first category of case is where, on the contemporaneous documents before the court, it can be seen that the Firm's retainer preceded the payment of the reservation fee. This first category of case comprises the cases of Connolly, Donnelly, Leggett, O'Connor, O'Leary and Tysom. Taking the case of Connolly as an exemplar, that was a case in which a reservation fee of €3000 was paid in respect of unit 186 F on 20 May 2007, but where the Firm's retainer letter had been dated 14 April 2007. I am satisfied, based on the pleaded case vindicated through the judgment in default, that the payment of the reservation fee is a recoverable loss applying legal principles of causation and remoteness (to which I will need to return in more detail below). The logic of the judgment in default, in the context of the claim as pleaded, is that the Firm failed from the outset to protect its client purchasers by sharing the knowledge that the development was fatally compromised and ought to be avoided. I am satisfied – and find as a fact – that the incurring of these reservation fees by these claimants was the natural, unforeseeable and unavoidable consequence of their misplaced reliance on the legal firm already acting in a falsely reassuring due diligence role. The 6 claims falling within this group are recoverable in full.

33. A second category of case comprises the cases of Mahoney, Redmond, Rossi and Vickery. These are all cases in which a reservation fee was paid on a date between February 2007 and August 2007, and in which there is before the court a Real Estate Purchase document ("REP document"). In one of the four cases there is also a Reservation Fee document ("RF document"): that is the case of Mahoney where the RF document dated 19 February 2007 described the reservation fee as refundable "if unhappy on inspection". The REP documents in each case (which in the case of Mahoney is also dated 19 February 2007) records on its face that upon its acceptance the reservation fee becomes non-refundable. In none of these cases had the retainer been received from the Firm prior to the signing of the REP documents. However, each of the REP documents on its face describes the reservation fee as refundable. Some of them speak of a refund "if unhappy on inspection". More significantly, each of them states in terms that the reservation fee "will become non-refundable except in the case of non-fulfilment by the vendor". I am satisfied – and find as a fact – that an independent legal adviser acting compatibly with its duties, and protecting its client's position in the light of a development which it knew and could demonstrate to be fatally flawed and thus incapable of fulfilment, could and would have been able to secure the refund of the reservation fee in the light of this express term. The 4 claims within this group are recoverable in full.

34. The next group of cases comprise the cases of Beagan, Clarke, Darragh, Niblett, Paul Smith and Payne. These are all cases in which there is no REP document before the

court. In the cases of Darragh and Payne there are RF documents, which contain express terms entitling the purchaser to a 21-day inspection trip. During which the client must "decide to purchase or not to purchase the above property" and "if the client decides not to purchase the property the €3000 will be refunded" but "once a client decides… to purchase the property" and "will sign the Real Estate Purchase Form… the €3000 reservation fee will now form part of the 50% deposit and is no longer refundable". In all of these cases the retainer was within 21 days of the payment of the reservation fee. Mrs Beagan's witness statement describes the retainer letter is received immediately after payment of the reservation fee. In the case of Darragh the RF document was dated 18 February 2008 and the retainer 26 February 2008. In the case of Payne the RF document was dated 12 September 2007 and the retainer 17 September 2007. I am satisfied – and find as a fact – that an independent legal adviser acting compatibly with its duties, and protecting its client's position in the light of a development which it knew and could demonstrate to be fatally flawed, could and would have been able to secure the refund of the reservation fee in the light of this express term. The 6 claims within this group are recoverable in full.

35. The next category of cases comprise the cases of Bowker, Hayward, Lockwood and Smith Green. These are all cases in which the reservation fee was paid between March and July 2007, and where there is before the court no REP document and no RF document. In each case I need to consider the evidence in the context of what is known about other cases and on the basis, as I have found, that the claimants have candidly disclosed such documents as they hold and that no documents have been disclosed or contest raised by or on behalf of the LLP. I am satisfied – and find as a fact – that these are cases in which the developer would not have been able to point to a document describing the reservation fee as non-refundable, even in the context of "non-fulfilment"; and where reference to the standard form documents being deployed by and on behalf of the developer would have included the "non-fulfilment" proviso. I am satisfied – and find as a fact – that an independent legal adviser acting compatibly with its duties, and protecting its client's position in the light of a development which it knew and could demonstrate to be fatally flawed, could and would have been able to secure the refund of the reservation fee in the light of this fact. The 4 claims within this group are recoverable in full.

36. That leaves a final category comprising the claims of Fernandes, Magner and Mitry. These are all claimants who have disclosed, very properly, that they signed an REP document (dated 22 November 2007, 29 January 2008 and 18 February 2008 respectively) describing the reservation fee as now non-refundable, and in which no "non-fulfilment" proviso now appeared, and they each signed these documents prior to the retainer of the Firm (8, 21 and 27 days later respectively). On the face of the contractual documents, these claimants had already signed away a non-refundable reservation fee, before any legal adviser came on the scene. I am not satisfied, to the relevant civil standard, that an independent legal adviser acting compatibly with its duties, and protecting its client's position in the light of a development which it knew and could demonstrate to be fatally flawed, would have been able to secure the refund of these reservation fees in the light of this fact. However, I accept Mr Coulter's fallback submission, that in those circumstances the question is whether these claimants can recover by reference to a loss of a chance, and if so what the level of that recovery should be.

37. Loss of a chance features at this point and will also feature later in this judgment in relation to lost rental income. Mr Coulter cited two authorities on loss of a chance. They were Tom Hoskins Plc v EMW (a firm) [2010] EWHC 479 (Ch) [2010] ECC 20, in which the court described and applied the approach laid down by the Court of Appeal in Allied Maples v Simmons & Simmons [1995] 1 WLR 1602 (see Hoskins at paragraphs 123 to 140); and Aldgate Construction Co-Ltd v Unibar Plumbing & Heating Ltd [2010] EWHC 1063 (TCC) 130 Con LR 190, a contract case in which the court applied that same approach. That is the approach which I have applied in this case. Two features of the case are particularly important at this stage in the analysis, in my judgment. The first is that the developer, by the time of these reservation fees, had taken steps to tighten up the terms of the documents removing the references to refundability (on "non-fulfilment" or if 'unhappy on inspection'). The second feature is that this was a high profile development, in a context in which publicity and reputation and the risks to those things would have been significant, and any exchange between a legal adviser and the promoters or developers would have ensued against that commercial background.

38. Returning to the final category of cases, I accept Mr Coulter's submission that there would have been a high degree of likelihood that an independent legal adviser, apprised of the facts and acting skilfully and promptly to promote their client's interests, would have secured the repayment of even these reservation fees. I am satisfied – and find as a fact – that there is a two-thirds chance that refund would have been secured. In those circumstances these 3 claims succeed as to 2-thirds of the reservation fees. In the case of Fernandes two-thirds of the €6000 reservation fees (€4000) is recoverable; in the case of Magner and Mitry two-thirds of the €3000 reservation fees (in each case, €2000) are recoverable.

39. I should add this, in relation to reservation fees. In some of the cases, reservation fees were paid in relation to units which were not in the event pursued through to the payment of the 50% deposit. An example is the case of Mrs Beagan, who put down €6000 by way of reservation fees in respect of units 40 G and 8F, but in the event proceeded only with the deposit in relation to 40 G. The Fernandes case is another example. I am satisfied, that the fact that a unit was not pursued through to deposit does not affect the recoverability – on the approach which I have described above – of the reservation fee incurred in relation to that unit. That is because an independent legal adviser apprised of the facts and protecting its client's interests would have protected those interests in relation to the reservation fees, and all of them, in the ways which I have described.

40. Reservation fees awarded: Beagan (€6000), Bowker (€3000), Clarke (€9000), Connolly (€3000), Darragh (€3000), Donnelly (€3000), Fernandes (€4000), Hayward (€9000), Leggett (€9000), Lockwood (€3000), Magner (€2000), Mahoney (€6000), Mitry (€2000), Niblett (€3000), O'Connor (€3000), O'Leary (€3000), Paul Smith (€6000), Payne (€3000), Redmond (€3000), Rossi (€3000), Smith Green (€3000), Tysom (€3000) and Vickery (€3000).

Lost rent

41. The next feature of the claimed losses with which I will deal is the lost rent which the claimant purchasers, supported by the expert report, say would have been achievable on a successful investment in a viable and successful apartment complex development

of this kind. It is important to be clear as to how this claimed loss is characterised. Some of the materials, including some passages in the expert report, refer to an assessment of what level of rental profit would have been realised by the claimants, had the Jewel of the Sea proceeded to a successful completion. That will not do. This is not a claim against the developer for failing to deliver the apartments that were promised. It is a claim against lawyers, for failing to alert prospective purchasers to the fact that they ought to go nowhere near this development, in the light of fundamental legal impediments to its successful completion. What should have happened, if the lawyers had done their job – as the case is put in the particulars of claim and vindicated in the judgment in default – is that none of these claimants should have been entering into any preliminary sale agreement or committing any down-payment of deposit.

42. It is possible to think of a case in which a legal adviser, advising on the merits of a proposed scheme, and discharging their duties to their client, would be able to identify a solvable impediment and thereby secure the success of the project where otherwise it would or could be doomed to fail. Take this example. Suppose a lawyer who fails to recognise, and therefore take steps to secure the removal of, an encumbrance on title. Or suppose a lawyer who fails to recognise the need for an approval, which recognition would have triggered steps to secure it. The development is doomed and no profits arise from it. But if the lawyer had done their job, it could and would have succeeded. In such a case, a claimant might seek to recover from the adviser as recoverable losses the gains which everybody knew and understood the clients stood to make – and which constituted the very rationale for their action – in relation to the very transaction on which the legal adviser was to give advice. That, however, is not this case.

43. The way in which the claim to lost rent is properly characterised, and put by Mr Coulter, is as follows. Had the claimants been alerted as they should have been to the fundamental problems with the development from the outset of the retainer, they could and would have looked for an alternative viable development in which to invest. Such alternative viable investment opportunities were available and would have been secured. Had that occurred, equivalent rental profits from an equivalent development in another location would have been obtained. That alternative outcome was denied to them by the actionable breaches for which the LLP is responsible under the judgment in default. Evidence providing proper support for that analysis is before the court, because the claimants' witness statements are clear about their shopping around for a suitable investment opportunity, and because the expert report specifically analyses lost rent by reference to a number of apartment complexes on a number of sites at four locations which the expert assesses as having "the same particularities and attractions as… the Jewel of the Sea". Mr Coulter persuasively submits that the Firm must have known and contemplated at the time of the contracts of retainer that their client purchasers were looking for investments attracting rental income.

44. A critical question in relation to this claimed loss is whether it falls foul of the principle of remoteness. Mr Coulter cited the remoteness principle as famously articulated in Hadley v Baxendale (1854) 9 Ex341 at 354 – 355 (see Chitty on Contracts at paragraphs 26-119 to -120), inviting me to approach this issue of remoteness as an application of first principles, supplying me with the passages from Chitty and also from MacGregor on Damages. He cited the cases of Jackson v Royal

Bank of Scotland plc [2005] UKHL 3 [2005] 1 WLR 377; Aldgate Construction (referred to above in the context of loss of a chance); and John Grimes Partnership Ltd v Gubbins [2013] EWCA Civ 37 [2013] PNLR 17. I have found these authorities helpful, for the principles they discuss and apply, and as illuminating working illustrations.

45. Jackson was a case in which a bank had breached its contractual obligations to its customer who was an importer of goods. The breach was the disclosure of confidential information, to an entity known (at the time when the bank entered into its contractual obligations to the importer) to be the importer's customer. Having received the information, the importer's customer discontinued its relationship with the importer, who sued the bank for loss of ongoing profits. The House of Lords held that those lost profits were not too remote to be recoverable. As can be seen, Jackson is a case concerning the loss of repeat orders under a present trading relationship known to the defendant at the time of entry into the contract. The case is helpful to me in the discussion of the principles applicable to the question of remoteness. As Mr Coulter pointed out, Lord Hope explained in the Jackson case (paragraph 36 that: "there is no arbitrary limit that can be set to the amount of the damages once the test of remoteness according to one or other of the rules in Hadley v Baxendale has been satisfied". Within the discussion of remoteness in Jackson is Lord Walker's endorsement of the observation of Lord Reid in C Czarnikow Ltd v Koufos [1969] 1 AC 350, 385: "The crucial question is whether, on the information available to the defendant when the contract was made, he should, or the reasonable man in his position would, have realised that such loss was sufficiently likely to result from the breach of contract to make it proper to hold that the loss flowed naturally from the breach or that loss of that kind should have been within his contemplation".

46. The Aldgate Construction case was a breach of contract claim brought by a family development company against the plumber. The development company had a dual-property approach to residential development. It had been developing a property known as Number 35 and another known as Plot 3. Using the proceeds of sale of Number 35, it would have entered into a new project at a property known as Plot 1, had the plumber – engaged to provide services at number 35 – performed its contractual obligations. The plumber did not do so, and there was a fire at Number 35. The development company sued the plumber for breach of contract, which breach was admitted, and sought to recover the loss of profits which would have been earned through the reinvestment of the proceeds of sale of number 35 in the acquisition and development of plot 1. Applying principles of causation and remoteness, the court (Aikenhead J) held that there was a recoverable loss, assessed under loss of a chance principles at 50%. The judge recorded what was the accepted position in that case: "that it was within the parties' contemplation when contracting in the ordinary course of things that a fire at number 35 might cause Aldgate to lose an investment opportunity; it was also foreseeable but that might have knock-on effects in terms of Aldgate's future trading… There is, properly, no issue that the type of loss claimed is in principle, subject to proof, recoverable in this case". The judge went on to discuss the relevant causation and remoteness principles, but it is not necessary or proportionate for me to set out any further passages from that discussion. The Aldgate case is helpful, in my judgment, in illustrating that a recoverable and non-remote loss may arise out of a reasonably foreseeable follow-on investment, which the claimant would have and been able to have pursued, had it not been for the breach of contract.

It is, in principle, no objection that the lost profits claimed would have arisen out of another transaction had the defendant's contractual obligations been discharged. If, in principle, a plumber can be responsible when breaching a contract in relation to property A for losses incurred in relation to an investment which the claimant would have pursued in property B had the contractual obligations been complied with, it is impossible to see why the same should not be true of an independent legal adviser whose advice is being relied on in sinking funds into the development of property A when a properly advised investor would have done no such thing and would have looked instead for a viable property B.

47. The John Grimes case was another case about a developer and a breach of contract. The developer wanted to develop land for housing, the success of which needed the construction on the land of the road suitable for adoption by the local authority. The developer engaged the services of an engineer to produce a suitable design for the road. In breach of contract, the engineer failed to complete the work. In consequence, another engineer had to be engaged and there was substantial delay, by which time the property market had deteriorated and the profits of the development were substantially reduced. The developer sued the defaulting engineer, claiming the lost profits on the development arising out of the delay. The claim succeeded in the County Court and the judgment was upheld by the Court of Appeal. The loss was a recoverable loss which was not too remote. The remoteness principle was discussed by Sir David Keene at paragraphs 17-30, in particular at paragraphs 24 and 25. In those passages, the focus is on whether the claimed loss is of a type "which can reasonably be foreseen at the time of contract to be not unlikely to result if the contract is broken" and in respect of which no evidence in the particular case as to "the nature of the contract and the commercial background" renders responsibility for the type of loss inappropriate. The trial judge was commended for seeking to apply those principles, in considering whether the losses of the type in question were reasonably foreseeable at the time of the contract as a consequence of its breach, and whether the commercial background contra-indicated this expectation or intention reasonably to be imputed to the parties. Also noteworthy (paragraph 30) was the rejection of an argument based on disproportionality of the engineer's fee compared with the scale of the loss claimed: "It may not infrequently be the case that the breach of a contract of modest size gives rise to a substantial claim in damages. Moreover, any such contrast is merely one possible point towards a contracting party not having undertaken a potential liability which is reasonably foreseeable and by itself would not normally suffice to establish such an absence of responsibility". At paragraph 29 of the judgment is a discussion of the case of T & S Contractors v Architectural Design Associates (16 October 1992 HHJ Rich QC). That was a case involving recoverability of lost profits arising out of a delay, where an architect had negligently surveyed a site, as a result of which planning permission proved incapable of implementation and a fresh planning permission had to be sought.

48. One way to test the logic of the position in the present case is to take a case like John Grimes, or like T & S Contractors, with a modest adjustment in the facts. Suppose a developer wishes to develop land for a project and relies on the professional services of a firm of solicitors to advise on whether there is an impediment in relation to that land. If the firm of solicitors, in breach of its contractual obligations, fails to recognise that there is a curable impediment such that the project is delayed, in principle the developer could recover in respect of the lost profits on the envisaged investment. I

can see no reason in principle, logic or justice why the result should be otherwise, in a case where the firm of solicitors ought to have recognised an uncurable impediment, with the consequence that the developer could and would have proceeded on alternative land involving no such impediment. No doubt, the conclusions in any particular case will turn on an assessment of the facts and evidence in that case, applying the relevant legal principles to those facts and that evidence. That is what I have done in the present case.

49. I turn to my findings in the present case. My conclusions are, of course, fact-specific and case-specific. On the particular facts, and based on the evidence, in the present case I am satisfied – and find – that the claimants' losses of the pursuit of alternative viable investment opportunities, arising from having sunk their deposits into these apartments, could reasonably be foreseen at the time of the retainer as likely to result if the contract was broken through a failure to warn against investing in this particular development. On the information available to the Firm when the contracts of retainer were made, in each case, it realised and the reasonable firm in its position would have realised that the loss of alternative rental was sufficiently likely to result from the breach of contract to make it proper to hold that the loss flowed naturally from the breach, and in any event that this was loss of a kind within the contemplation of the Firm. I am satisfied – and find – that the evidence in this particular case as to the nature of the contract and the commercial background, and as to other relevant circumstances, do not make the implied assumption of responsibility for that type of loss inappropriate. I am satisfied – and I find - in the circumstances of the present case that this is a type of loss for which the Firm ought fairly to be taken to have accepted responsibility. I am satisfied – and find as a fact – that the retainer letters were written to the claimants knowing perfectly well, as their witness evidence records, that they were looking for a suitable apartment development project by way of an investment; and knowing and foreseen that the claimants would each have sought to pursue an equivalent viable alternative, had they been properly protected and advised by the Firm.

50. Based on the evidence, including the expert report which discusses alternative developments and the rental income arising from them, I am satisfied – and find as a fact – that the claimants have each lost a real and substantial chance of pursuing the alternative investment of their monies in an equivalent alternative development project, in an equivalent timeframe, and securing an equivalent rental income. I am satisfied – and find as a fact – that the loss of the chance of that rental income arising from investment in a viable alternative was the direct, natural and foreseeable consequence of breach of contract by the Firm.

51. I approach quantification of the chance by reference to the evidence of the claimants, what they say about alternatives and about the uniqueness of the Jewel of the Sea, what is said in the expert report, and by way of inference determined from all the circumstances of the case. I have considered the approach to loss of a chance in the Hoskins case and the Aldgate Construction case. I find that the percentage chances of each claimant securing a successful equivalent alternative investment opportunity at 75%. They are each entitled to recover 75% of the rent they would have obtained in an equivalent alternative development with the same characteristics.

52. As to quantifying what the rent in a successful equivalent alternative development would have been (75% of which I have found to be recoverable), this quantification is

an aspect on which I concluded – and I find – that the assessment set out in the expert report was reliable and appropriate, and there was no basis to reject it or adjust it. The expert report takes a reasonable, balanced and fair approach to the assessment of rental loss. Careful consideration is given to aspects such as the relevant season. The figures quantified recognise that in all the cases except one the deposits were at the level of 50%, and the rental income has accordingly been halved. Account is taken of the fact that a claimant purchaser could be expected to use their own apartment for a period (a month has been identified) during the season. However, I am satisfied that the expert has properly included that one month. Within the assessment of loss, in circumstances where the claimant has lost that one month use and the rental value constitutes a fair reflection of that component of the loss. I need not set out in any further detail the particular approach and parameters adopted in the expert report. The approach is a proper and convincing one and I adopt the figures assessed.

53. I am satisfied that there is no basis for drawing any temporal line the claimed losses, occurring on a continuing basis. The claims have been properly brought within the relevant limitation period. I am satisfied – and find as a fact – that the relevant losses of alternative rental income would have continued through the periods in relation to which they are claimed, and that there has been no failure on the part of the claimants to mitigate. I bear in mind that their substantial deposits, transferred to the Firm, have sunk without trace and not been available for any alternative use. No arbitrary line is appropriate. It follows, for all these reasons, that each of the claimants is entitled to recover 75% of the figures for lost rental set out in the expert report.

54. Lost rent awarded: Beagan (€52,902.75), Bowker (€52,902.75), Clarke (€158,709.37), Connolly (€52,902.75), Darragh (€45,956.25), Donnelly (€52,902.75), Fernandes (€52,902.75), Hayward (€158,709.37), Leggett (€158,709.37, Lockwood (€52,902.75), Magner (€52,902.75), Mahoney (€105,806.25), Mitry (€45,956.25), Niblett (€52,902.75), O'Connor (€52,902.75), O'Leary (€45,956.25), Paul Smith (€52,902.75), Payne (€52,902.75), Redmond (€52,902.75), Rossi (€52,902.75), Smith Green (€52,902.75), Tysom (€52,902.75) and Vickery (€52,902.75).

Loan interest

55. Finally, I will address the feature of the claims described in the case of Mrs Beagan as interest in the amount of €5560.62 on a financial loan taken out to fund the deposit on the unit which she was purchasing. That element of the loan is identified in the expert report. In error, it was omitted from the updated schedule of loss served on the liquidators. I concluded at the hearing that it was appropriate to give permission for this item to be recovered, directing that the schedule of loss should be amended, and dispensing with further service. In circumstances where the figure is included specifically within the amounts claimed in the relevant witness statement, and included specifically in the expert report, and in circumstances where other (and much larger) amounts for interest on loans are included in the updated schedule and have met with zero response from the liquidators, I am quite satisfied that there is no prejudice in that course whatsoever and that it is necessary, appropriate and proportionate in the interests of justice.

56. The judgment of Foskett J included a comment relating to interest on loans at paragraph 466. Agreeing with Counsel, the judge said: "I cannot really make any generic finding on claims for additional costs and interest incurred through borrowing

to raise funds to pay the deposits". I had the benefit of witness statements which describe the need which certain claimants had to enter into loans in order to fund the deposit outlay for the proposed purchase of the apartment and the development. Exhibited to those witness statements are the documents which evidence the loans. Subject to a point relating to double-counting, I am satisfied on the basis of the submissions made by Mr Coulter that the evidenced amounts of interest payable on loans necessitated by the deposits are recoverable in law as damages in relation to the various actionable breaches – including the contractual claims – which are the subject of the pleading and the judgment in default. In particular, I am satisfied that it was (and should have been) in the direct knowledge and contemplation of the Firm that their clients, embarking on these proposed purchases with the down-payment of 50% deposits, would be incurring not only the cost of the cash deposit but the cost of financing it. On the evidence, and on the pleaded case, the Firm were directly entwined in arrangements for a development designed to attract investment. The prospectus of the promoter recognised this reality explicitly, in a document with which I have no doubt the Firm was fully familiar. It said: "You need to make sure you find the best solution to your personal financial needs when purchasing abroad. We work alongside a team of highly qualified experts, who will give you all the advice you need, in relation to overseas mortgages, opening a bank account and equity release". It is, in my judgment, nothing to the point that the Firm was not involved in advising a claimant purchaser in relation to their lending requirements. The point is that loan arrangements and the burden of a loan, in the context of an unrealised asset, are fairly and reasonably to be considered as arising naturally from the breach of contract, by which the Firm failed to alert the prospective purchaser of the true nature of the development arrangements before the deposit was paid in reliance on the Firm for its independent, impartial and reliable legal advice. I was shown examples of claimants who incurred interest payments much higher than did Mrs Beagan. In my judgment, that higher degree of quantum does not affect the principled legal position. I mention once more that no point of substance has been raised by or on behalf of the LLP as a basis for disputing this component. I am satisfied – and find – that, subject to the need to avoid double-counting, the claimants are entitled to judgment in respect of losses of this kind.

57. There is a double-counting issue. The claim for loan interest cannot also succeed once, and to the extent that, the lost rent claims succeeds. Mr Coulter accepted this. If the lost rental were recoverable, there could not also be recovery of the interest payable on loans. That is because that same lending, with that same interest, would have arisen on the alternative hypothesis of investment in a viable alternative development, it would therefore have been incurred, and could not be taken to be part of the value of the asset (which he submitted distinguished it from deposits), in the very pursuit of the alternative which would have given rise to the rental income not obtained.

58. Does the same apply to the deposits? Mr Coulter has persuaded me that it does not. It is true that any pursuit of an alternative investment opportunity in a different and viable development would have involved the use of the same monies as were sunk as deposits into these apartments, in the acquisition of the alternative apartments. However, as Mr Coulter points out, the use of that money in that way would itself have been reflected in the value of the asset thereby being obtained, which asset would have continued to vest in the hands of the relevant claimant. There is no

question of any claimant seeking to recover losses reflected in the value of the asset which the deposit would otherwise have been used to acquire. The claim is not for the loss of an alternative asset, but for the loss of the rental income that would have been obtainable. I am satisfied, in logic and in principle, that the deposits and the rental income are each recoverable without any impermissible double counting.

59. This means I need to consider whether 25% of the lost interest should be recoverable given my finding as to the loss of a 75% chance of an alternative investment. I am satisfied that it should be. That is because I am satisfied – and find – that the scenarios in which the equivalent alternative investment opportunity would not have ensued are those in which the claimant investor would not have been incurring the ongoing interest figures.

60. Loan interest awarded: Beagan (€1390.15), Donnelly (€137.50), Lockwood ($4594.65), Mahoney (€1396.61), Paul Smith (£2500.00), Redmond (€4654.55), Smith Green (£6250.00) and Vickery.

Conclusion

61. I will award judgment in favour of the claimants in the various amounts set out in the concluding (sums "awarded") paragraphs for each relevant section of this judgment, using the currency in which the loss was incurred (see Foskett J's judgment at paragraph 470), together with interest pursuant to section 35A of the Senior Courts Act 1981. As I had envisaged and indicated, I was able to look to the claimants' representatives, responding to this judgment in draft, to assist me with factual and logical accuracy, confirming what figures accurately reflect what I have decided, and providing me with a draft Order including a detailed Schedule listing the relevant amounts for each claimant or group of claimants. I make an order for costs in the claimants' favour, but decline the invitation in the claimants' draft order to order costs on an indemnity basis.