Neutral Citation Number: **[2023] EWHC 1867 (Ch)**

Claim No: BL-2020-000294

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES BUSINESS LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

20 July 2023

Before :
MR NICHOLAS THOMPSELL
sitting as a Deputy Judge of the High Court

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Between :

TRAFALGAR MULTI ASSET TRADING COMPANY LIMITED (IN LIQUIDATION)	**Claimant**
- and -	
(1) JAMES DAVID HADLEY	**Defendants**
(2) THOMAS WILLIAM GORDON BIGGAR	
(3) STUART NEIL CHAPMAN-CLARK	
(4) ANDREW CHRISTOPHER JONES	
(5) TITAN CAPITAL PARTNERS LIMITED	
(6) CGROWTH CAPITAL BOND LIMITED	
(7) WILLIAM MACFARLAND WRIGHT III	
(8) PINNACLE BROKERS LIMITED (IN LIQUIDATION)	
(9) MARK LLOYD	
(10) VIVERE FORTI INTERNATIONAL FOUNDATION	
(11) KIRSTY LOUISE PLATT	
(12) PLATINUM PYRAMID LIMITED (IN LIQUIDATION)	
(13) BENTLEY JARRARD THWAITE	

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Mr Justin Higgo KC and **Ms Belinda McRae** (instructed by **Kingsley Napley LLP**) appeared for the Claimant
Mr James Hadley appeared in person
Mr Andrew Jones appeared in person and on behalf of Titan Capital Partners Ltd

Mr William Wright appeared on behalf of CGrowth Capital Bond Ltd
Mr Stephen Goodfellow appeared for Mr William Wright
Mr Bentley Thwaite appeared in person for himself

Hearing date: 29 June 2023

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JUDGMENT

Mr Nicholas Thompsell:

1. INTRODUCTION

1. This judgment deals with consequential matters arising from the main judgment in this matter (the "**Liability Judgment**") which is reported as *Trafalgar Multi Asset Trading Co. Ltd v Hadley and ors* [2023] EWHC 1184 (Ch) and which I handed down on 19 May 2023. This came after a four-week trial dealing with the question of liability in this matter. Full details of the claim were given in the Liability Judgment. I will not repeat them here and I will use in this judgment terms that I defined in the Liability Judgment.

2. In the Liability Judgment I found for the Claimant in relation to:

   I) its claims against Mr Hadley, Mr Chapman-Clark, Pinnacle and Mr Lloyd, in relation to what I described as the Original Conspiracy;

   II) its claims against Mr Hadley, in relation to bribery and conspiracy in relation to Trafalgar's investment in the CGrowth transactions;

   III) its claim against CGrowth based on vicarious liability for bribery, dishonest assistance and unconscionable receipt and its claim for a declaration that the CGrowth bond purchase contracts are void for Mr Hadley's want of actual or apparent authority;

   IV) its claims against Mr Hadley for breaches of fiduciary duty; and

   V) its claims against Mr Chapman-Clark, Mr Lloyd, Pinnacle, Mr Thwaite and PPL for dishonest assistance and for unconscionable receipt.

3. I will call the Defendants that the Court has found have liability to the Claimant the "**Relevant Defendants**".

4. However, I found against the Claimant in relation to:

   I) its claims against Mr Jones and Titan in relation to any unlawful means conspiracy (including what I described as the Original Conspiracy);

   II) its conspiracy claim against Mr Wright and its claims against him of injury by unlawful means, dishonest assistance, and unconscionable receipt.

5. I noted that, in view of the complexity, and the elections available to the Claimant as to its remedies, the precise remedies and quantum under each established claim would need to be considered further. I suggested that arrangements for determining this should be considered at a consequentials

hearing to be heard when practicable following the handing down of the Liability Judgment.

6. This hearing was originally timetabled for 29 and 30 June 2023, but it would seem that there was some misunderstanding whether all the parties who were still engaging with this action would be available for the second of these dates. With this in mind, I made an order that this hearing should take place on 29 June 2023 and providing that the purpose of the hearing should be:

I) to deal with matters consequential upon the Liability Judgment, and

II) if, but only if, the Court sees fit having regard to further representations to be received by the Court, to deal with the outstanding issues regarding quantum on which the Court has reserved judgment or failing that to give directions for the resolution of such matters.

7. As it transpires, we were able to deal most of the outstanding matters but needed to reserve some matters to a later date as I will explain below.

2. PAPERS RECEIVED MATTERS FOR DETERMINATION

8. Ahead of this hearing:

I) the Claimant provided a full skeleton argument, supported by a witness statement, a draft order, a bundle for the hearing and an authorities bundle, under which the Claimant sets out (amongst other things):

A) its proposals in relation to damages, including as to interest;

B) its submissions in relation to its own costs;

C) guidance for the Court, and I think also intended to assist the unrepresented Defendants, as to the considerations applicable for any party asking for permission to appeal or for a stay of execution.

II) Mr Hadley provided a short skeleton argument in which he set out in very broad terms his arguments for asking for permission to appeal and for a stay of execution as well as some representations as to the costs claimed by the Claimant;

III) Mr Jones provided an informal schedule of costs in support of an application for costs;

IV) Mr Wright provided a skeleton argument relating to costs supported by a witness statement and a schedule of costs on form N260.

V) the Claimant provided a further skeleton argument responding to the points raised by certain of the Relevant Defendants.

3. REPRESENTATION AT THE HEARING

9. At this hearing,

I) the Claimant was represented by Mr Higgo and Ms McRae;

II) Mr Hadley appeared for himself;

III) Mr Jones appeared for himself;

IV) Mr Thwaite appeared, remotely, for himself;

V) Mr Wright was represented by Mr Goodfellow but appeared himself, remotely, to represent CGrowth as its director;

VI) Mr Lloyd and Pinnacle were not represented: the counsel and solicitors supporting Mr Lloyd at the trial were no longer acting for him. Mr Lloyd was no longer answering emails from his previous address and the Court staff had not found any way to contact him;

VII) PPL was not represented: the Court had received notice from PPL that Mr Thwaite no longer represented PPL as PPL had progressed from a members' voluntary liquidation to a creditors' voluntary liquidation and would henceforth be represented by James Dowers and Mark Wilson of RSM UK restructuring advisory as joint liquidators;

VIII) Mr Chapman-Clark also was not represented: he had previously said that he was not going to undertake any involvement in the trial.

10. No party had made an application for an adjournment of the hearing and I saw no reason not to proceed with it.

4. MATTERS FOR DETERMINATION

11. The Claimant's legal team had originally produced a draft timetable suggesting how the Court should use the day. However, matters had moved on, and after hearing from the parties represented and having regard to the terms of the order, I determined that we should deal with matters in a different sequence, namely:

I) to deal with Mr Hadley's application for leave to appeal and his application for a stay of execution;

II) to deal with the quantification issues relating to the Claimant's claim;

III) to deal with the Claimant's claim for costs, except that the question whether the Claimant should be entitled to compound interest on pre-judgment damages should be reserved to another occasion;

IV) to deal with Mr Jones' claim for costs;

V) to determine directions for hearing Mr Wright's application for costs and the matter reserved regarding compounding of interest as soon as possible.

5. PERMISSION TO APPEAL

12. Mr Hadley had set out in his skeleton argument in a very broad way his arguments as to why he should have permission to appeal the findings made against him in the Liability Judgment. He based this on the proposition that the transcripts of the trial revealed "*a multitude of procedural failings; deliberate obstructions of vulnerable defendants and elements that may be perceived to give the impression of bias*".

13. Mr Hadley was asked to particularise these items.

The allegation of bias

14. Mr Hadley commenced with the question of bias, or perception of bias. He claimed that there would be other instances that he had not had time to particularise but at present was able to particularise only two matters.

15. The first related to a point early in the trial where he said that I, as trial judge, appeared to assume that there had been a number of complaints about Trafalgar. This appears in the transcript for Day 1. Mr Hadley considered that such an assumption was made without evidence. He had not considered however that I might have based my understanding on this point on materials in the hearing bundle that I had read before trial and he quickly moved on from this point.

16. The second point was that I had encouraged the Claimant to particularise its case as regards breaches of the general prohibition in FSMA and had allowed the Claimant to make a late amendment to its Particulars of Claim to explain these points. He contrasted this with my not encouraging or allowing an amendment to his pleadings to accommodate a pleading of contributory negligence.

17. I reminded Mr Hadley why I had encouraged and allowed the amendment to the Claimant's Particulars of Claim. This was because the Claimant had already cited breach of FSMA to support (as one of a number of strands) the illegality

element in its claim for an unlawful means conspiracy. I considered that it would be in the interests of justice for the Claimant to particularise this point and amend its Particulars of Claim so that the Defendants would have a clearer idea of the allegations of illegality that were already present in the Claimant's pleadings but put more broadly. I had explained this in the Liability Judgment at [152]:

> "Whilst Mr Higgo, for the Claimant, considered, and I agreed, that it was not strictly necessary to amend the Claimant's Particulars of Claim for the Claimant to raise these matters, I indicated that I would be open to their making such an amendment, having in mind that it would be much better for the Defendants to understand fully the case alleged against them in this regard. The Claimant applied for such an amendment and I granted that application and also allowed each of the affected Defendants to file an amended Defence and a further witness statement if they thought fit."

18. This then was a matter of seeking clarification in the Particulars of Claim of allegations that had already been pleaded more broadly. It was in no way comparable with Mr Hadley's request to amend his pleadings to introduce a brand new defence of contributory negligence. Furthermore, I was satisfied that such a defence had no reasonable prospect of success. The Claimant's case against Mr Hadley was not a case in negligence where contributory negligence might be an issue. It was a case relating to breach of fiduciary duty and participation in an unlawful means conspiracy. It was no defence to these allegations to say that the board of Trafalgar should have stopped Mr Hadley from doing these things.

19. I therefore see no case for the two points raised by Mr Hadley demonstrating any bias or being capable of giving rise to a perception of bias.

20. Mr Hadley suggested that these were just examples and, given more time, he could have come up with further examples to establish a pattern of bias. However, I could not accept he had not had enough time to provide more examples if there were any examples to be found. He had had several weeks to compile his case for appeal. He had known what the Liability Judgment had said since it was circulated to him in draft in April and must have known from that point that he intended to appeal.

21. As Mr Higgo reminded me, the relevant test, established by *Porter v Magill* [2002] 2 AC 357 and since widely followed, is whether a fair-minded and informed observer having considered the facts would consider there was a real possibility that the tribunal was biased.

22. It may be that Mr Hadley feels that he has been treated unfairly. But the legal test is not based on his feelings: it is based on what would be the views of a fair-minded and informed observer. As explained by Lord Dyson MR giving the liability judgment of the Court of Appeal in *Harb v His Royal Highness Prince Aziz* [2016] EWCA Civ 556 at [69]:

> "First, the opinion of the notional informed and fair-minded observer is not to be confused with the opinion of the litigant. The "real possibility" test is an objective test. It ensures that there is a measure of detachment in the assessment of whether there is a real possibility of bias."
>
> and
>
> "… the litigant is not the fair-minded observer. He lacks the objectivity which is the hallmark of the fair-minded observer. He is far from dispassionate. Litigation is a stressful and expensive business. Most litigants are likely to oppose anything that they perceive might imperil their prospects of success, even if, when viewed objectively, their perception is not well-founded."

23. I cannot see that the points Mr Hadley has raised could be perceived in any way as demonstrating bias or an appearance of bias in the eyes of a fair-minded observer. I therefore have refused to grant permission to appeal on this basis.

The allegation of obstruction

24. Mr Hadley's second point was that he had been obstructed from making his case by the Court and the Claimant.

25. When pressed for instances of such obstruction, the only instance he gave for this was the failure of the Claimant to inform him of the effect of the Fraud Act 2006 until late in the trial. The effect of the Fraud Act 2006 is explained at section 5.3 in the Liability Judgment. Mr Hadley claimed that, had he understood this earlier, he would have produced a more detailed defence. However, he was unable to particularise in what way it might have been a more effective defence.

26. I cannot see how the Claimant's conduct in this regard could be seen to amount to obstruction. The Claimant and its legal counsel were not advising Mr Hadley and cannot have known that he was holding back information in defending this claim for fear it might prejudice a future criminal case. They had understood that Mr Hadley had taken some legal advice in the early stages of this matter and so might have expected him to be informed broadly on this point. When Mr Higgo raised the point about the Fraud Act 2006, his purpose was not to inform Mr Hadley that this Act protected answers he gave in a civil court in relation to

fraud-related matters from being used against him in a future criminal trial. It was to warn Mr Hadley that it was unclear whether this protection would extend to answers given in relation to the newly particularised allegations concerning breach of the general prohibition in FSMA, and to ask the Court for guidance on this point. It is perverse to suggest that this intervention was intended to be anything but helpful to Mr Hadley or that there was some improper motive on the part of the Claimant in not mentioning the Fraud Act 2006 earlier.

27. The suggestion that the Claimant was deliberately and unfairly obstructing him by not informing him earlier about the effect of the Fraud Act 2006 depends on the idea the Claimant would have expected that there was information that might have assisted Mr Hadley in the civil trial, but which would work against him in a future criminal trial. It is very difficult to conceive of any category of information that would have this effect and completely incredible that the Claimant might have plotted against Mr Hadley on the assumption that there was.

28. Furthermore, unless there was information in such category that would or could have made a difference to the outcome of the case it is difficult to see how Mr Hadley's defence has been damaged by his earlier ignorance of the Fraud Act 2006 provisions. I gave Mr Hadley several opportunities to provide examples of information he had withheld that might have had such an effect. He was unable to think of a single example and rested on the vague proposition that he would have been able to give a more detailed defence, but without being able to identify any detail that might have helped him.

29. Mr Hadley has failed to substantiate as a ground for appeal that he had been obstructed in any way in making a proper defence. I cannot accept this as providing grounds for appeal.

The allegation of unfair treatment of a vulnerable defendant

30. Mr Hadley clarified that, whilst he considered that he was vulnerable defendant as a result of his suffering from ADHD, he was not pursuing as a separate argument any allegation that the Court had failed to make reasonable accommodations for this, or that the Claimant had deliberately exploited this. However he considered this to be a matter to be taken into account in relation to his point concerning the Fraud Act 2006, and that, in view of the late introduction, or rather particularisation, of the legal issues relating to the general prohibition, it would have been useful to him to have had more time to respond to this point.

31. In my view, Mr Hadley was right not to pursue a separate issue concerning his treatment at a vulnerable defendant. Being aware of the duties of the Court

under Practice Direction 1A, I had managed the case taking account of this, for example allowing for more breaks, and being vigilant to ensure Mr Hadley was following a question put to him. He was given more time than other Defendants to make his case and to give his evidence. I found Mr Higgo also had been sensitive to this issue, occasionally suggesting breaks and generally adopting a gentler style of cross-examination than he did with some other witnesses. As I commented in the Liability Judgment at [211], I consider that these steps were a proportionate response. At no point did I consider that Mr Hadley had any more difficulty in presenting his case or answering questions than any other litigant in person in his position.

32. I do not see how Mr Hadley's ADHD has any bearing on the analysis I have given above concerning the issues raised concerning the Fraud Act 2006.

33. Neither do I find it as a legitimate ground for appeal that, in hindsight, Mr Hadley would have liked more time to respond to the issues under FSMA when he did not ask for an adjournment at the time.

The allegation of procedural failings

34. Whilst Mr Hadley had mentioned in his skeleton argument a "*multitude of procedural failings*", he did not specifically identify any procedural failings when making his oral submissions.

35. It is possible that he considered that the points discussed above concerning the late particularisation of the FSMA issues and the Claimant's alleged failure to inform him about the Fraud Act 2006 amounted to procedural failings. If so, the allegation adds little or nothing to the points that I have already discussed, and dismissed, above.

36. In addition, I note that even if (as I consider not to be the case) either point could be characterised as a procedural failing, neither such putative failing is at all likely to have given rise to any different result for Mr Hadley.

37. If Mr Hadley had had more warning about the precise nature of the FSMA issues, it is difficult to see what other evidence he could have brought to bear to change the Court's decision in relation to these points.

38. Even if he did, this would not have made any difference to the overall findings of the Court as to his breaches of fiduciary duty, his acceptance of conflicts of interest, and generally in relation to either the Original Conspiracy or the bribery and conspiracy relating to the CGrowth transaction. The FSMA issues were only one strand of the illegality alleged and proved against Mr Hadley as a basis for an unlawful means conspiracy. If there had been a different result on the FSMA issues, what I have termed the Original Conspiracy was nevertheless

more than fully shown to be an unlawful means conspiracy on other grounds. I think I went too far during the hearing in describing these issues as a "sideshow". They were one strand of the illegality that the Claimant relied upon, and therefore needed to be properly considered. However, the point that I was trying to make was that the Claimant did not need to succeed on these points in order to establish its case. Even if takes away the Court's findings on the FSMA issue, the case against Mr Hadley remains fully established.

39. I do not think that Mr Hadley's complaint that he had not been told earlier about the effect of the Fraud Act 2006 can be regarded as a procedural failing. However even if it could be, it is difficult to see how this would have made any difference to the outcome of the case. As I have already explained, even if Mr Hadley had been told about the implications of the Fraud Act 2006 earlier, the circumstances where this could have made a difference to his defence are limited. It could only have made a difference if there were matters that he had not put before the Court because they might damage his position in relation to a future hearing but which would have assisted him in resisting the civil claim. This is intrinsically unlikely, and Mr Hadley has not been able to identify any such matter.

40. To summarise in relation to the allegation of procedural failings made in Mr Hadley's skeleton argument:

I) Mr Hadley has not specifically identified any such procedural failings;

II) if he considers that the way that the FSMA issues were late in being particularised and the Claimant's failure to tell him about the Fraud Act 2006 were procedural failings, I disagree that they are; and

III) in any case even if they could be considered to amount to failings, they were not failings that could have caused any difference to the outcome of the case.

Summary in relation to the application for permission to appeal

41. Under CPR 52.6, there is a dual test to be applied when the court is considering giving permission to appeal. This is either that:

> "(a) the court considers that the appeal would have a real prospect of success; or
> (b) there is some other compelling reason for the appeal to be heard".

42. It is only necessary to satisfy either the test in paragraph (a) or that in paragraph (b).

43. As regards the first test, in paragraph (a), the question of "*real prospect of success*" does not require the would-be appellant to demonstrate that success is probable or more likely than not, but rather that it is realistic as opposed to fanciful (see *R. (A Child) [2019]* EWCA Civ 895 at [29]-[31]).

44. In my view, for the reasons discussed above, the prospects of success for the arguments advanced by Mr Hadley as his proposed basis of appeal are fanciful at best.

45. As to the second test in (b), the test for a "*compelling reason for the appeal to be heard*". As explained by Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538, this is met when:

> "the issue may be one which the court considers should in the public interest be examined by [the Court of Appeal] or, to be more specific, [the Court of Appeal] may take the view that the case raises an issue where the law requires clarifying."

46. There is nothing in the arguments put forward by Mr Hadley that provide any other compelling reason for an appeal to be heard. The points he has raised do not point to any matter where the law requires clarification nor to any other point of public interest.

47. As Mr Hadley has not shown any real prospect of success at appeal and there is no other compelling reason for the appeal to be heard, having heard his full explanation for his proposed grounds for appeal, I have had no hesitation in rejecting his application for permission to appeal.

6. STAY OF EXECUTION

48. Mr Hadley had applied for a stay of execution based on financial hardship and lack of likely recovery from Trafalgar if his appeal were to succeed, on the basis that it is an overseas company in liquidation.

49. Mr Higgo had argued in his response to the Defendants' submissions that neither of these grounds has been evidenced, or properly explained. I asked Mr Hadley to expand on these points.

50. He explained that if the order that the Claimant was requesting were to be granted and immediately enforced against him in full, he would not be able to meet his liability and would go bankrupt. Despite having been denied leave to appeal in this Court, he still intended to ask the Court of Appeal for leave to appeal and he would have suffered irremediable harm to him and his family if it turned out that his appeal was successful but, in the meantime, he had been made bankrupt. Also there was a prospect that in such event he would not be

able to obtain from the Claimant repayment of any amounts paid by him as the Claimant was an overseas company undergoing a winding-up process.

51. He considered that delaying execution of the order (against him only – he was not seeking to prevent an order being made and enforced against any other Defendant) would not unduly prejudice the Claimant since it would in any case need to take some time to collect all monies owing to it.

52. Mr Higgo in his skeleton argument had helpfully referred the Court and the parties to the useful summary of the principles relating to the grant of a stay that were explained in *Otkritie International Investment Management Ltd v Urumov* [2014] EWHC 755 (Comm) at [22]. In summary:

I) The starting point is that an appeal (and one might add, *a fortiori*, the prospect of an application for permission to appeal) does not operate as a stay of the lower court's order.

II) A stay is the exception not the rule.

III) In order to displace the ordinary rule, the putative appellant must put forward "solid grounds" in favour of a stay, which is typically some form of irremediable harm that will arise if no stay is granted.

IV) If "solid grounds" are identified and proved, the Court will conduct a "balancing exercise", considering the risk of injustice to both parties if the Court grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the Liability Judgment? On the other hand, if a stay is refused and the appeal succeeds, and the Liability Judgment is enforced in the meantime, what are the risks of the appellant being able to recover any monies paid from the respondent?

V) Whilst the "normal rule" is for no stay to be granted, if the justice of the approach is in doubt, the answer may well depend on the perceived strength of the appeal.

53. In *Leicester Circuits Ltd v Coates Brothers plc* [2002] EWCA Civ 474, the Court of Appeal provided another explanation of how the judge should approach the question of whether a stay should be granted. The Court (at [12]) per Potter LJ approved a submission (that it described as uncontroversial) that:

> "the principles to be applied in relation to the application are that, while the general rule is that a stay of judgment will not be granted, the court has an unfettered discretion and no authority can lay down

> rules for its exercise. It is relevant that the appellant may be unable to recover from the respondent the sum awarded in the event of judgment being set aside on appeal."

54. The Court went on at [13] to explain:

> "The proper approach is to make the order which best accords with the interests of justice. Where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives to decide which is less likely to cause injustice. The normal rule is for no stay, but where the justice of that approach is in doubt, the answer may well depend on the perceived strength of the appeal."

55. Applying these principles to the current case, whilst Mr Hadley has not put forward any evidence that enforcement of the proposed order might lead to his bankruptcy, in view of the amounts involved, I am prepared to believe that it would. The prospect of this would in my view amount to irremediable harm, and provides the solid grounds for me to undertake the balancing act then required. I do not however accept his point about Trafalgar being in liquidation as it is doubtless solvent and its liquidators would need to take into account any contingent liability to Mr Hadley if it seemed he might be successful in his appeal before distributing Trafalgar's assets to its shareholder, the Fund.

56. The potential for harm to Mr Hadley needs to be weighed against the harm to the Claimant if it is delayed in enforcing a claim. The delay itself may be seen as a form of injustice having regard to the years that it has taken in establishing its loss. This could have the effect of prolonging the time it takes to wind up the Fund and increasing fees to liquidators and the costs of winding up generally.

57. I think it is reasonable in this regard also to consider the position of the investors that stand behind the Claimant. These investors will also face a delay in recovering their investments. It seems likely that these, entirely innocent, investors also could face further hardship if there is further delay in receiving recoveries.

58. The harm to Mr Hadley will only arise if the Court of Appeal were to grant permission to appeal, and then he is successful in that appeal. The prospects of this occurring are, in my view, fanciful. I have already found that he does not have a good arguable case. I consider that Mr Hadley has very little chance of persuading the Court of Appeal to grant such permission to appeal. Even if he did, he would then face the uphill struggle of winning his appeal. As I weigh this highly unlikely prospect against the prospect of harm to the Claimant for

delay, then I consider that I should use my discretion to deny Mr Hadley the stay of execution that he has requested.

59. This analysis of the balance of hardship may change, of course, if contrary to my confident expectation, the Court of Appeal does grant permission to appeal. If it does, Mr Hadley would have an opportunity at that point to ask the Court of Appeal for a stay.

60. There was another suggestion in Mr Hadley's skeleton argument that a stay should be linked to the detailed costs assessment. I see no logic and no merit in that argument.

61. Accordingly, I will deny Mr Hadley the stay of execution that he has requested.

7. CLAIMANT'S DAMAGES

62. The Claimant set out in its draft order the principal sums that it claims based on the Court's decision on liability. It supported this, along with the claim for interest, with detailed calculations in the form of an Excel spreadsheet.

63. This claim was based on the following principles.

64. First, as the Court had found that the Claimant is entitled to multiple remedies against the same Defendants, the Claimant was required to make certain elections as to the relief it wished to claim. The Claimant elected as follows:

I) at paragraph 1, for a claim for damages for the Original Conspiracy against Mr Hadley, Mr Chapman-Clark, Pinnacle and Mr Lloyd (together the "**Original Conspirators**"), corresponding to paragraphs 618(ii), 621(i) and 624(i) in the Liability Judgment. It calculated the sums due based on losses from its investments in the Dolphin, Quantum, Titan, Momentum, Shawcross and CGrowth transactions adjusted to reflect recoveries to date.

II) at paragraph 2, the Claimant asks for damages for bribery committed by Mr Hadley, PPL and Mr Thwaite, following the Court of Appeal's Order and the Court's further findings relating to bribery and for vicarious liability against CGrowth, corresponding to paragraphs 618(iii), 627, 631, and 632(v)(c) in the Liability Judgment.

65. Secondly, the Claimant had accepted as obvious, that it was not entitled to recover the same loss more than once (as recognised at [615] in the Liability Judgment). It would take that into account in enforcement and had already deducted the recoveries that it had made to date in its calculation of loss. For that reason, it had formulated its claims to include Mr Hadley in the group of

Defendants only in paragraph 1 and not in paragraph 2, to ensure that Trafalgar is not recovering for the CGrowth losses twice against Mr Hadley. I considered that this was not the best way to deal with the double recovery point against Mr Hadley as it might make it less clear as to what rights of contribution the Defendants listed in paragraph 2 might have against Mr Hadley (and *vice versa*). Mr Higgo agreed that the wording should be adjusted to add Mr Hadley into paragraph 2 but with wording to make it clear that there could be no double recovery against him.

66. As regards the calculation in paragraph 1, this included the Claimant's losses from the Titan and CGrowth transactions as well as those from the Quantum, Titan, Momentum, and Shawcross transactions. The Claimant considered that this was supportable notwithstanding the issue raised in the Liability Judgment that at some point Mr Hadley was no longer operating for the benefit of the Original Conspirators (other than himself).

67. The Claimant considered that there was evidence that Mr Hadley continued to operate within the scope of the Original Conspiracy after his falling out with Mr Talbot including in 2015 - 2016 and Mr Higgo drew the Court's attention to examples of this. The Claimant also argued that this was anyway the correct approach, following the possible analysis that I had included at [323] of the Liability Judgment that:

> "the effect of the Original Conspiracy was to place pension investors funds into the hands of Mr Hadley so that he could disburse them in ways that would benefit the conspirators, including himself, the fact that Mr Hadley continued to do so for his own purposes after he had fallen out with other of the original conspirators be seen as a harm to Trafalgar brought about by the Original Conspiracy, and therefore something for which all the original conspirators should be fixed with responsibility".

68. Mr Higgo put this more concisely in his oral submissions, arguing that the conspiracy in this case had comprised putting money into Trafalgar by unlawful means in order to enable that money to be misappropriated for the benefit of one or more of the individual conspirators. It only worked because Mr Hadley and Mr Biggar were in charge of the money. The Titan transaction had clearly formed part of the intentions of the Original Conspirators. The CGrowth investments were also tied up in that conspiracy as part of the motivation for entering into the transaction was to hide the earlier losses that had been incurred to benefit the Original Conspirators. Considering all these factors, the Court should conclude that the totality of the loss was the result of the Original Conspiracy and therefore felt to be recovered from those involved in that conspiracy.

69. None of Defendants had challenged this approach and I determined that the Claimant's arguments were correct on this point.

70. The Claimant proposed that there should be joint and several liability against the Original Conspirators (dealt with in paragraph 1 of the draft order). Mr Higgo explained that this was not unfair to Mr Lloyd and PPL even though they had joined the conspiracy later than the other Original Conspirators. This was because the only transfer of Trafalgar's funds which took place before this date was the £1 million transfer to Dolphin on 19 June 2014 and the Claimant does not claim that amount, as it has already recovered that sum (plus interest).

71. I agreed that joint and several liability was appropriate on this basis.

72. The Claimant similarly proposed that there should also be joint and several liability amongst the participants listed in paragraph 2 of the draft order involved in the bribery claims relating to CGrowth. I agreed that this also was appropriate.

73. The precise sums that Trafalgar claims at paragraphs 1-2 of the draft order were supported by the calculations exhibited to the Court. These calculations were not challenged and I accept them.

74. The calculations included interest calculated at the rate of 5.65% up to judgment. This had been calculated taking the approach in *Glenn v Watson* [2018] EWHC 2483 (Ch) at [49], and endorsed by the Court of Appeal in *Watson v Kea Investments Ltd* [2019] 4 WLR 145. It was an approach that I had previously followed myself in *Baroness Jacqueline Van Zuylen v Rodney Whiston-Dew* [2021] EWHC 2219 (Ch).

75. The approach was to award a rate of interest that acts as a proxy for the investment return that funds with the general characteristics of the fund in question could expect to make. This requires a broad-brush approach.

76. This approach is appropriate for a claimant such as Trafalgar that is not an ordinary commercial claimant. The general presumption underlying interest calculations is that the claimant would have borrowed less and therefore sets an interest rate based on commercial borrowing rates. This is not appropriate for an investment entity such as an investment fund that does not borrow. It is more appropriate for such an investing entity to use a rate of interest that reflects the investment returns that a fund with similar general characteristics would have earned (following a broad-brush approach).

77. The Claimant supported its suggested interest rate by reference to the investment objectives of the Fund recorded in the Offering Supplement, which

involved seeking an absolute return. The Claimant had provided evidence of what funds with an objective of absolute return generated by referring to the 'Long-Only Absolute Return Fund Index', within the 'Alternative Fund Indices' produced by Eurekahedge, which claims to be "*the world's largest hedge fund and private equity database*". This is a weighted index of 377 constituent funds, and is said to be "*designed to provide a broad measure of the performance of underlying long-only fund managers who pursue absolute returns with flexible investment mandates*".

78. This index showed an average monthly return over the period in question (June 2014 – June 2023) equating to an average annual rate of 5.65%.

79. I agree with the Claimant's submission that this averaged rate is an appropriate proxy rate. None of the Defendants argued against approaching interest before judgment in this way. It is appropriate, then, that the order should reflect this approach.

80. The Claimant is looking for interest to be compounded annually but there was no time during the day for it to make its argument in this regard. I agreed that this question would be kept open to be dealt with at a further hearing, alongside the question of Mr Wright's costs, and pending any further order of the Court, interest would be due calculated on the basis of simple interest.

81. The Claimant's calculations of costs due also included post-judgment interest fixed by statute at 8% (see section 17(1) Liability Judgments Act 1838; taken with article 2, Liability Judgment Debts (Rate of Interest) Order 1993). I agree that this is appropriate.

82. The Court has a discretion under CPR rule 40.8(1)(b) as to the date from which post-judgment interest is to run. This is ordinarily from the date of judgment (i.e., the date on which judgment is pronounced, not the date of the order). However, where the date of the order is later, as it is here, where the order will be over a month after the original judgment has been handed down, the Court may specify instead the date of the order. In this case, I consider it appropriate that post-judgment interest should run from the date of the consequentials hearing, 29 June 2023 so that the Defendants are not liable for an additional month of interest at a higher rate, purely because of hearing scheduling issues.

83. Subject to this point, and in the context of there being no argument to the contrary from any Defendant, I see no reason not to accept the principles put forward by the Claimant as to the basis of damages and to the drafting of the order following these principles.

8. CLAIMANT'S COSTS

The Relevant Defendants' liability for costs

84. The Claimant seeks an order confirming the Relevant Defendants should pay costs, subject to detailed assessment if those costs are not agreed. Such an assessment however should expressly exclude the costs covered by the Court of Appeal's order (which are wholly excluded from Trafalgar's costs schedule).

85. The Claimant argues this on the basis that the starting point is the general rule that costs follow the event: CPR rule 44.2(2)(a). The Claimant succeeded in its claims against all the Relevant Defendants.

86. I agree that there is no reason to move away from the principle that the Claimant as the successful party against the Relevant Defendants would normally be entitled to its costs as a matter of principle. I agree further that these should be subject to detailed assessment if not agreed.

87. I have considered whether there should be any discount to these costs to reflect the fact that the Claimant also pursued Mr Jones, Titan and Mr Wright and was not successful in its action against those parties. However, I do not consider that there should be any discount in this regard. The evidence relevant to the claims against these parties had to be before the Court to determine liability in relation to the Relevant Defendants and I do not consider that the Claimant's costs therefore would have been materially less had the Claimant not pursued its case against these Defendants.

Joint and several basis

88. The Claimant invites the Court to order those costs be paid on a joint and several basis, citing the following reasons:

I) the Claimant's claim against the Relevant Defendants arose out of a fraudulent scheme which required it to sue the Defendants together (in particular the parties to the Original Conspiracy);

II) the Relevant Defendants (in particular Mr Hadley, PPL and Mr Thwaite) adopted a common position on many of the key issues;

III) there was only a very limited divergence between the Relevant Defendants on any issue, largely confined to differences between Mr Hadley and Mr Lloyd on the question of investment advice;

IV) the vast bulk of the costs incurred are common to the claims against the Relevant Defendants and cannot sensibly or practically be distinguished from one another.

89. Trafalgar refers the Court to *Hotel Portfolio II v Ruhan* [2022] EWHC 1695 (Comm) at paragraph 45, where Foxton J found similar factors to be persuasive when determining that costs be paid jointly and severally.

90. I agree that the principle of joint and several liability as to costs as between the Relevant Defendants is justified on these bases.

91. However, this does not mean that the Defendants listed in paragraph 2, excluding Mr Hadley (a group which I will refer to as the "**CGrowth Defendants**") should be responsible for the whole of the Claimant's costs.

92. The CGrowth Defendants were not responsible for all damages arising out of the Original Conspiracy, only those relating to the CGrowth transactions. To the extent that costs were incurred in establishing the liability of the Original Conspirators, they should not be responsible for those costs. The converse does not apply, however, as I have found that the damages payable by the Original Conspirators include those relating to the CGrowth investment, and as a result it is appropriate that these Defendants should also bear liability for the Claimant's costs of establishing liability in relation to the CGrowth investment.

93. I do accept, however, that it would be too difficult on a line-by-line basis to apportion costs between those relating to establishing the liability of the Original Conspirators and those relating to establishing liability in relation to the CGrowth Defendants. A broad-brush approach is needed. There was some discussion in Court as to what proxy could be used for these purposes.

94. One suggestion was to look at the overall liability in cash terms applicable to each group. Under this approach, I would limit the costs payable by the CGrowth Defendants to the same percentage of the total costs that the liability that I have found against the CGrowth Defendants (around £8.32 million) represents as a proportion of the liability I have found against the Original Conspirators (approximately £14.4 million). This would suggest an apportionment of around 57.7% to the CGrowth Defendants, which reasonably could be rounded up to 60%, having regard to the fact that some of the evidence relating to the Original Conspiracy would anyway have needed to have been put before the Court in relation to the case against the CGrowth Defendants.

95. Another approach would be to look at the time spent at trial in relation to the Original Conspiracy and that spent in relation to the CGrowth transaction. The Claimant produced a breakdown of time. Having seen this breakdown of time, I

consider it is too difficult to establish a calculation on this basis. I do not think it would be proportionate to require a line-by-line analysis of how time was spent either at trial or more generally.

96. Having looked at the possible alternatives, I consider the 60% figure as calculated above provides the best basis of allocation of costs to the CGrowth Defendants that can be devised without undue effort. It also seems subjectively about right to me.

Standard or indemnity basis?

97. A further complication is that the Claimant has sought indemnity costs against Mr Hadley, PPL and Mr Thwaite and standard costs against Mr Chapman-Clark, CGrowth, Mr Lloyd and Pinnacle.

98. As summarised in the White Book at paragraph 44.3.8, the making of a costs order on the indemnity basis is appropriate where the conduct of the parties or the other particular circumstances of the case (or both) is such as to take the situation "*out of the norm*", in other words "*something outside the ordinary and reasonable conduct of proceedings*".

99. The Claimant relies on the following matters as putting the conduct of Mr Hadley out of the norm:

I) Mr Hadley's failure to be candid until cross-examination at trial with Trafalgar's Board (and ultimately its liquidator) about the true objective behind the establishment of Trafalgar (i.e., the combination at the heart of the Original Conspiracy), and the role of various individuals (including Mr Talbot);

II) the Court's findings as to Mr Hadley's dishonesty and lack of frankness more generally (e.g., about his understanding of his conflict of interest: mentioned in the Liability Judgment at [434]) and

III) his failure to disclose any documents until during the trial, despite the fact that the SFO returned to him a "large body of information" many weeks before trial that was obviously relevant to the proceedings, and caused the adjournment of the trial and disrupted the Claimant's trial preparation.

100. I agree that these matters taken together put Mr Hadley's conduct of these proceedings out of the norm and have impeded the Claimant's ability to pursue its case in an efficient manner. I am less convinced that I should take into account other matters raised by the Claimant in this regard relating to the heinousness of the matters that were under investigation in the trial. However, it is not necessary to take those matters into account for me to agree with the

Claimant that Mr Hadley's conduct at trial was out of the norm on the basis of the points enumerated in the previous paragraph.

101. As regards Mr Hadley, Mr Thwaite and PPL, the Claimant points to the fact that they each advanced a false defence to the bribery claim against them, which only emerged in Mr Hadley's cross-examination. This was despite these issues being the subject of a separate summary judgment application before the High Court and Court of Appeal. Had they been honest about the relevant facts, the Claimant could have proceeded entirely differently, including bringing a wider summary judgment application at an earlier stage. This, says the Claimant, amounts to conduct out of the norm.

102. Mr Hadley left the courtroom after the short recess and had made no representations concerning the Claimant's proposal that he pay costs on an indemnity basis.

103. Mr Thwaite did make representations against the indemnity basis as applied to himself and PPL (although he was not representing PPL). He pointed out that he had been prevented from participating fully in the trial as regards the new revelations concerning bribery that came up at trial, as it had been ordered that he could speak only concerning quantum. He considered that the conclusions that I had reached in relation to the alternative basis of a bribery claim based on documents disclosed only at trial had not been adequately tested as a result. It was his contention that the commission arrangement with Mr Hadley's company had been voided before any of the CGrowth transactions had occurred.

104. The findings relating to the additional bribery claim really only had an effect in relation to CGrowth. Bribery had already been established against Mr Hadley, Mr Thwaite and PPL. The point was relevant against CGrowth since it was clear that CGrowth must be vicariously liable for a bribery claim based on commission agreement entered into by PPL on behalf of CGrowth, whereas the question of vicarious liability was more difficult in relation to the bribery claim established by the Court of Appeal's decision. CGrowth and Mr Hadley had been given an opportunity to discuss this point fully, and I remain satisfied that my findings in this matter were correct on the evidence provided.

105. I accept Mr Thwaite's point that he did disclose the documentation that he was holding in relation to the commission agreement (an undated copy) and it was not his fault that Mr Hadley had made only a very late disclosure of his (dated) copy of this agreement. However, this point makes no difference to the major thrust of the point that the Claimant is making here. The existence of this signed copy, and the evidence of the first payment made under it, demonstrate that case that was pleaded by Mr Hadley, Mr Thwaite and PPL at the striking out hearing before Deputy Judge Karat and later at the Court of Appeal was

false. Mr Thwaite (and therefore PPL) must be taken to have known that the case they were advancing on these occasions was false (or at least so incomplete as to be misleading). Had this false or misleading information not been provided, the whole case would have taken a very different turn. I agree with the Claimant that these facts put the arrangements out of the norm and so justify requiring these Defendants to pay costs on an indemnity basis.

106. At the hearing, there was discussion of how one could make an order for joint and several liability between the Relevant Defendants where some had been found liable for costs on the standard basis and some on the indemnity basis. I accepted that this was possible if:

I) costs in general were assessed on both bases;

II) the costs order limited the amount that could be claimed against the Relevant Defendants who were liable on the standard basis (individually and collectively) to costs on standard basis; whilst

III) the joint and several liability of Relevant Defendants who were liable on the indemnity basis was the full amount of the costs for which they were liable assessed on the indemnity basis.

107. We did not discuss in detail the practicalities of dealing with costs if I decided (as I have decided) to order for costs to be on a joint and several basis but for the costs for which the CGrowth Defendants would be liable would be limited to the percentage of costs that the Court allocated to the CGrowth Claims. However, in principle I think a similar approach is to be taken – i.e. all the Relevant Defendants would be responsible jointly and severally for the costs but the order would limit the amount of costs that could be claimed against the CGrowth Defendants (individually and collectively).

Allocation of liability for costs

108. My determinations above make distinctions between the position of the Defendants who are to be treated for costs on the standard basis and those who are to be treated on the indemnity basis; and between the CGrowth Defendants and the Original Conspirators. Mr Hadley is in a class of his own being both one of the Original Conspirators and someone who must bear costs on an indemnity basis.

109. Taking these points together, I consider that the order I should make in relation to costs is that the Claimant's costs are to be assessed both on the standard basis and on an indemnity basis. The Relevant Defendants are each to be liable for costs on a joint and several basis provided that:

I) the liability for costs of each of Mr Chapman-Clark, Mr Lloyd and Pinnacle should be limited to the Claimant's costs assessed on the standard basis;

II) the liability of each of Mr Thwaite and PPL should be limited to 60% of the Claimant's costs assessed on the indemnity basis;

III) the liability of CGrowth should be limited to 60% of the Claimant's costs assessed on the standard basis;

IV) the liability of Mr Hadley to contribute to the Claimant's costs should be assessed on the indemnity basis;

V) once the Claimant has received costs which equal its costs based on the standard basis, the Claimant may not demand a further payment of costs from any of the Defendants mentioned in paragraphs (i) and (iii) above;

VI) once the Claimant has received costs from the CGrowth Defendants which equal 60% of its costs assessed on the indemnity basis, the Claimant may not demand a further contribution to the payment of costs from any of the CGrowth Defendants.

110. The Claimant has requested costs on account, and I agree that such an order is both usual and appropriate. The Claimant has suggested that this should be set as a percentage of the figure that it is claiming for its costs (the "**Pre-Assessment Costs Claim**") and the Claimant proposes 60% as the appropriate percentage. Logically this percentage should be set differently according to whether costs are to be paid on the indemnity basis or on standard basis. Whilst I consider 60% of this figure to be appropriate as against Relevant Defendants who are to be liable for costs on the indemnity basis, I consider that 50% is more appropriate for Relevant Defendants who are to be liable on the standard basis.

111. The matter, is complicated by the complexity of the liability for costs that I am ordering as set out in paragraph 109. above. In order for the order for a payment on account of costs to match the same principles, I consider that I should order that the Relevant Defendants should be responsible for such payment on account on a joint and several basis provided that:

I) the liability of Mr Chapman-Clark, Mr Lloyd and Pinnacle individually to contribute to the payment on account of costs should be limited to 50% of the Pre-Assessment Costs Claim;

II) the liability of each of Mr Thwaite and of PPL to contribute to the payment on account of costs should be a limited to 36% (60% of 60%) of the Pre-Assessment Costs Claim.

III) the liability of CGrowth to contribute to the payment on account of costs should be limited to 30% (50% of 60%) of the of the Pre-Assessment Costs Claim.

IV) the liability of Mr Hadley to contribute to the payment on account of costs should be limited to 60% of the Pre-Assessment Costs Claim;

V) once the Claimant has received costs which equal 50% of the Pre-Assessment Costs Claim, the Claimant may not demand a further contribution to the payment on account of costs from any of the Defendants mentioned in paragraphs (i) and (iii) above;

VI) once the Claimant has received costs from the CGrowth Defendants which equal 36% of the Pre-Assessment Costs Claim, the Claimant may not demand a further contribution to the payment on account of costs from any of the CGrowth Parties.

112. The Claimant proposes that the costs of this consequentials hearing should be dealt with as costs in the case. None of the Relevant Defendants spoke against this proposition and I agree that this is the appropriate treatment for these costs.

7. MR JONES' COSTS

113. During the course of the hearing, Mr Jones withdrew his claim for costs, having reached some settlement out of court in relation to this matter. Accordingly, I make no order for costs against the Claimant in favour of Mr Jones.

8. MR WRIGHT'S COSTS

114. Mr Wright's arguments concerning costs had been received quite late and raised a number of complex issues. It was agreed between the Claimant and Mr Wright that these should be heard at a further hearing and the costs order would include directions in relation to the preparation for that hearing.

9. CONCLUSION

115. When I circulated a draft of this judgment to the parties for any minor corrections, I asked the Claimant's representatives to draft a revised version of the Claimant' draft order reflecting the principles set out in this judgment. A version of this was received by the Court on 4 July 2023, and following some comments I made on this, a further version was received by the Court on 6 July

2023. This further version was approved by me with amendments on 19 July 2023.