Neutral Citation Number: [2020] EWHC 2271 (Comm)

Case No: LM-2019-000198

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (QBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 14/09/2020

Before :

HIS HONOUR JUDGE PELLING QC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

WINLINK MARKETING LTD	**Claimant**
- and -	
THE LIVERPOOL FOOTBALL CLUB & ATHLETIC GROUNDS LTD	**Defendant**

- -
- -

Mr Andrew Sutcliffe QC and Mr William Day (instructed by **BLM Solicitors**) for the **Claimant**
Mr Robert Anderson QC and Mr Theo Barclay (instructed by **DLA Piper UK LLP**) for the **Defendant**

Hearing dates: 8-11, 15 June 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.

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 10:30am on Monday 14th September 2020.

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HIS HONOUR JUDGE PELLING QC SITTING AS A JUDGE OF THE HIGH COURT

HH Judge Pelling QC:

Introduction

1. This is the trial of a claim by the claimant ("WML") for commission in the sum of £1.125m said to be due under an introduction agreement between the parties made on 18 October 2013 ("IA"), following the introduction by WML of BetVictor Limited trading as BetVictor ("BetVictor") to the defendant ("LFC") in late 2013, by reference to a sponsorship agreement that LFC entered into with BetVictor on 27 May 2016 ("2016 sponsorship agreement").

2. By the end of the trial, there were only two defences relied on by LFC. Firstly LFC alleges that the 2016 sponsorship agreement had been entered into after the expiry of the Introduction Period as specified in clause 1.1.8 of the IA, the text of which is set out below, as that phrase is to be construed applying conventional English Law construction principles. Secondly, LFC alleges that the IA was subject to an implied term that required WML to be the or an effective cause of the sponsorship agreement and alleges that WML was not the or an effective cause of LFC entering into the 2016 sponsorship agreement with BetVictor. WML disputes LFC's construction of the IA, disputes that an effective cause term was to be implied into the IA and in any event maintains that WFL was an effective cause of BetVictor entering into the 2016 sponsorship agreement.

3. The trial took place between 8 and 15 June 2020. I heard oral evidence on behalf of WML from Mr Mark Dixon, a senior marketing executive who at all material times worked and works for WML and an associated company Bettor Marketing Limited ("Bettor") and on behalf of LFC from:

    i) Mr Jonathan Kane, LFC's Director of International Business Development at the relevant time and Mr Dixon's principal contact at LFC;

    ii) Ms Raffaella Valentino, a marketing executive who entered employment by LFC in 2016 having previously been employed by Targeted Regional Marketing Limited ("TRM"), where she had also had a role in negotiating BetVictor's sponsorship of Chelsea Football Club ("Chelsea"). LFC's factual case is that Ms Valentino was exclusively responsible for securing the sponsorship agreement with BetVictor by reason of the long standing and strong commercial relationship that she had developed with BetVictor's then Chief Executive Officer Mr Meinrad; and

    iii) Mr William Hogan, LFC's Managing Director and Chief Commercial Officer. He explains that both Mr Kane and Ms Valentino reported to Mr Olly Dale. Mr Dale was not called as a witness however, nor was Mr Meinrad.

4. This is a dispute relating to events that took place some years ago. In those circumstances, I have approached the factual issues between the parties that are material to this dispute by testing the oral evidence of each of the witnesses wherever possible against the contemporary documentation, admitted and inconvertible facts and inherent probabilities. This is an entirely conventional approach – see <u>Onassis and Calogeropoulos v. Vergottis</u> [1968] 2 Lloyds Rep 403 at 407 and 413. This is not to say that a judge can attempt, or that I have attempted to, resolve factual disputes by referring

only to contemporaneous documentation. It is necessary to consider all of the evidence – see Kogan v. Martin [2019] EWCA Civ 164 per Floyd LJ at paragraphs 88-89. However, there is nothing in that authority or the requirement to consider all of the evidence that prevents the evaluation of oral evidence using the techniques I have referred to. In my judgment the use of such techniques is all the more appropriate having regard to the lapse of time since the events with which this case is concerned – see Gestmin SGPS SA v. Credit Suisse (UK) Limited [2013] EWHC 3560 (Comm) *per* Leggatt J (as he then was) at paragraphs 15-22. I return to the credibility issues that arise to the extent necessary later in this judgment.

Background

5. WML and Bettor are intermediaries whose business is to introduce sports rights holders to commercial entities willing to sponsor the sporting rights holder concerned. Much as an estate agent is retained by a property vendor to find a purchaser using its contacts and other marketing skills, entities such as WML are retained by sporting rights holders to find sponsors. Sponsorship can take a number of different forms – it can include in the football context advertising on the electronic hoarding surrounding the field of play in a football stadium (referred to in the correspondence between the parties to this dispute as "LED" advertising), advertising material on players' playing or practice kit or parts of it and the naming of stadia using the name of the sponsor.

6. The sums involved are substantial. Mr Dixon's evidence as to this was that:

> " … Manchester United priced its front of shirt partnership at £64 million in 2014 and again in 2020. For the same years, its training kit partnership was c£15 million, and its betting partnerships started at approximately £3 million. Liverpool was a little cheaper, but still towards the top of the market. Its front of shirt partnership was £20 million in 2014 and £40 million in 2020. Its training kit partnership went from £3 million in 2014 to £9 million in 2020. And its betting partnerships went from c£1.5 million in 2014 to c£5 million in 2020. To give a third example, Everton's combined front of shirt and training kit partnership was priced at £4 million in 2014 and £9 million in 2020."

Generally, a sponsor will be prepared to invest sums of this magnitude because sponsoring a sporting rights holder that is prominent either globally or in particular regional markets is thought likely to enhance the market recognition of the sponsor, thereby attracting business that it would or might not otherwise attract. Generally sponsorship agreements with football clubs run for the duration of a football season (July to June in England) or multiples of such seasons. It follows that generally sponsorship agreements will have to be finalised well before the start of the first season to be sponsored, not least so that the promotional material on which the sponsor's name is to be displayed can be designed, approved and manufactured.

7. Although many sporting rights holders will operate their own marketing operations (as LFC did at all times material to this dispute) and seek to obtain sponsorship by direct marketing of the rights on offer to sponsors, WML maintains and it is not seriously in

dispute that it and companies like it enable sporting rights holders to access a wider variety of potential sponsors than may be accessible by a sporting rights holder's marketing department, by reason of the intermediary's contacts within the senior management of potential sponsors and to identify those most likely to be interested in sponsoring particular sporting rights holders, having regard to the spondee's prominence, attractiveness to particular commercial sectors and in particular regions.

8. WML has operated as such an intermediary for many years, particularly, though not exclusively, in relation to professional football clubs in the first and second tier of the English game and European clubs of equivalent status. At a number of stages in the course of the evidence there seemed to be some confusion in the minds of the various witnesses as to whether the principal of a company such as WML was the sporting rights holder or the potential sponsor. In this case the only formal agreement was the IA between LFC and WML under which LFC was WML's principal. In my judgment however the intermediary's principal can be either a sporting rights holder or a potential sponsor depending on the circumstances and the terms of any formal agreements that are entered into. Although the fees of the intermediary will generally be paid by the sponsee rather than the sponsor, that is not a certain guide to who is to be regarded as principal because in most cases any fee paid by the sponsee will come from money that either comes to or would otherwise go to the sponsee as part of the sponsorship arrangement.

9. Mr Dixon had known Mr Kane for a number of years prior to the events with which this dispute is concerned. He cold called Mr Kane in May 2013, when Mr Kane informed Mr Dixon that LFC was looking for a betting sponsor for the 2014/15 season. By August 2013, Mr Dixon was able to inform Mr Kane that he was able to introduce LFC to potential betting business sponsors including BetVictor. The detail surrounding these early contacts does not matter.

10. It is common ground that Mr Kane made clear that LFC would only be prepared to work with WML if it entered into a formal agreement with LFC. Although there was a significant amount of detail in the evidence concerning the negotiations that followed, none of that is material to the issues that arise, not least because the IA was subject to entire contract terms (see clause 11) and (as I explain in more detail below, where I set out the applicable legal principles) what is said and done in the course of negotiations is immaterial to the true construction of written agreements resulting from such negotiations. Ultimately the parties entered into the IA. Although there was at one stage an issue between the parties as to whether the IA was ever signed on behalf of, or became binding on, LFC, that issue had disappeared by the start of the trial.

The IA

11. In so far as is material, the IA was in the following terms:

> "PARTIES
>
> 1. LIVERPOOL FOOTBALL CLUB AND ATHLETIC GROUNDS LIMITED incorporated and registered in England

and Wales with company number 035668 whose registered office is at Anfield Road Liverpool L4 0TH (LFC).

2. WINLINK MARKETING LIMITED incorporated and registered in England and Wales with company number IE493008 whose registered office is at Floor One, Block One Quayside, Business Park Dundalk Colouth Ireland (Introducer).

3. Background

A. The Introducer has a large number of contacts, and can meet further contacts who may be interested in purchasing the Sponsorship Rights from LFC.

B. The LFC wishes to be introduced to such contacts, and is willing to pay the Introducer a commission on the terms of this agreement if such contacts purchase services from it and the Introducer is willing to effect these introductions in return for this commission.

AGREED TERMS

l. INTERPRETATION

…

1.1.2 Commencement Date: has the meaning given to it in clause 7.

1.1.3 Commission: has the meaning given to it in clause 4.2.

1.1.4 Introduction: the provision to LFC of the contact details of a Prospective Client who knows one or more individuals at the Introducer and is of sufficient seniority to authorise or recommend the purchase of the Sponsorship Rights from LFC. Introduce, Introduces and Introduced shall be interpreted accordingly.

1.1.5 Introduction Date: for each Prospective Client, the date during the term of this agreement on which the Introducer first Introduces such Prospective Client to LFC.

1.1.6 Net Income: the payments actually received by LFC for the Sponsorship Rights under a Relevant Contract less any value added tax or other sales tax on them.

1.1.7 Prospective Client: means each of Bet Victor, Stan James and Betfred only.

1.1.8 Relevant Contract: a legally binding agreement for the grant of Sponsorship Rights entered into during the Introduction

Period between LFC and a Prospective Client who was Introduced by the Introducer.

1.1.9 Sponsorship Rights: means rights of sponsorship of LFC to be granted by LFC to a Prospective Client pursuant to a Relevant Contract, the particulars of which shall be notified by LFC to the Introducer but provided that the Introducer acknowledges that the precise rights granted to a Prospective Client under a Relevant Contract following negotiation may differ from those notified to the Introducer.

…

2. INTRODUCTIONS

2.1 LFC appoints the Introducer on a non-exclusive basis to Introduce the Prospective Clients to LFC on the terms of this agreement.

2.2 The Introducer shall:

2.2.1 serve LFC faithfully and diligently and not to allow its interests to conflict with its duties under this agreement;

2.2.2 use its best endeavours to make Introductions of the Prospective Clients and in any event shall ensure that it has introduced LFC to at least one Prospective Client within 30 days of signature of this Agreement;

2.2.3 not approach any party other than the Prospective Clients with a view to making an Introduction without the prior written consent of LFC;

2.2.4 report in writing to LFC from time to time on progress made with Prospective Clients; and

2.2.5 comply with all reasonable and lawful instructions of LFC.

2.3 The Introducer shall have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised to bind LFC in any way, and shall not do any act which might reasonably create the impression that the Introducer is so authorised. The Introducer shall not make or enter into any contracts or commitments or incur any liability for or on behalf of LFC, including for the provision of the Sponsorship Rights or the price for them, and shall not negotiate any terms for the provision of the Sponsorship Rights with the Prospective Clients.

…

2.4 The Introducer must disclose to each Prospective Client that it represents LFC and that it has no authority or ability to negotiate or vary the Sponsorship Rights or the terms of a Relevant Contract or enter into any contract on behalf of LFC.

…

4. COMMISSION AND PAYMENT

4.1 The Introducer shall be entitled to Commission if a Prospective Client Introduced by the Introducer enters into a Relevant Contract.

…

4.5 LFC shall within thirty (30} days of receiving the corresponding payment for the Sponsorship Rights send to the Introducer a written statement setting out, in respect of such Relevant Contract:

4.5.1 the Commission payable to the Introducer;

4.5.2 the payments for Sponsorship Rights received and details of any sums due which have not been received; and

4.5.3 how the Commission has been calculated, including details of all deductions made in determining Net Income.

4.6 The Introducer shall invoice LFC for the Commission payable as per LFC's statement submitted pursuant to clause 4.5, together with any applicable VAT and LFC shall pay such invoice within 30 days of receipt.

…

4.13 Termination of this agreement, howsoever arising, shall not affect the continuation in force of this clause 4 and LFC's obligation to pay Commission to the Introducer in accordance with it.

5. OBLIGATIONS OF LFC

5.1 LFC must at all material times act in good faith towards the Introducer.

…

5.5 The LFC shall be under no obligation to:

5.5.1 follow up any Introduction made by the Introducer; or

5.5.2 enter into a Relevant Contract.

…

7. COMMENCEMENT AND DURATION

This agreement shall commence on the date when it has been signed by all the parties (Commencement Date) and shall continue, unless terminated earlier in accordance with clause 8, until either party gives to the other party written notice to terminate.

8. TERMINATION

…

8.2 LFC shall be entitled to terminate this agreement for any other reason by giving not less than thirty (30) days' notice in writing to the Introducer.

9. CONSEQUENCES OF TERMINATION

9.1 Other than as set out in this clause, neither party shall have any further obligation to the other under this agreement after its termination.

9.2 The following clauses shall continue to apply after the termination of this agreement: clause 1, clause 3, clause 4, clause 6 and clause 9 to clause 18 (inclusive).

9.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

…

11. ENTIRE AGREEMENT

11.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

11.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this agreement.

…

> 12. VARIATION
>
> No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
>
> …
>
> This agreement has been entered into on the date stated at the beginning of it."

The only copy of the IA in evidence is dated 1 October 2013 and I find that the agreement took effect as and from that date.

Introduction of BetVictor to Liverpool

12. By the end of October 2013, Mr Dixon had visited BetVictor's offices in Gibraltar on three separate occasions. Mr Dixon's evidence was that he focused on that entity because a large part of its business was in Asia where LFC had a higher profile than most other premier league clubs and, perhaps at least as importantly, because a Mr Riley, then BetVictor's CEO was known to Mr Dixon and a Mr Grinneback had joined BetVictor as "*Head of Asia*" in September 2013. Mr Grinneback was a good personal contact of Mr Dixon. On 16-17 July 2013, Mr Dixon visited Mr Riley at BetVictor's office in Gibraltar and it was at that meeting that Mr Riley informed Mr Dixon that BetVictor was interested in entering into a sponsorship arrangement with a premiership football club. Mr Dixon's second visit was on 9-11 September 2013, following which he reported to Mr Kane that there was substantial interest being shown by BetVictor.

13. Following the IA becoming binding between the parties, Mr Dixon visited BetVictor for the third time on 21-23 October 2013. I need not take up time describing the interaction between the parties that occurred thereafter. WML's case is that it effected an introduction of BetVictor to LFC on 6 December 2013 by an email of that date in these terms:

> "Mark Dixon <mark@wirflmk.net> 6 December 2013 at 16:14
> To: Jonathan Kane <Jonathan.Kaneliverpoolfc.com>, Karl Riley <Karl.Riley@betvictor.com>. Magnus Grinneback <Magnus.Grinneback@vcint.com>
>
> Hi chaps ,
>
> As discussed let's do a call at 1130 (UK or CET?) on Tuesday.
>
> Karl please can you confirm time and call details.
>
> Many thanks
>
> cheers
>
> Mark"

All parties agreed that a call could take place as proposed. WML's case is that this is the first time when Mr Dixon put Liverpool (acting by Mr Kane) and Messrs Riley and Grinneback of BetVictor into direct contact and was the "*Introduction*" for the purposes of clauses 1.1.4 and 4.1 of the IA. On 10 December 2013 the planned call took place between Mr Kane and Ms Crump (for LFC), Mr Riley and Mr Grinneback (for BetVictor) and Mr Dixon (for WML).

14. Whilst there is a significant amount of evidence concerning what happened thereafter, much of the detail is immaterial to the issues that arise. It is common ground that BetVictor made a proposal to LFC on 21 January 2014 by an email from Mr Grinneback to Mr Kane which came to nothing because LFC decided to stay with its existing betting sponsor, as it was fully entitled to do by operation of clause 5.5 of the IA. The offer made to LFC by BetVictor was a betting sponsorship arrangement under which BetVictor would have paid LFC between £800,000 and £900,000 in each of the three years that followed agreement but with BetVictor being entitled to break the arrangement after the end of each year.

15. At no relevant time after the failure to agree terms in 2014 did LFC terminate the IA whether under clause 8.2 of the IA or otherwise.

16. In late May 2014, there was a change of control at BetVictor, when the majority shareholder Mr Chandler sold his shares to the then minority shareholder Mr Tabor. This was followed by a change of management when Mr Meinrad became CEO. Contact continued between Mr Dixon of WML and Messrs Grinneback and Meinrad of BetVictor. However, that contact was not as agent for LFC but was as agent for BetVictor with various other clubs other than LFC. As Mr Dixon put it in paragraph 99 of his first statement:

> "On 1 February 2015, Andreas Meinrad joined BetVictor as CEO. I knew from emails with Mr Grinneback in late January 2015 that he was interested in a "big club betting partner angle". I reminded Mr Grinneback that I had sent him details for Arsenal, Chelsea and Manchester United, adding that for the moment "Liverpool as we know unavailable". I had positive meetings with Mr Meinrad on 11 March 2015 at Cheltenham and then on 24 March 2015 in Gibraltar over lunch. He signalled his interest in a partnership with a Premier League club for the exposure in Asia and UK. He instructed me to keep on dealing with Mr Grinneback on this, but made it clear that he was also going to take a personal interest in any opportunities which arose. It was clear to me that, if anything, BetVictor's next sponsorship bid in the Premier League would be bigger than its first offer to Liverpool."

17. In March 2015, Mr Kane renewed contact with Mr Dixon and emailed him a sponsorship proposal. However it is clear that at this stage Mr Dixon was taking instructions from BetVictor not LFC. As WML put it in its opening submissions, " … *[o]n instructions from Mr Meinrad and Mr Grinneback, Mr Dixon set about finding "three to four clubs for LED partnership" for BetVictor …*" As Mr Dixon put it in his email to Mr Meinrad of 28 March 2015:

> "I've spoken again to Magnus and am on with finding three to four clubs for LED partnership. Given the 666bet demise it may be that West Brom will do an immediate deal to include next season; I'll come back to you and Magnus on all this as well as intel on the bigger clubs fyi."

18. On 28 April 2015, as WML put it at paragraph 75 of its written opening submissions:

> " … Mr Grinneback instructed Mr Dixon to make offers for LED advertising to both Liverpool and Manchester City. Mr Dixon emailed and then telephoned Mr Kane to offer £880,000 for a package for the 2015/2016 season on behalf of BetVictor. Mr Kane declined, saying that the price had risen since 25 March 2015."

Contrary to what Mr Dixon said in paragraph 99 of his first statement quoted earlier, this offer was not materially "*bigger*" than that made in 2014 and was focusing on LED advertising. I explained the nature of this advertising service earlier. Mr Dixon reported back to BetVictor in terms that were consistent with him treating BetVictor as his principal and which made clear that BetVictor's proposal had been rejected by LFC. Mr Dixon's email was in these terms:

> "HI Magnus
>
> I spoke to both clubs today.
>
> They both politely declined your offer.
>
> They both said that things change by the day so I will keep talking to them every day.
>
> Where they are at:
>
> Liverpool
>
> Talking to Betfair. Marathonbet and ANother (think it's probably Databet or PokerStars) plus their Asia partner incumbent 188bet. Recent positive talks with these now mean that only an offer of $1.3m for 3 mins LED would be worth discussing! Or maybe slightly less but then a commitment for 2016/17 at £2m + for exclusive Global partner with 516 mins LED.
>
> Man City
>
> Talking to Marathonbet and ANother (as above think it's Dafabet or PokerStars) as well as incumbent 188bet. Recent positive talks suggesting that they are confident of Global partner at £1.5m +; with 3 mins LED.
>
> So as I say I'll keep talking to them both but unless something significant changes looks like we are a long way away.

> Might be worth seeing where West Brom are but really I need an offer of some sort from you e.g. £5500k 10 mins plus Asian co-operation etc...let me know.
>
> Plus I'm chasing Bournemouth.
>
> And doing the rounds..."

19. Mr Dixon introduced BetVictor to Chelsea in June 2015 and BetVictor subsequently entered into a one season sponsorship arrangement with Chelsea. Ms Valentino was at that stage employed by TRM and was involved in the transaction on the Chelsea side. Ms Valentino claims that she was responsible for bringing about that transaction. That is disputed by WML.

20. The other event of any significance in 2015 was the formal termination of the relationship between BetVictor and WML. By an email from Mr Grinneback to Mr Dixon of 29 September 2015, Mr Grinneback stated:

> "Hi Mark,
>
> This email is to clarify that there is no relationship between BetVictor or any of our companies and yourselves (Bettorlogic, you or any other representative of your company). We will immediately cease any existing discussions between you and all our staff (if any are in progress) and we want to underline that you are not representing us in any commercial discussions.
>
> Please confirm receipt of this email.
>
> Many thanks,
>
> Magnus"

Mr Dixon responded by email on 5 October 2015 in these terms:

> "Hi Magnus
>
> l'm acknowledging receipt of your recent email but I have to say I'm completely dumbfounded by all this. I'm also really upset that my great working relationships with yourself and so many at BetVictor including Neil Joyce and Paul Louis have been terminated in this way. I'm really struggling to see where I've gone wrong. As you know over a number of years I brought a number of deals to you/BV. l was clear to you during a number of discussions, and in writing, that the clubs had agreed to pay me a percentage of any of those deals, if terms were agreed between the club & BV. This meant that I wasn't going to be invoicing you for anything such as fees, expenses or commissions. Chelsea were obviously one of those clubs. Pre and post our meeting with Steve Cumming at Stamford Bridge, Chelsea confirmed an agreement to pay me if BV signed a

> betting partnership deal, and I am asking them to now honour that agreement. I'm not asking BV to pay me anything here - even though Chelsea are telling me that they have agreed with BV that BV pay us!
>
> I can only think that Steve Cumming did not properly communicate the arrangement he made with me - and obviously Steve leaving Chelsea has caused confusion. The good news is that Christian Purslow at Chelsea has now reached out and asked for a meeting. I hope and expect that this can all be resolved amicably at that imminent meeting. But it would leave me very sorry if you & I could not continue working together."

Notwithstanding this, relations were not restored and I find that the relationship between WML and BetVictor came to an end from the end of September 2015.

21. This exchange of emails is consistent with the tenor of the correspondence to which I referred earlier; namely that following the failure of BetVictor to obtain a sponsorship agreement with LFC in 2013, WML's continued contact with BetVictor had been with a view to furthering the interests of BetVictor. As is apparent on the face of the copies of the emails in the trial bundle and was accepted by Mr Dixon in his second witness statement and in his cross examination (which I refer to in more detail later) these emails were not disclosed by WML and came to light only because BetVictor supplied copies to LFC.

22. In November 2015, Ms Valentino resigned from her employment with TRM and was placed on gardening leave until she was employed by LFC, ostensibly with effect from 18 February 2018. In fact, Ms Valentino was acting on behalf of LFC from at least mid-January 2016 without TRM's agreement. Although much is made of this by WML, in reality it has no substantive impact on the issues that matter in this litigation although the fact that Ms Valentino was prepared to carry on in this fashion is relevant to an assessment of her credibility. I return to that issue later in this judgment. That LFC was prepared to treat with Ms Valentino as if she was an employee at a time when (as I find below) it knew that Ms Valentino was on gardening leave does it no credit either although I conclude that this has no impact on the credibility of Mr Kane as a witness because it was not his decision that LFC deal with Ms Valentino in this manner.

23. Ms Valentino informed Mr Meinrad of her appointment by LFC early in the new year by email. Following discussion between them, on 21 January 2016, Ms Valentino emailed Mr Meinrad using her personal email account. The opening sentence reads "… *As promised we needed a few days to put together the proposal and here it is! …*". This is significant because (as is otherwise obvious from the offer that follows) the email was written following discussions with LFC officials and secondly, it is obvious that Ms Valentino had been working with LFC officials significantly prior to 21 January 2016. All this is equally apparent from the following paragraphs, where she says:

> "You will see I have put my boss' contacts - Olly Dale, he is our Commercial Director and based in London with me, so if you are interested we can all meet up when you are over and/or we can come to see you in Gibraltar in the next few weeks."

The reference to "*my boss*" leads me to conclude that the reason she used her private email account was in order to conceal the fact that she was in effect working for LFC prior to the end of her period of gardening leave.

24. It is not necessary that I describe the offer made in any detail. In essence it provided a variety of different benefits, which Ms Valentino described as being "*... an incredible package and you get to virtually own Liverpool Football Club. (with almost 400m fans in Asia!) ...*" for an "*... investment of £4.5m per annum ...*". Ms Valentino met Mr Meinrad in London on 11 February 2016 (while still on gardening leave from TRM) and reported on the meeting to Mr Dale at LFC by email that night in these terms:

> "BetVictor: went as well as it could. From a "no" to T[raining]K[it] over text, now he's taken away both proposals and will consider them both. Positives are that he decides quickly, he IS the decision maker, and that he said he could look to do a small deal with CFC and a bigger one with us. So we will know week after next latest - I think he MAY make an offer, just not sure it will meet our ask"

25. She added at the end of her email that " *… if OK with you, I will join the calls etc but work from home until I start on Thus. Also because my mum is visiting to catch me on my last days 'off' before I start!*" This sentence is plainly consistent only with a recognition on the part of Ms Valentino to the knowledge of Mr Dale (Mr Kane's superior at LFC) that she was not permitted by the terms of her contract with TRM to commence employment with LFC at the date of this email or at any time prior to 18 February 2016 and a recognition by both that in reality she had started to work for LFC prior to the expiry of her gardening leave with TRM. It is on the basis of these exchanges that I find that LFC by at least Mr Dale knew that Ms Valentino was working at a time when she was meant to be on gardening leave from TRM.

26. The arrangement between LFC and BetVictor being considered at this stage was different from the proposal that had been considered in 2013. The 2016 proposal was significantly more expensive and much higher profile arrangement by which BetVictor would sponsor LFC's training kit with a number of associated advertising opportunities that would link BetVictor and LFC in the minds of its supporters.

27. On 18 February 2016, Mr Valentino emailed Mr Meinrad saying

> "I have officially started at LFC now, and IN CONFIDENCE, have these performance stats by Marathon Bet with us, I told you they loved the partnership!
>
> Please PLEASE keep these confidential and don't share, but for you to view:
>
> <u>*UK Sponsorship numbers*</u>*:*
>
> *LFC were responsible for **53%** of all new registrations that were directly linked to tracked UK sponsorship campaigns in 2015*

> *LFC were responsible for **51%** of all new first time depositors that were directly linked to tracked UK sponsorship campaigns in 2015*
>
> *To put that into perspective, Man Utd who are the other Club they sponsor (for £3m+) numbers are **9%** and **4%***
>
> *UK numbers in general:*
>
> *LFC tracked campaigns made up for 8.3% of all UK first time depositors in 2015 across all channels*
>
> *Registration to FTD conversion:*
>
> *53% of LFC fans that signed up for an Marathonbet account then went on to place a deposit.*
>
> *To give you other comparisons, LFC were responsible for 53% REG and 51% FTD whereas Man Utd ONLY 9% and 4%.*
>
> *We're miles ahead in terms of our KPIs, which is great news as next season we can look at extending UK customer lifetime and global account acquisition (particularly in Asia).*
>
> Do let me know when you have feedback on what I left with you : Match Day Live - Principal Partnership £4.5m or Training Kit £6m.
>
> Please consider the Interview backdrops are JUST for Principal partners and we are offering you Principal Partner type rights (LED, backdrops, digital etc) for a fraction of the price. Principal partners are only New Balance, Standard Chartered (shirt).
>
> The only way to get Marathon Bet off is to be "Principal" - they are on £2m+. and with Man Utd they pay £3m+.
>
> You've seen the CSM stats, if Asia is important, NO ONE performs like Liverpool, and as you see above, no one
>
> performs like LFC in UK too.
>
> Let me know when you are back and can talk!"

The first sentence is consistent with Mr Meinrad being aware that prior to 18 February Ms Valentino was working for LFC when she should not have been and is an acknowledgement by Ms Valentino that she had been working for LFC in January 2016 when she should not have been.

28. The italicised material would appear to be material generated by Marathonbet, then LFC's sponsor. The material was plainly commercially confidential as equally plainly Ms Valentino knew, as is apparent from her request to Mr Meinrad that he " … *Please PLEASE keep these confidential and don't share ...*".

29. This correspondence is significant for two reasons that matter. First it shows that LFC was keen to secure BetVictor as a sponsor (something that is accepted by the claimant as I explain in more detail later in this judgment) but Mr Dale, the head of LFC's marketing operation, nonetheless was content to leave it to Ms Valentino to negotiate with Mr Meinrad. This can only have been because, in the minds of LFC's senior officials, LFC's best chance of securing a training kit sponsorship agreement with BetVictor lay in leaving the task in the hands of Ms Valentino. Given that she was a very new employee that can only have been because they recognised that the transaction depended in large part on the relationship between Ms Valentino and Mr Meinrad built over time first while Ms Valentino worked for Manchester United FC then for TRM acting for Chelsea FC and while Mr Meinrad worked for other betting companies prior to joining BetVictor. This letter is also significant because its contents demonstrate the high level of trust that existed between Mr Meinrad and Ms Valentino. Were it otherwise she would not have included such obviously confidential material in an email.

30. On 8 April 2016, Mr Meinrad informed Ms Valentino that BetVictor had decided to enter into the proposed sponsorship arrangements with LFC. Ms Valentino reported this information by email on that date in these terms:

> "Hi Billy, Olly and Jo,
>
> GREAT start to the weekend and hope you return safely from China to this good news.
>
> **BetVictor want to leave CFC and partner with us.**
>
> Everyone internally at BV is convinced about the switch and he said there was no comparison between the pitch we did vs how Christian and CFC presented.
>
> Feedback on the offer:
>
> - He feels he can trust and will be better looked after at LFC
>
> - He will appoint 2ppl on his team to purely work on LFC
>
> - ASIA and Jurgen are big factors in switching
>
> - Our activity and major impact we have in China is key
>
> - CFC put forward a similar proposal (because he had to send them what he wanted, which he didn't like, he constantly had to chase them for a proposal!) and the rights are therefore similar for £4.5m but with no TK
>
> - **Investment proposed: He knows its £5M per annum for 3 years. He said "look CFC put forward 4.5m, I don't want to negotiate, I leave it up to you if there is anything you can do to help us here, we are a small/growing business, so if there is ANYTHING you could do I would appreciate it"**

- Another big factor is Michael Owen. Ideally they would like him to be exclusive with them, they know he has other betting deals — can we help there?

- They are SUPER excited to be working with us

- He said he constantly had to chase Christian, and now that the fee is 4.5m (on a proposal Andreas had to send him), copying ours, he now chases him all day!

NEXT STEPS:

- He has a Shareholder Call on Tues NIGHT where he has to present the £15m investment with LFC. He doesn't foresee any problems

- Asked if we can start working on the contract in super confidential matter. He needs to inform CFC of his decision so if we could put a neutral name in the contracting party until he has spoken to CFC/Shareholder that would help

- He'd be keen to wrap it up soon — as I know from first-hand experience 'time kills deals' so I would encourage prioritising this Principal deal with our legal if possible

- Possible request in the contract from them will be that IF China shuts down for betting or there is a massive regulation block to betting, because that is 60% of his business, if there is language to renegotiate terms or terminate etc.

- Jo, I pull together a Deal Brief first thing Monday ok?

Having done 2 x deals with him (bwin at MU and BetVictor at CFC) and you have met him, he gets stuff done and is reliable. And will get it done quickly.

FOR US TO THINK ABOUT:

- Should we worry about Christian suing or something because he's come to LFC? In fairness Andreas asked me, and I've known him for years. I don't know why but I am paranoid about CP and consequences as he's a bad loser

- Should we now ask Andreas for the new BetVictor logo for New Balance?

Let me know your thoughts, surely we can start drafting the contract and get ahead of ourselves even if we need to hear from Hankook?"

The points that emerge from this email are firstly that the impact of Asia was a major factor in the decision making but not the only one that led to BetVictor's decision and

secondly that Ms Valentino was a major driving force for the transaction. This is apparent from the fact that Mr Meinrad informed her rather than any of the more senior executives at LFC (whom he had met at a meeting in late March 2016) of BetVictor's decision to accept LFC's proposal, from the apparently sincere effusive congratulations from the various addressees of the 8 April email, from Ms Valentino's concern about the reaction of "*Christian*" (the Managing Director of Chelsea), her unforced comment that it was "*Andreas*" (i.e. Mr Meinrad) who approached her initially and from the fact that ultimately LFC paid Ms Valentino a substantial bonus in respect of the transaction.

31. Following this there were detailed negotiations that I need not take up time describing (for the reasons explained earlier in relation to the IA) that led to the signing of the 2016 sponsorship agreement on 27 May 2016.

32. On 1 July 2016, LFC announced the signing of the 2016 sponsorship agreement. On 4 July 2016, WML (acting by Fintan Farrell) sent an email to Mr Kane, with a copy to Mr Dixon, congratulating LFC on the deal and then saying "*Jonathan can you let me have details for billing our commission …*" to which Mr Kane responded:

> "Hi Fintan,
>
> Nothing to do with me I'm afraid.
>
> It was a deal struck between my colleague Raffaella Valentino and the new CEO at BetVictor Andreas Meinrad. Raffy used to work at Man Utd and did their betting deal with BWIN through Andreas so they have history.
>
> Jonathan"

Whilst that letter viewed on its own and isolation from what had gone before might be characterised as self-serving, in fact it is entirely consistent with the tenor of the internal LFC material to which I have referred above. WML maintains however that I should conclude that notwithstanding what he says in this email, Mr Kane provided behind the scenes support to Ms Valentino, particularly by suggesting she emphasise the Asia synergy that WML maintain it had identified as a basis for introducing Mr Riley and Mr Grinneback to Mr Kane in December 2013. I return to that issue when considering the factual issues relevant to LFC's effective cause defence. Whilst the confidential commercial information that Ms Valentino supplied to Mr Meinrad referred to earlier could only have come from senior officials within LFC, there is no evidence that it was obtained from or provided by Mr Kane.

33. WML maintains that having affected an Introduction to BetVictor within the meaning of clause 1.1.4 of the IA by its email of 6 December 2013, the 2016 sponsorship agreement was a Relevant Agreement within the meaning of clause 4.1 of the IA because it was " *… a legally binding agreement for the grant of Sponsorship Rights entered into during the Introduction Period between LFC and a Prospective Client who was Introduced by the Introducer …*" and thus it became entitled to recover a commission under the terms of the IA by reference to the 2016 sponsorship agreement. LFC's factual case is in essence as stated by Mr Kane in the email referred to above. The 2016 deal was brought to LFC by Ms Valentino, who personally negotiated it with Mr Meinrad initially and with him and Mr Grinneback in the later stages.

The Out of Time Defence

34. Clause 1.1.8 defines a Relevant Contract as being one entered into " *... during the Introduction Period ...*". Although the operative phrase is capitalised, thereby suggesting that it is a defined phrase, in fact it is not defined expressly anywhere within the agreement. There is no evidence as to how this came about and absent a rectification claim (and there is no such claim) such evidence would be inadmissible.

35. LFC's case as to the true meaning and effect of this phrase is pleaded in paragraphs 21-23 of its Defence in these terms:

> "21. The terms of the Alleged Agreement fall to be construed in light of its commercial purpose and the Alleged Agreement as a whole. In particular:
>
> a. recital 3B makes clear that [WML] is to be remunerated, if specific contacts that it introduces subsequently purchase services from LFC;
>
> b. clause 2.1 makes clear that [WML] is to be appointed on a non-exclusive basis as an Introducer; and
>
> c. [WML] stood to receive significant levels of Commission under clause 4.2, if the introduction of its contacts subsequently resulted in a Relevant Contract.
>
> 22. A "*Relevant Contract*" is defined, pursuant to clause 1.1.8, as "*...a legally binding agreement for the grant of Sponsorship Rights entered into* ***during the Introduction Period****...*" (emphasis added). Paragraph 21 above is repeated. Further, the reference to the "*Introduction Period*" in clause 1.1.8 falls to be construed in light of the expectation of the parties that Introductions would be made promptly, as reflected in clause 2.2.2.
>
> 23. By using the words "*Introduction Period*", in the specific context of the Alleged Agreement, the parties evinced a mutual intention that Commission should only be payable if there was a reasonable nexus in time between the date of the Introduction and the date of a legally binding agreement for the grant of Sponsorship Rights. The Sponsorship Agreement was entered into almost two and a half years after the Introduction. It is denied that the Sponsorship Agreement was entered into during the Introduction Period, because a period of almost two and a half years is not a reasonable time period after the Introduction. For that reason, the Sponsorship Agreement does not amount to a Relevant Contract and no Commission is payable."

Contractual Construction – The Relevant Principles

36. In summary the relevant principles are as follows:

i) The court construes the relevant words of a contract in its documentary, factual and commercial context, assessed in the light of

a) the natural and ordinary meaning of the provision being construed,

b) any other relevant provisions of the contract being construed,

c) the overall purpose of the provision being construed and the contract in which it is contained,

d) the facts and circumstances known or assumed by the parties at the time that the document was executed, and

e) commercial common sense; but

f) disregarding subjective evidence of any party's intentions

– see Arnold v. Britton [2015] UKSC 36 [2015] AC 1619 per Lord Neuberger PSC at paragraph 15 and the earlier cases he refers to in that paragraph;

ii) A court can only consider facts or circumstances known or reasonably available to both parties that existed at the time that the contract was made – see Arnold v. Britton (ibid.) per Lord Neuberger PSC at paragraph 21;

iii) In arriving at the true meaning and effect of a contract, the departure point in most cases will be the language used by the parties because the parties

a) have control over the language they use in a contract; and

b) must have been specifically focussing on the issue covered by the disputed clause or clauses when agreeing the wording of that provision

– see Arnold v. Britton (ibid.) per Lord Neuberger PSC at paragraph 17;

iv) Where the parties have used unambiguous language, the court must apply it – see Rainy Sky SA v. Kookmin Bank [2011] UKSC 50 [2011] 1 WLR 2900 per Lord Clarke JSC at paragraph 23;

v) Where the language used by the parties is unclear the court can properly depart from its natural meaning where the context suggests that an alternative meaning more accurately reflects what a reasonable person with the parties' actual and presumed knowledge would conclude the parties had meant by the language they used but that does not justify the court searching for drafting infelicities in order to facilitate a departure from the natural meaning of the language used – see Arnold v. Britton (ibid.) per Lord Neuberger PSC at paragraph 18;

vi) If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other – see Rainy Sky SA v. Kookmin Bank (ibid.) per Lord Clarke JSC at paragraph 21 – but commercial common sense is relevant only to the extent of how matters would have been perceived by reasonable people in the position of

the parties, as at the date that the contract was made – see Arnold v. Britton (ibid.) per Lord Neuberger PSC at paragraph 19;

vii) In striking a balance between the indications given by the language and those arising contextually, the court must consider the quality of drafting of the clause and the agreement in which it appears – see Wood v. Capita Insurance Services Limited [2017] UKSC 24 per Lord Hodge JSC at paragraph 11. Sophisticated, complex agreements drafted by skilled professionals are likely to be interpreted principally by textual analysis unless a provision lacks clarity or is apparently illogical or incoherent – see Wood v. Capita Insurance Services Limited (ibid.) per Lord Hodge JSC at paragraph 13 and National Bank of Kazakhstan v. Bank of New York Mellon [2018] EWCA Civ 1390 per Hamblen LJ at paragraphs 39-40; and

viii) A court should not reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight, because it is not the function of a court when interpreting an agreement to relieve a party from a bad bargain - see Arnold v. Britton (ibid.) per Lord Neuberger PSC at paragraph 20 and Wood v. Capita Insurance Services Limited (ibid.) per Lord Hodge JSC at paragraph 11.

37. Although the IA was drafted by LFC's in house lawyers at the time, it is as Mr Anderson QC puts it on behalf of LFC in paragraph 62 of his opening submissions, " … *on any view, a poorly drafted document* ..." not least because of the deficiencies to which I have referred already that give rise to the issue of construction that I am now considering. In those circumstances and because on any view in relation to the issue I am now considering the relevant provision lacks clarity and is both illogical and incoherent, this not a case where the document should be interpreted principally by textual analysis. However that does not detract from the point that the departure point should be the language used by the parties for each of the reasons identified by Lord Neuberger summarised at paragraph 36(iii) above.

Construction – Discussion

38. LFC submit that it is wrong as a matter of principle and law for the court simply to ignore the phrase " … *entered into during the Introduction Period...*" and that in the absence of an express definition it is necessary for the court to decide what a reasonable person having all the background knowledge which would have been available to the parties would have understood it to mean. I agree that in principle this approach is correct and that such an approach is consistent with authorities such as The Tropwind [1982] 1 Lloyd's Rep 232, Novus Aviation Limited v Alubaf Arab International Bank BSC [2017] 1 BCLC 414, and Westvilla Properties Ltd v Dow Properties Ltd [2010] 2 P & CR 19 although each was concerned with points that were different from those that arise in this case. Generally to reject an entire phrase as meaningless should be the last resort, reserved only for those cases where it is impossible to make sense of the language used after having recourse to the facts and circumstances known or assumed by the parties at the time that the document was executed, and commercial common sense.

39. For the avoidance of doubt however, I reject LFC's submissions based on the decision of the Supreme Court in Egon Zehnder Limited v. Tillman [2019] UKSC 32; [2020] AC 154 at paragraph 87. That authority was concerned exclusively with the approach a court should adopt when considering clauses that are alleged to be in restraint of trade and the extent to which a relevant provision can be saved by excising unenforceable provisions. It says nothing about the correct approach to the construction of a contract in the circumstances that arise in this case and there is nothing within it that suggests the approach set out above is wrong or should be modified. In summary, the correct approach is that set out in the general principles summarised above subject to the qualification that where it is impossible to make sense of the language used in light of the facts and circumstances known or assumed by the parties at the time that the document was executed and commercial common sense then a court is entitled to treat that language as if it was not present in the agreement.

40. In my judgment, applying the principles summarised above, it is necessary to start with any other relevant provisions of the contract being construed in order to see whether that assists in resolving the construction issue that arises.

41. LFC relies on clause 2.2.2, which provides that WML would use its best endeavours to make "*Introductions*" of the "*Prospective Clients*" and " … *in any event shall ensure that it has introduced LFC to at least one Prospective Client within 30 days of signature of this Agreement*." This is of little or no assistance in resolving the issue that arises because it says nothing about the intended duration of the IA. Had it been intended that the agreement would come to an end if WML had not " … *introduced LFC to at least one Prospective Client within 30 days of signature of this Agreement …*" then the parties could and would have said so but did not. LFC was entitled to terminate for cause under clause 8.1.1 of the IA but there is no express provision that provided for termination following noncompliance with clause 2.2.2. This suggests that the parties intended that LFC could but did not have to terminate for breach of that provision and thus is not consistent with the Introduction Period being that referred to in clause 2.2.2 or with it being intended that the IA should have any fixed or indeterminate term other than one that depended on termination of the IA in accordance with its terms – that is in the case of LFC by 30 days' notice.

42. In my judgment the only contractual provisions within the IA that provide meaningful assistance on the meaning of the phrase in issue are clause 7, which is consistent with the intention of the parties being that the IA would continue in force until terminated in accordance with clause 8, Clause 8.2, which permitted LFC to terminate the IA at any time by giving the required period of notice and clause 9, which regulates what rights can accrue after termination. This is consistent with the parties having intended that the IA should continue in effect unless terminated in accordance with its terms at which point neither party would have any further obligations – see clause 9.1 – save and to the extent they arose from the post-termination continuation of the clauses referred to in clause 9.2 or had accrued prior to termination – see clause 9.3.

43. Clauses 9.2 and 9.3 are designed to preserve the right of WML to recover commission following termination of the IA either if all the conditions for the payment of a commissions have been met before termination (which is the effect of clause 9.3) or where a relevant Introduction had been affected before termination but a Relevant Contract (which is governed by clause 4) was entered into only after termination (which

is the, or an, effect of clause 9.2, because it provides that clause 4 is to continue in operation notwithstanding termination). Since clause 2 is not preserved no rights could accrue after termination unless WML Introduced a Prospective Client before termination but a Relevant Contract was entered into after termination. In such circumstances, WML would be entitled to recover any commission that it would have otherwise been entitled to but for the termination because clause 9.2 provides that clauses 1 and 4 will continue to apply notwithstanding termination.

44. This textual material would lead a reasonable person with the parties' actual and presumed knowledge to conclude that (subject to the Effective Cause issue considered later in this judgment) clause 1.1.8 of the IA was intended by the parties to refer to any legally binding agreement for the grant of sponsorship rights entered into by LFC with a Prospective Client either prior to termination of the IA or thereafter with a Prospective Client to whom LFC had been Introduced prior to termination of the IA. This makes clear commercial sense because it ensures that LFC could not avoid the IA by terminating after an Introduction but before entering into a Relevant Contact. However, before reaching a final conclusion as to the meaning of the phrase it is necessary to consider whether any of the relevant factual matrix suggests a different meaning from that which I consider is to be derived from the terms of the rest of the IA and an argument by LFC that such a construction works commercial absurdity.

45. Turning first to the contextual circumstances known or assumed by the parties at the time that the document was executed, LFC relies firstly on the dynamics of football sponsorship that I summarised earlier in this judgment. The football season in England runs from July to June of each year (in a normal season) and sponsorship arrangements almost invariably run for at least one season so defined or multiples of such seasons – see the evidence of Mr Dixon at T1/52/14-18. Secondly, all parties knew or ought reasonably to have known that it was necessary for sponsorship agreements to be concluded in sufficient time prior to the start of the season to which they are related to enable all necessary preparatory steps to be taken including by way of example the design of kit with all the relevant logos displayed as agreed and then manufactured as well as the design and manufacture of all the other design and promotional material that is necessary to give effect to whatever sponsorship arrangements have been made. Thirdly, LFC submit that it is relevant to take account of the commercial requirements of LFC when it responded positively to Mr Dixon's original cold call - LFC was looking and said at the time it was looking for a betting sponsor for the 2014/15 season. That was (I accept) the sole focus of Mr Dixon's efforts during 2013.

46. The factual matrix matters referred to above do not assist on the construction issue that arises. That a sponsorship agreement would be required to start at the beginning of a season and that time was required prior to the start of the relevant season to make the necessary preparations says nothing about when the "*Introduction Period*" was to end. The requirement for a betting sponsor for the 2014/5 season does not assist on this issue either because the parties then entered into contractual negotiations after the initial exchange of emails that culminated in the IA, a written agreement subject to an entire contract provision, that does not anywhere limit the definition of a "*Relevant Agreement*" to one applicable to, or only to, the 2014/5 season and Recital B is inconsistent with the scope of the IA being confined in this way.

47. Finally, LFC submit that WML's own construction gives rise to commercial absurdity because it would mean that LFC would be entitled to terminate the IA before executing a Relevant Agreement thereby depriving WML of its commission. I reject that analysis because I do not accept that is the true meaning and effect of the IA. As I have explained at length above, the effect of clause 9.2 is to continue in force clause 4 of the IA notwithstanding the termination of the IA. This is an entirely conventional anti-avoidance provision that it makes obvious commercial sense for the parties to have included. In any event, LFC's absurdity submission ignores the point that what appears to be the correct construction should be adopted even where that appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. It is not part of the function of a court carrying out a construction exercise that it should in effect redraft the agreement so as to supply terms that have not been included, that contradict other express terms and which suit one party rather than another as events have unfolded.

48. In my judgment, the true construction of the phrase " ... *entered into during the Introduction Period* …" is that I had arrived at provisionally having considered the other terms of the IA as a whole. That construction reflects the intention of the parties to be collected from the rest of the provisions of the IA, and gives meaning to the words in dispute that reflects what a reasonable person with the parties' actual and presumed knowledge would conclude the parties had meant by the language they used. It is difficult to see how the parties could have intended to define " … *Introduction Period ..."* in any other way given the terms of the Recitals and in particular Recital B and clauses 7, 8 and 9. Such a construction is not contradicted by any of the relevant contractual matrix and is not commercially absurd.

The Effective Cause Issue

Implied Terms – General Principles

49. The principles applicable to the implication of terms were comprehensively set out by the Supreme Court in Marks and Spencer Plc v. BNP Paribas Securities Services Trust Co (Jersey) Limited [2015] UKSC 72; [2016] AC 742 and applied in Ali v. Petroleum Company of Trinidad and Tobago [2017] UKPC 2; [2017] ICR 531, Ukraine v. The Law Debenture Trust Corp. PLC [2018] EWCA Civ 2026 and UTB LLC v. Sheffield United Limited [2019] EWHC 2322 (Ch). In summary and in so far as is material for present purposes:

    i) Terms are to be implied only if to do so is necessary in order to give the contract business efficacy or to give effect to what was so obvious that it goes without saying and only if and to the extent that without the terms contended for the contract would lack commercial or practical coherence;

    ii) It is a necessary but not a sufficient requirement that the term that a party seeks to have implied appears fair or is one that the court considered that the parties would have agreed if it had been suggested to them;

    iii) The terms to be implied must be capable of clear expression and not contradict the express terms of the contract concerned; and

iv) In most, possibly all, disputes about whether a term should be implied into a contract, it is only after the process of construing the express words is complete that the issue of an implied term falls to be considered because it is only after the construction exercise has been undertaken that the necessity question and the allied question whether the terms sought to be implied contradict the express terms of the contract concerned can be answered – see the judgment of Males LJ in Equitas Insurance Limited v. Municipal Insurance Limited [2019] EWCA Civ 718; [2019] 3 WLR 613.

As was made clear by all the judgments in Marks and Spencer Plc v. BNP Paribas Securities Services Trust Co (Jersey) Limited (ibid.) and emphasised by Lord Hughes in Ali v. Petroleum Company of Trinidad and Tobago (ibid.) at paragraph 7, the " … *concept of necessity must not be watered down. Necessity is not established by showing that the contract would be improved by the addition. The fairness or equity of a suggested implied term is an essential but not a sufficient precondition for inclusion*." As he also added: " … *if there is an express term in the contract which is inconsistent with the proposed implied term, the latter cannot, by definition, meet these tests, since the parties have demonstrated that it is not their agreement*." or as Fancourt J put it in UTB LLC v. Sheffield United Limited (ibid.) at paragraph 203: " … *the principle [is] that (as restated in the Marks and Spencer case) no term may be implied into a contract if it would be inconsistent with an express term*".

Ascertaining Whether a Commission Agreement is subject to an "Effective Cause" Provision – General principles

50. It is next necessary to consider the principles applicable to commission agreements. LFC submit that subject to express provision the general principle is that where the remuneration of an agent is a commission on a transaction, he is not entitled to such commission unless his services are the effective cause of the transaction being brought about. It is submitted that this principle has been upheld in any number of cases concerning estate agents and brokers over many years and a similar approach has been adopted in relation to commission agency relationships other than estate agency – including insurance brokers, shipbrokers, and football players agents. The justification for this approach is twofold – first, as Lord Neuberger said in paragraph 20 of his judgment in Foxtons v Pelkey Bicknell [2008] EWCA Civ 419, the implication of such a term will " … *minimise the risk of a seller having to pay two commissions* …" and secondly because, as Longmore LJ put it in Glentree Estates Limited v. Favermead Limited [2010]EWCA Civ 1473 at paragraph 15: "… *an agent is usually expected to do more work to earn his commission than merely to effect an introduction, e.g. to participate in what may be either cursory or lengthy negotiations with the purchaser*."

51. Mr Sutcliffe submits that authorities, the outcome of which depend upon the particular language of particular contracts, will not assist in resolving a dispute concerning different facts and different contractual wording. I agree. The only value of the authorities concerning when commissions become payable is limited to the general principles if any that they identify.

52. In my judgment the correct approach is that set out in Foxtons v Pelkey Bicknell (ibid.), an estate agency case, where Lord Neuberger authoritatively re-stated the applicable principles at paragraph 18 in these terms:

> "Article 57 of Bowstead and Reynolds on Agency (18th edition) states that, at least usually, "*where the remuneration of an agent is a commission on a contract to be brought about, he is not entitled to such commission unless his services were the effective cause of the transaction being brought about*". The implication of such an "effective cause" term in an agency contract appears to have been first raised by Henn Collins MR in the relatively briefly reported case of Millar Son & Co v Radford (1903) 19 TLR 575. However, while such a term will relatively readily be implied into an estate agency contract, it was made clear by Viscount Simon in Luxor (Eastbourne) v Cooper [1941] AC 108 at 119 that, where there is an argument whether or not such a term is to be implied, the issue should be resolved by reference to the normal rules relating to implication of terms."

The "*normal rules"* applicable to the implication of terms are those I set out at the start of this section of this judgment. All I would add is that applying those general principles it is necessary first to decide whether as a matter of construction the contractual terms agreed between the parties include an effective cause provision and if not whether there is any express provision that is inconsistent with the implication of an effective cause term and whether the implication of such a term is necessary in order to give the contract concerned commercial or practical coherence.

53. It follows from this and applying the general principles set out above that it is necessary to decide:

    i) whether, as a matter of construction, the IA is to be construed as including an "Effective Cause" requirement ("Issue (i)"). If the answer is affirmative then it is necessary to move to Issue (iv) below;

    ii) If the answer to Issue (i) is negative, it is next necessary to decide whether, again as a matter of construction, the IA includes any provision that would be contradicted by or inconsistent with the implication of an "Effective Cause" term ("Issue (ii)"). If the answer is affirmative then that is the end of the effective cause issue because applying general principles the implication of an effective cause term would be impermissible in those circumstances and WML would be entitled to payment;

    iii) If the answers to Issue (i) and (ii) are both negative, the next stage is to decide whether the implication of such a term is necessary in order to give the IA commercial or practical coherence ("Issue (iii)");

    iv) Finally, if it is concluded that either as a matter of construction or by necessary implication the IA is subject to an effective cause provision it will be necessary to decide whether as a matter of fact WML was the or an effective cause of the agreement entered into by LFC with BetVictor in May 2016 ("Issue (iv)").

54. *Issue (i)*

    The general principles applicable to the construction aspects of this exercise are those set out earlier.

55. By clause 2.1 of the IA, LFC appointed WML " *... on a non-exclusive basis to Introduce the Prospective Clients to LFC on the terms of this agreement*." The non-exclusive nature of the appointment plainly created the risk of having to pay two commissions unless the contract was subject to an effective cause qualification, not least because WML has a number of direct competitors in its chosen market and such was known to all parties at or before the time when the IA became binding between them. Mr Dixon accepted that this was so in his oral evidence:

> "Q. Now, the agreement in this case between Liverpool and Winlink was non- exclusive, do you recall? We can turn it up if you like. Your agency was not an exclusive or sole agency?
>
> A. Absolutely. I recall that from the agreement, yes .
>
> Q. Very good. So -- sorry, this is obvious, but forgive me -- so other agents, a Pitch or a SportQuake, it doesn't matter -- other agents could also introduce deals to Liverpool with BetVictor, Stan James or Betfred?
>
> A. Yes, from that agreement, yes."

Mr Sutcliffe submits that in fact LFC did not have to pay two commissions. This is immaterial since the issue that I am currently concerned with must be judged by reference to the facts and circumstances known or assumed by the parties at the time the IA was executed.

56. The IA was an agreement by which WML took on obligations. The IA contemplated that WML would comply with all reasonable and lawful instructions of LFC. There is nothing within the IA that suggests this excluded participating in negotiations with any of the Prospective Clients. Although Mr Dixon maintained that all that WML was expected to do was make an Introduction I reject that evidence as inconsistent with the express terms of the IA and with what happened once the IA had been signed, when much of the discussion between the parties was conducted by and via Mr Dixon.

57. The Recitals are, and in particular Recital B is, consistent with the parties intending that entitlement to commission was intended to be dependent on any Introduction by WML being the effective cause of any Relevant Contract by reference to which commission was to become payable to WML. The Recitals provided that:

> "A. The Introducer has a large number of contacts, and can meet further contacts who may be interested in purchasing the Sponsorship Rights from LFC.
>
> B. The LFC wishes to be introduced to such contacts, and is willing to pay the Introducer a commission on the terms of this agreement if such contacts purchase services from it and the Introducer is willing to effect these introductions in return for this commission."

Recital B emphasises that LFC was willing to pay commission " … *if such contacts purchase services from it* …". The phrase "*...such contacts ...*" is a reference back to

those referred to in Recital A – that is to contacts of WML – to which LFC wished to be introduced as expressly stated in the opening phrase of Recital B. Whilst the recitals are silent as to whether an introduction need be an effective cause of the contact purchasing services by reference to which commission becomes payable, in my judgment construing them subject to such a requirement reflects what a reasonable person with the parties' actual and presumed knowledge would conclude the parties had meant by the language they used. The alternative – that LFC wished to pay commission for introductions that were not an effective cause of the purchase by reference to which commission was to be paid makes no commercial sense, is unreasonable to a high degree and would have made no commercial sense to either party at the time the IA became binding between them.

58. WML's entitlement to commission accrued " … *if a Prospective Client Introduced by the Introducer enters into a Relevant Contract.*" – see clause 4.1 of the IA. A Relevant Contract is defined contractually in clause 1.1.8 as meaning a contract between LFC and a Prospective Client who was Introduced by WML. Prospective Client is defined as three companies operating in the betting sector, each of whose names is incompletely stated. Although the definition of Introduction is poorly expressed, it is apparent that what the parties intended to mean by Introduction was the introduction by WML to LFC of an individual or individuals at the Prospective Client who knew one or more individuals at WML and was, or were, of sufficient seniority to authorise or recommend the purchase of the Sponsorship Rights from LFC. These provisions are much more consistent with the parties intending that for commission to become payable the relevant introduction had to be an effective cause of the Relevant Contract by reference to which commission would become payable.

59. Clause 9.2 is consistent with the parties having intended that any Introduction be an effective cause of any Relevant Contract by reference to which commission was to be payable. As I have explained this provision is one by which the interests of WML were protected in the event of a termination after an Introduction but before a Relevant Contract was entered into. By preserving the continued application of amongst others clause 4 following a termination, it preserved the right of WML to recover commission by reference to a Relevant Contract entered into after termination of the IA following an Introduction made prior to termination. It is highly improbable that the parties would have included a provision of this sort unless they also intended that commission would be payable under clause 4 only if the Introduction was the effective cause of a Relevant Contract.

60. On the claimant's construction, an entitlement to commission would arise at any time after an Introduction was made as long as the "*Prospective Client*" concerned entered into a Relevant Contract even though there was no causative link between the Introduction and the conclusion of the Relevant Contract, as long as the IA had not been terminated. On WML's construction of the IA, therefore, a commission would become payable under it in the following hypothetical circumstances:

i) In 2013, LFC and WML enter into the IA and in 2014, WML introduced A, the then marketing director of LFC to X, then the managing director and sole shareholder in D Limited;

ii) In 2016, X sold his shares in D Limited to Y and Z was appointed managing director of D Limited in place of X;

iii) In 2017, C was appointed marketing director of LFC in place of A; and he appointed E Limited on similar terms to those set out in the IA without knowing of the existence of the IA;

iv) In 2018, C and Z are introduced to each other by the CEO of E Limited and Z and C then agree a Relevant Contract between D Limited acting by Z and LFC acting by C with support from E Limited as necessary; and

v) LFC then paid commission to E Limited in accordance with the contract between LFC and E Limited.

That a commission would be payable (or could have been intended by either WML or LFC to become payable) to WML in such circumstances is obviously a very unreasonable outcome when viewed from the perspective of the parties to the IA down to the date when it became effective between them, is contrary to business common sense, not least because it exposed LFC to the requirement to pay commission even though the Introduction had no causative link with the Relevant Contract and because of the obvious risk of having to pay two commissions by reason of WML having been appointed from the outset on a non-exclusive basis and is not what a reasonable person would have understood the IA to have meant at the date it became binding between the parties. This is so on the assumption that the IA had not been terminated but applies with equal force where as I have concluded, the parties had entered into an agreement that included an anti-avoidance provision that enabled WML to claim commission for Relevant Contracts that were entered into after termination following an Introduction that took place prior to termination.

61. The language in the IA does not clearly and unambiguously disclose an intention by the parties to achieve such an unbusiness-like outcome. In my judgment very clear language would be required before a court could conclude that the parties intended such an outcome – see by way of example the language used in the agreement considered in Dashwood v Fleurets Ltd [2007] EWHC 1610 (QB), Glentree Estates v Favermead [2010] EWCA Civ 1473 and Watersheds v Simms [2009] EWHC 713 (QB). A reasonable person with the parties' actual and presumed knowledge as at the date when the IA became binding between them would conclude that the parties had intended that a commission will become payable under clause 4.1 only if the "*Prospective Client*" entered into a "*Relevant Contract*" as a result of the Introduction by WML to LFC of the individuals referred to in clause 1.1.4 of the IA – that is individuals of sufficient seniority to authorise or recommend the purchase of the Sponsorship Rights by the Prospective Client from LFC.

62. *Issue (ii)*

Issue (ii) does not arise given my conclusions on Issue (i). However, it necessarily follows from what I have said above concerning Issue (i) that there are no express terms within the IA that contradict or are inconsistent with the implication of an effective cause term. The contract is simply silent on the issue that arises, if I am wrong to have concluded Issue (i) as I have done. Mere silence does not does not give rise to inconsistency unless there are other provisions within the agreement that make clear an

intention that commission would be payable irrespective of whether the introduction was an effective cause of a transaction that otherwise triggers the payment of commission – see by way of example Sadler v Whittaker (Unreported, 15 October 1953). As I have said there are no such provisions within the IA.

63. *Issue (iii)*

This issue does not arise in light of the conclusions set out in relation to Issue (i). However, I set out my conclusions on Issue (iii) in brief in case I should be wrong in the conclusions that I reached concerning Issue (i).

64. Had I concluded that that I was not able to construe the IA in the way I have construed it above, I would nonetheless have concluded, as set out in paragraph 62 above, that there are no express terms within the IA that contradict or are inconstant with the implication of an effective cause term.

65. The IA lacks commercial or practical coherence in the absence of an implied term to the effect that that a commission would become payable under clause 4.1 only if the "*Prospective Client*" entered into a "*Relevant Contract*" as a result of the Introduction by WML to LFC of the individuals referred to in clause 1.1.4 of the IA. My reasons for concluding that the IA lacked commercial coherence in the absence of such an implied term are those set out in relation to Issue (i). In those circumstances it is plainly necessary that an implied term to the effect I have mentioned be implied in order to give the IA business efficacy or to give effect to what was so obvious that it goes without saying and so prevent it from taking effect in the entirely unreasonable and uncommercial outcome that would otherwise result.

66. *Issue (iv)*

WML submits that whether or not the IA is to be construed as subject to an effective cause qualification or is subject to an implied term to that effect takes LFC nowhere because on proper analysis WML was the or an effective cause of the 2016 sponsorship agreement between BetVictor and LFC.

67. LFC submits that where a contract is construed as subject to an effective cause qualification or is subject to an implied term to that effect, the effect of such a provision is that summarised in Article 57 in Bowstead & Reynolds on Agency (21st Edition, 2019) – that is that the putative recipient of commission " … *is not entitled to such commission unless his services were the effective cause of the transaction being brought about …*". There was a debate between the parties as to whether what is required to be proved by the claimant was that it was an as opposed to the effective cause of the Relevant Contract. The debate in the context of this case is a sterile one. Although the context was very different from the facts of this case, I respectfully adopt the approach identified by Rix J (as he then was) in Harding Maughan Hambly v CECAR [2000] 1 All ER (Comm) 225 where having commented on the debate concerning the use of the definite or indefinite article concluded at 251G-J:

> "In this connection I am impressed by two citations to be found in Bowstead and Reynolds under art 59. One is a passage from the judgment of Barwick CJ in L J Hooker Ltd v W J Adams Estates Pty Ltd (1977) 138 CLR 52 at 58, cited for the

> submission that the word 'effective' may be more important to stress than either the definite or the indefinite article: 'The factual inquiry is whether a sale is really brought about by the act of the agent.' The other is the definition of effective cause from the American Law Institute's Second Restatement of Agency (1958) para 448, to this effect:
>
> > '… an agent is an "effective cause" … when his efforts have been sufficiently important in achieving a result for the accomplishment of which the principal has promised to pay him, so that it is just that the principal should pay the promised compensation to him.'
>
> The learned editor comments that this definition is open to the objection that it begs the question. It is, but on the whole it seems to me to be none the worse for that. It articulates the thought that the decision on causation is a matter of common sense informed by its context and designed to produce a just result." [Emphasis supplied]

The debate concerning the use of the definite or indefinite article may be material in some cases – it may be for example where the claim concerns two agents each claiming a commission in respect of the same transaction. However, that is not the issue that arises in this case. In summary, I accept that the factual issue to be determined is that identified by Mr Sutcliffe in paragraph 82(1) of his closing submissions - that is whether the agent or intermediary "*brought about*" the transaction - as long as (a) it is borne in mind that " *... where an agent is asking for commission upon a certain transaction he has got to show that he was an efficient cause of the transaction coming about. It is not enough to show that he was the introducer of the two parties because that is merely a causa sine qua non and may not be the efficient cause ...*" – see McNeil v. Law Union & Rock Insurance Company Limited (1925) 23 Lloyds Rep. 314 *per* Branson J at 316 following earlier Court of Appeal authority to similar effect; and (b) that the issue is approached in the manner identified by Rix J in the emphasised part of the extract from his judgment in Harding Maughan Hambly v CECAR (ibid.) set out above.

68. I now turn to the factual submissions of the parties.

69. WML focus on what happened between 2013 and 2015. However, as I said earlier in this judgment, the transactions being considered then were very different from that concluded in 2016 and none of the transactions being considered between 2013 and 2015 came to fruition.

70. The 2014 proposal was for a one year global betting partnership at a price to be paid by BetVictor of under £1m. That did not come to fruition because LFC opted for a two year continuation of its relationship with its incumbent betting partner. During 2015, as I explained earlier, WML's relationship was with BetVictor not LFC. The main focus of the discussions during that period was on obtaining LED advertising time. That in itself is very different from the scope of the sponsorship agreed in 2016. A number of premiership clubs were being considered by or on behalf of BetVictor in 2015 of which LFC was one. This culminated on 28 April 2015 with an instruction from BetVictor to

Mr Dixon to make offers for LED advertising to both LFC and Manchester City FC – see paragraph 104 of Mr Dixon's first statement where he states:

> "On 28 April 2015, Mr Grinneback rang me from Asia (I think it was Kuala Lumpur or Singapore). We discussed Liverpool and he instructed me to make an offer of £880,000 for a betting package including 3 mins LED. He said that Mr Meinrad was happy with this. He also instructed me to make an offer to Manchester City on the same telephone call.
>
> 105. I then sent an email to Mr Kane:
>
> "hi mate, Betvictor - how much LED could they get for c £800k - £1.2m; under what designation?"
>
> 106. I then spoke to Mr Kane and said I was delighted to make an indicative offer on behalf of BetVictor of £880,000 dependent on 3 minutes LED advertising. Mr Kane thanked me but suggested that there was now more interest than there had been at the end of March when he had sent me the latest proposals for BetVictor; and that there was now a minimum ask of £1.3 million per season."

This is significant because (a) it shows as I have said earlier that at this stage WML were acting for BetVictor not LFC and (b) that the approach to LFC from Mr Dixon was confined to LED advertising rights. This was materially different from the subject matter of the 2016 agreement between LFC and BetVictor, which was as I have explained resulted in BetVictor becoming a principal sponsor of LFC and paying very substantially more for that role than was in contemplation in 2013-5.

71. There then followed the email of 28 April to which I referred earlier in this judgment in which Mr Dixon informed Mr Grinneback that both clubs had "…*politely declined your offer…*" and ultimately nothing came of any of this because as Mr Dixon put it in his first statement:

> "109. Mr Kane subsequently informed me on a call that Liverpool had concluded a partnership deal with Marathonbet for the 2015/16 season.
>
> 110. This left BetVictor without any partnership for the upcoming season, so Mr Grinneback asked me to look at other options, including reviving the conversation around a global betting partnership with Chelsea. I contacted Steve Cumming, the Commercial Director at Chelsea, and this led to more meetings, emails and calls to discuss detail.
>
> 111. Initially I was involved in that dialogue between Chelsea and BetVictor but then Rafaella Valentino, who knew Mr Meinrad from when he was at Bwin and she was at Manchester United, joined the Chelsea commercial team, as (I believe) a Sales Consultant. In the event I understand Mr Meinrad

> personally negotiated final details of the deal directly with Ms Valentino and Christian Purslow, Head of Global Commercial Activities and later Managing Director.
>
> 112. BetVictor and Chelsea signed the deal in June 2015 for the 2015/16 season, and in December 2015 we were paid commission for it.
>
> 113. Following this, Mr Meinrad decided that BetVictor would deal directly with the clubs they were considering. I – like all agents – am used to this happening with operators. Once they are engaged in speaking with the rightsholders, the day-to-day need for the introductory agent diminishes. We had been of great service to BetVictor for over two years, informing them of numerous different rights opportunities and a number of clubs. That had resulted in a deal with Chelsea, and two near misses with Liverpool."

72. In fact and again as I set out earlier in this judgment, what happened between June and December 2015 was that Mr Grinneback sent to Mr Dixon his email of 29 September 2015, which was in these terms:

> "Hi Mark,
>
> This email is to clarify that there is no relationship between BetVictor or any of our companies and yourselves (Bettorlogic, you or any other representative of your company). We will immediately cease any existing discussions between you and all our staff (if any are in progress) and we want to underline that you are not representing us in any commercial discussions.
>
> Please confirm receipt of this email.
>
> Many thanks,
>
> Magnus"

Thus in summary: Initially in 2013, LFC retained WML in relation to its search for a betting partner for the 2014/5 season. Although WML introduced LFC to BetVictor pursuant to the IA, no Relevant Contract was concluded. Thereafter during 2014/5 WML maintained a commercial link with BetVictor and in that capacity offered LFC on behalf of BetVictor a LED advertising arrangement. That offer was rejected by LFC and thereafter WML introduced BetVictor to Chelsea FC, BetVictor then terminated its relationship with WML and a one year agreement was made between Chelsea acting by Ms Valentino and BetVictor acting by Mr Meinrad.

73. The failure of Mr Dixon to draw attention to the email of 29 September 2015 in his first statement leads Mr Anderson to make adverse submissions concerning his credibility as a witness. Not merely did he not comment on the email or his response to it until his second witness statement but WML did not disclose either email. In fact, these emails came to light only because BetVictor supplied copies to LFC. This point was put to Mr

Dixon in clear terms – see T2/8/6-7 – and his explanations were not satisfactory – see the relevant exchanges at T2/9-10 as follows:

> "Q. The point is this, you buried this email. You did not disclose it because you could see it looked bad for Winlink to have been dismissed months before the 2016 deal was even contemplated. That's why you didn't disclose it?
>
> A. It's not actually. The reason we didn't disclose it is we didn't think it was relevant to Liverpool and our agreement with Liverpool. We thought -- I thought it was relevant to my relationship with BetVictor and it was all to do with the -- as I think everyone has seen now -- the case with Chelsea. So at the time it was a decision that it wasn't relevant and would lead into other avenues I suppose which we didn't think relevant to the matter with Liverpool.
>
> Q. Mr Dixon, that cannot be right, with respect. You are aware that it is Liverpool's case that if you are to be paid commission, you must be the effective cause of the deal that was done in 2016 between Liverpool and BetVictor. You know that's Liverpool's case, don't you?
>
> A. Yes, I ...
>
> Q. It's a simple question. You know that Liverpool's case is that for you to be paid commission, you had to be the effective cause of the contract that was concluded in 2016; yes?
>
> A. I've heard those words " effective cause" bandied around a lot, yes, so ...
>
> Q. You must surely know in your claim for č1.125 million what Liverpool's defence is. Liverpool's defence is you had to play an effective part in the deal. You know that, don't you?
>
> A. Right, yes.
>
> Q. In those circumstances, are you telling his Lordship that you did not think it relevant that one of the two contracting parties had said, "We have no relationship with you. You must not negotiate on our behalf"? Is that your evidence to his Lordship?
>
> A. Sorry, when I was doing this , I was, I guess, thinking of the case and our case -- and my thoughts are always about -- this is all about the introduction. So ...
>
> Q. I'm not sure how much further I can take this with you, but I'm afraid disclosure isn't just about your case and the documents that you think assist you. It's right, isn't it -- do you

> now accept? -- you ought to have disclosed the document, the email, at page C4/1078? Do you accept that?
>
> A. In hindsight, yes. At the time there was a discussion -- you know, we were concentrating on our case with Liverpool and the relevance of it. That's all I remember from that discussion."

74. In my judgment the emails are clearly relevant to LFC's case concerning WML being the effective cause of the 2016 sponsorship agreement between BetVictor and LFC. Both emails should plainly have been disclosed and the tenor of Mr Dixon's answers were that he was on any view involved in the decision not to disclose them. It is implicit if not explicit in the answers that he gave on these issues that he perceived these documents as damaging to WML's case. In my judgment that factor in combination with the manner in which he sought to disguise what had happened is necessarily damaging to his credibility as a witness. It means that I have to be cautious before I accept his evidence save where it is corroborated, admitted or against the interest of WML.

75. Mr Dixon had no involvement in the negotiation of the 2016 agreement between LFC and BetVictor, as he accepted – see T2/1/11-13. This is not surprising given that his relationship with BetVictor had come to an end the previous Autumn and the negotiations took place very largely between Ms Valentino for LFC and Mr Meinrad for BetVictor.

76. Before returning to the relevant facts, it is necessary that I mention Ms Valentino's credibility as a witness at this stage because much of LFC's case as to the effective cause of the 2016 agreement with BetVictor depends upon her evidence. In assessing Ms Valentino's credibility, it is worthwhile starting by remembering that she is no longer employed by LFC. She is currently based in Switzerland. She nonetheless agreed to give evidence voluntarily for LFC. It was not suggested that she had any reason to lie to me about what happened from her perspective and there is no evidence of her having any motivation for so conducting herself.

77. It was submitted that Ms Valentino was an untruthful witness. In support of that submission WML relies on the following aspects of her evidence. First, Ms Valentino was forced to accept that she had contact with Mr Grinneback much earlier in the discussions with BetVictor on behalf of LFC that she had previously said because his first name is mentioned by her in an email of 9 March 2016. This led to the following correction at the outset of her evidence as follows:

> "Q. It seems from that email that -- contrary to what you say in paragraph 48, it seems you did speak to Mr Grinneback on at least one occasion in early March 2016. Do you recall having seen this document?
>
> A. Yes, obviously I must have done because it's in the email, but I -- at the time of my statement I didn't realise it was the same Magnus, I suppose. It's very common, my Lord, that in sponsorship deals the decision -maker would of course involve his marketing team to evaluate or run the numbers, also because they will be the ones responsible for activating and then

> measuring the partnership , and frankly in the same -- and I remember passing in fact the Chelsea deal to Magnus and Ed Connick on the Chelsea side -- Ed was the partnership management director -- then to activate the partnership, and I suppose this would have absolutely made sense at the time, to have had a call with the BetVictor marketing team. I suppose, when I say that I don't have any communication with anyone else, BetVictor is more, I suppose, on the negotiating side. But, yes, apologies for that mistake."

78. I am unpersuaded that affects Ms Valentino's credibility in the manner suggested. First the original error was in my view innocent given the error was apparent on the email to which she referred when correcting her evidence. Secondly, I consider it to her credit that the point was corrected by her at the outset of her evidence. Thirdly, speaking to Mr Grinneback earlier than she had said in her statement does not detract from her evidence that she had a strong relationship with Mr Meinrad and that the initial contact was between him and her and arose from that relationship. Indeed, that this was so is plain from the emails to which I referred much earlier in this judgment.

79. However, some of her answers in some of the exchanges between her and Mr Sutcliffe were less than frank. One of these concerned her knowledge about Mr Dixon and the Chelsea transaction in 2015. The full exchange can be found at T2/99 – 104. It is not necessary to set it out in full. In summary however, Mr Sutcliffe pressed her to acknowledge that a reference in an email from Mr Meinrad concerning the role "*Mark*" played in the Chelsea transaction was a reference to Mr Dixon. Her position was to say that she did not know this was a reference to Mr Dixon, then that she didn't know "*Mark*" and then that she didn't know Mark Dixon or who he was. All this ignored the fact that Mr Meinrad's email to Ms Valentino that formed the basis of this cross examination stated "*I had an agreement with bettor and I called him [Mr Dixon] off the case as you know since I took it on*". This is a reference to the exchange of emails I referred to earlier between Mr Grinneback and Mr Dixon by which the relationship between WML and BetVictor came to an end. This led to the following exchange:

> "I didn't know that BetVictor had a relationship with Mark and I didn't know that Mark and Steve Cumming had dealings as such.
>
> Q. You see, if you didn't know anything about Mr Dixon, why didn't you say that in your reply to Mr Meinrad, which is at the top of the page? In fact you refer to that and say you need to solve it together, that problem.
>
> A. I mean, I didn't know Mr Dixon and today I don't know Mr Dixon. This is a relationship he had with Steve Cumming. As I said,"

These answers (and there were others that were similarly off the point) were not convincing or persuasive.

80. These unsatisfactory answers have to be balanced against the fact that she was a voluntary witness with no interest in the outcome who corrected a significant error in

her statement. I am not persuaded that her acknowledgement that she was working during her gardening leave from her previous employer is something to take account of in her favour. That fact was apparent from the emails to which I referred earlier in this judgment. That she was prepared to work in breach of contract is not something that can be ignored in an assessment of her credibility. Nonetheless I conclude that Mr Sutcliffe's invitation in paragraph 11 of his closing submissions that I should find that Ms Valentino was not a truthful witness goes too far and is not one that I should accept. That said however, I consider that some caution is needed in relation to her evidence because the events with which this case is concerned took place some time ago, a witness in the position of Ms Valentino cannot be expected reasonably to have retained all the detail including detail concerning dates and the like over the years and in some respects her answers were off the point or failed to answer the questions asked. That being so, my approach to her evidence has been to treat her uncorroborated testimony with caution and where it is not corroborated or admitted to test it by reference to contemporary documentation, admitted and inconvertible facts and inherent probabilities. That said, much of her evidence on the issues that matter is consistent with the contemporaneous documents to which I have and will refer.

81. I need not consider the credibility of the remaining witnesses other than when considering the issues on which they give material evidence. I now return to the facts material to an assessment of the effective cause issue.

82. It would appear to be common ground that LFC had been looking for a training kit sponsor for the 2016/7 season since at least August 2015. Mr Kane (who Mr Sutcliffe accepts in paragraph 12 of his closing submissions was a straightforward witness whose evidence is not challenged by WML save in two respects not material to the issue I am currently considering) had been trying for a significant period to find such a sponsor. He had not approached BetVictor notwithstanding the pressing nature of this issue. That of itself is significant to an assessment of whether the 2013 introduction was causally efficient in the making of the 2016 sponsorship agreement. Mr Sutcliffe accepted Mr Hogan's evidence, which he summarises at paragraph 14 of his written closing submissions as being:

> "(i) Liverpool was under "tremendous pressure" to sell the training kit in 2016; (ii) this was the reason for cutting the sponsorship from £7 million to £6 million and then to £5 million; (iii) the commercial team was 7 or 8 months past the deadline originally set by New Balance for confirming the logo for the training kit, and so almost out of time by early 2016; (iv) failing to secure a training kit partnership would have had "significant" revenue implications, would have damaged credibility, and potentially the ability to negotiate on price with sponsors in the future; so (v) that by early 2016 this was essentially a "distressed sale of the training kit rights"."

83. Mr Kane's evidence when pressed on whether if he had approached Mr Meinrad he would have started with a similar proposal to that which Ms Valentino proffered and achieved a similar outcome, said this (T3/93 and following):

"Q. -- so I'm suggesting that there was every prospect of you getting the same favourable response from BetVictor as Ms Valentino got. Do you agree?

A. I disagree.

Q. And how do you say you wouldn't have got the same deal with BetVictor?

A. I suspect that Mr Meinrad in the first instance probably wouldn't have picked up the phone to me, let alone got to a stage where I was offering him terms.

Q. Put simply, Mr Kane, you were just as capable of closing this deal as Ms Valentino, weren't you?

A. I disagree. When you say "deal", deal specifically as in the BetVictor deal or deal as in the training kit deal? Because I think there's a difference.

Q. The training kit deal, the deal that was done at 5 million a year, you were just as capable of closing that deal as Ms Valentino, weren't you?

A. Well, I had been trying and failing for a significant period of time until Ms Valentino came along and managed to secure that deal, so I disagree.

Q. Hang on, Mr Kane. That's not a very clever response, if I may say so, because the training kit deal had only become available when Garuda ceased to be your training kit partner and it was now, at that time, that I'm suggesting either you or Ms Valentino could have closed the same deal.

A. The deadline for the deal was set by New Balance, August 2014, in order to be provided with a logo to apply to the training kit. So we were already at this stage --

Q. Sorry to interrupt you. Do you mean August 2016?

A. Sorry, August 2015, should I say, so seven months before these emails were exchanged, because there's a significantly long process where we need to submit the logo to the training -- to the kit supplier. They need to complete the design, they need to produce and distribute and get the product into retail before it can be sold, and we should have really been gearing up to start selling the training kit at this time. So you could say that we were in a bit of a distressed sales situation. So when you ask if I could have done that deal, that's why I responded I tried and failed. I had an iron in the fire with Hankook, but -- I've used the term before in the emails -- Ms Valentino was our knight in shining

> armour and did an incredible job in a very short space of time to close this deal."

A little later in this same section of his cross examination, Mr Kane said this:

> "Q. …I just want to give you a chance once again to answer – and I appreciate it' s a hypothetical question, Mr Kane, but nonetheless it' s one you can answer -- there is no reason why you couldn't have closed the deal once Mr Meinrad got in touch?
>
> A. What do you mean by "once Mr Meinrad got in touch"?
>
> Q. In the January 2016.
>
> A. He didn't get in touch. He was halfway into a first year of a Chelsea deal so I wouldn't have thought he'd have any interest in getting in touch with any other football clubs.
>
> Q. Well, we know that he said he was interested when Ms Valentino told him that she was going to Liverpool, and Mr Dale, had he told Ms Valentino to refer Mr Meinrad to you, you would have been able to close that deal just as well as she did, wouldn't you?
>
> A. I don't think so. That deal was predominantly done on the strength of Ms Valentino and Mr Meinrad's relationship. I can't see why he would have looked elsewhere, only being a couple of months into a deal with Chelsea, had it not been for Ms Valentino."

84. I accept this evidence and so I accept that Mr Kane would not or probably would not have been able to make contact with Mr Meinrad; he had not attempted to do so because that was the position. I accept this evidence not merely because it is accepted that Mr Kane was a truthful witness but because it is inherently improbable that LFC would not have attempted to contact BetVictor if Mr Kane or Mr Dale thought that was a viable opportunity given the pressure it was under to achieve a training kit sponsorship contract for the 2016/7 season. The reality was as Mr Hogan put it in his evidence:

> " … we wouldn't have been having the conversation with BetVictor without Ms Valentino. There was no conversation -- it wasn't like somebody just needed to come and pick up the BetVictor account and have the conversation with them, there was no engagement with them whatsoever. And if we hadn't had the text message from Ms Valentino to Mr Meinrad letting him know that she was coming to Liverpool, none of these conversations would have happened. So there' s no scenario in a hypothetical that would make sense to talk about whether Mr Kane could have landed this deal. The deal and the conversation simply would not have happened."

When pressed again by Mr Sutcliffe to concede the point that Mr Kane could have concluded a similar agreement on similar terms with BetVictor if he had been asked to do so by Mr Dale, Mr Hogan said:

> "No, that' s -- I mean, first of all it's completely hypothetical. Secondly, we don't know how the conversation would have progressed because Mr Meinrad didn't have years of trust built in somebody that he was negotiating with. A negotiation like this takes typically months and months and months. This, as we can see, took somewhere in the neighbourhood of two and a half to three months to close. That's incredibly quick and you're right, it's down to the value. But that is principally down to the conversation that Ms Valentino and Mr Meinrad had and the relationship that he had and the trust that he had in her. So I think, had Olly asked Jonathan to pick up the conversation with BetVictor, even though Andreas has a relationship with Raffy, to have somebody else call him, first of all, just would have been odd and secondly they don't have a relationship. He has, to my knowledge, never met Mr Meinrad. They don't have history so I don't know where that conversation would have ended up."

I accept this evidence.

85. The failure to contact BetVictor prior to the arrival of Ms Valentino is unsurprising but significant for the purposes of evaluating whether WML's introduction in 2013 was an effective cause of the 2016 sponsorship agreement. The last meaningful contact between LFC and BetVictor had been in 2014. At that time Mr Riley had been Mr Dixon's principal contact. Since then the only meaningful contact had been by Mr Dixon acting on behalf of BetVictor in relation to a proposed transaction concerning LED advertising at a cost of under £1m per annum with annual break options whereas the training kit deal was a much more significant transaction with a price tag to match of £5m per annum for three years. There had never been contact concerning either stand or kit sponsorship, which were the alternatives that Ms Valentino offered to Mr Meinrad, nor any indication by BetVictor that it was interested in sponsorship at that level. As Mr Meinrad put it in his email to Ms Valentino of 23 March 2016:

> "… I am in the middle of a complete reforecasting exercise for the business which I will have done by April 8. by then I need to take the decision about increased sponsorship. your 5m offer translates into 7m including vat and activation (unless we find a solution) and this would be the single biggest ever investment into one asset BetVictor has ever made (even bigger than biggest tv commitment)
>
> if ok with you I would answer no latest than April 8. you know I am very interested and want to make this happen."

And as Mr Dixon accepted in his oral evidence:

> "Q. And then the BetVictor logo printed on the front of all Liverpool match day programmes. Can I suggest to you in terms

> that this is a completely different -- a deal of a completely different magnitude to that which you had looked at two and a half years earlier.
>
> A. Look, you're absolutely right. … "

86. The discussions that led from no interest to interest in a training kit agreement took place between the end of January down to 17 March 2016 were conducted exclusively by Ms Valentino. I have no real doubt that but for her involvement the progress through this period would not have been made for all the reasons identified by Mr Kane in his evidence summarised above. It was she who supplied the confidential performance information I referred to earlier in this judgment. This was information that no doubt came from information that LFC had been supplied with in confidence but LFC chose to route that information via Ms Valentino. That is another clear indication that Mr Kane was correct in the analysis set out above. Ms Valentino was perceived by LFC to be delivering something that could only be delivered by on the basis of " … *the strength of Ms Valentino and Mr Meinrad's relationship*". That this was so is apparent from the email of 23 March 2016 quoted above. It is apparent too from the fact that the offer subject to contract was sent by Mr Meinrad to Ms Valentino even though by then he had been introduced to and had met Mr Hogan and Mr Dale. As I set out earlier in this judgment, there then followed a series of congratulatory emails to Ms Valentino from those senior to her in the organisation of LFC. As Mr Hogan put it in his statement:

> "27. Olly (who left LFC in August 2019) and I had sole discretion over the decision to award a payment under the LFC Rewards Policy. It was without question (or challenge), that the LFC/BetVictor Deal was secured solely by Raffy on behalf of LFC and, pursuant to the LFC Reward Policy, she received a bonus of 1% of the annual deal value. Given that Raffy had only recently started at LFC and had secured us such a big deal, it was a significant achievement.
>
> 28. As a result of the dates on which Raffy was on maternity leave, combined with the dates on which the first instalment from BetVictor was received, in accordance with LFC's Reward Policy, I recall Raffy receiving commission in 2017 and 2018 but no commission in 2019, as she ceased to be an employee of LFC.
>
> 29. Save for Raffy, no other LFC employee received any reward/payment for the LFC/BetVictor Deal, nor did any other employee seek to receive any commission as a result of the LFC/BetVictor Deal."

I accept this evidence. Although Mr Sutcliffe criticises Mr Hogan for not agreeing that the 17 March 2016 meeting (when Mr Meinrad met Mr Dale and Mr Hogan for the first time) was an important part of the negotiations, I do not think that criticism is merited. As is plain from what I have said already, the negotiations had been conducted throughout by Ms Valentino with Mr Meinrad. Plainly it is was necessary that he be introduced to LFC's senior corporate managers in the course of the negotiation. That

was all part of LFC getting BetVictor " … *closer to YES on Training Kit deal*" – see the email of 14 March 2016 from Mr Hogan to Mr Ian Ayre. However, that does not detract from the central point, which is that the 2016 sponsorship " … *deal was predominantly done on the strength of Ms Valentino and Mr Meinrad's relationship* …". As Mr Hogan put it:

> "Q. And there often is, for these sorts of pre-meetings, there would have been a written agenda for your meeting with Mr Meinrad which you could have worked through in advance, I suggest?
>
> A. I don't know. Not always. Again this was really sort of a cup of coffee, chance to get to know him. I'm not sure there was a formal agenda."

In this regard, I accept Ms Valentino's evidence that arranging a meeting with LFC's senior corporate management was part of the way in which transactions of this sort are negotiated – see T2/170-171. I do not consider that this meeting altered the fundamentals of how the negotiations were being conducted. That much is apparent from what happened thereafter. That Mr Hogan and Mr Dale were content to leave the negotiations to Mr Valentino even after this meeting is entirely consistent with her being perceived as the only person within LFC who could deliver a sponsorship agreement with BetVictor.

87. All this leads me to conclude that WML has failed to discharge the burden of proving it was an effective cause of LFC entering into the 2016 training kit contract with BetVictor. It is entirely clear that the driving force for the proposal and eventual completion of the transaction were two powerful factors – first the relationship between Ms Valentino and Mr Meinrad and secondly the very sound commercial reasons that led BetVictor to enter into this transaction. So far as this last mentioned factor is concerned, Mr Sutcliffe urged me to conclude that it was the synergy between LFC's prominence in Asia and the importance of that market to BetVictor that mattered and that had first been identified by WML. I am unconvinced that this was a particularly startling revelation – see Ms Valentino's evidence at T2/148-9 and Mr Hogan's evidence at T4/24-25 – in the circumstances but whether it was or was not is immaterial. First, that synergy did not result in any business being concluded in 2014 or 2015 and secondly what was being offered in 2016 was wholly different from what had been offered previously as was what BetVictor was prepared to invest. This transaction was not conceived simply out of a realisation by BetVictor of the benefits to it of being linked with LFC. There were other clubs with a presence in Asia that carried similar benefits including Chelsea, with whom BetVictor had entered a one year contract in 2015. It was born out of the close and mutually trusting business relationship between Mr Meinrad and Ms Valentino that had subsisted for many years prior to January 2016 coupled with the perceived business value that what was being offered represented when compared to what others (principally Chelsea) were prepared to offer. None of this had anything to do with what happened in 2013 when Mr Dixon introduced Mr Riley and Mr Grinneback to Mr Kane.

88. It does not appear to be in dispute that the trading information supplied by LFC to BetVictor via WML in 2013 was of no practical value in 2016 – see T2/22.

89. It was suggested that the driving force was a desire on the part of Mr Grinneback to enter a sponsorship agreement with LFC. Ms Valentino rejected that proposition. I accept that because it is consistent with such contemporaneous documentation as there is from within BetVictor. This shows, as one would expect, that Mr Grinneback and Mr Meinrad discussed the issue and what was in the commercial best interest of BetVictor but there is no evidence of the proposal being driven by Mr Grinneback. As is entirely unsurprising there is evidence of Mr Meinrad discussing what was proposed collaboratively with Mr Grinneback in the manner to be expected of two senior executives in a relatively flat management structure. However that does not alter who was leading the negotiations on behalf of BetVictor or who ultimately would take the relevant decisions. In this regard I accept Ms Valentino's evidence that it was Mr Meinrad who was the decision maker – see T2/76-79. I do so because the contemporaneous documentation is consistent with that being the case. That this is how things worked is apparent from for example Mr Dixon's own email to Mr Grinneback of 23 February 2015, where he asks Mr Grinneback to confirm " *... If you can confirm that Andrea is happy with LED deals for next season and how many then I will start talking to clubs ...*" and see the email from Mr Meinrad to Ms Valentino of 23 March 2016 quoted earlier.

90. I now take a step back from the detail and having reminded myself of the test that I should apply to decide the factual question I am now considering, being that I set out in some detail at the start of this section of the judgment, I conclude first that the bargain on offer in 2016 was of a completely different order of magnitude from the transactions being contemplated in 2014 and 2015 and further was qualitatively different as well. This was a principal global sponsorship arrangement that involved not advertising for a short period of time each match on LED hoardings but a full spread of exposure on the training kit but also elsewhere on pretty much everything generated by LFC other than the first team shirt. What was being proposed in 2016 was fundamentally different from what was being considered in 2013-4. It was a completely fresh basis of dealing when compared with what was discussed but never agreed in 2014 and 2015. The 2016 transaction had nothing at all to do with what happened in 2013. BetVictor's owner had changed, its CEO had changed and the transaction was one that owed its genesis to the long standing commercial relationship between Ms Valentino and Mr Meinrad. It owed nothing to Mr Dixon's introduction of Mr Kane and Mr Dale to Mr Riley and Mr Grinneback in 2013. WML was not an effective cause of the 2016 sponsorship agreement between BetVictor and LFC

Conclusion

91. For the reasons set out above I conclude that the IA is either to be construed as requiring any Introduction by WML to be an effective cause of a relevant Contract by reference to which it claims commission under the IA or the IA is subject to an implied term to like effect and WML's Introduction of Mr Riley and Mr Grinneback of BetVictor to LFC in December 2013 was not an effective cause of the training kit sponsorship agreement that LFC entered into with BetVictor in 2016. In those circumstances, this claim fails and is dismissed.