Neutral Citation Number: [2026] EWHC 2320 (Ch)

Professional negligence *– Solicitors –Defendant acted for purchasers of residential units in a partly buyer-funded, off-plan development scheme – Purchasers losing their substantial up-front payments on failure of development – Trial of lead claim by family company purchasing eight residential units against its conveyancing solicitors for breach of duty – Extent of duty on purchaser's solicitors – Whether duty to advise purchaser not to proceed with the purchase –Whether duty to ensure purchaser fully understood the risks of the transaction – Whether duty to advise that deposit-holding machinery offered no meaningful security or protection – Whether solicitors in breach of duty – Whether loss of purchaser's investment legally attributable to any breach of duty*

Case No: BL-2022-MAN-000036

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

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Wednesday 16 September 2026

Before :

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between :

Niprose Investments Limited

60th Claimant

- and -

Vincents Solicitors Limited **10th Defendant**

- -
- -

Mr Laurie Scher (instructed by **Walker Morris LLP**, Leeds) for the **60th Claimant**
Mr Simon Wilton KC (instructed by **Reynolds Porter Chamberlain LLP**, London) for the **10th Defendant**

Hearing dates: 21-23 July 2026
Date draft circulated: 27 August 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 16 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE HODGE KC

The following cases are referred to in this judgment:

Afan Valley Ltd v Lupton Fawcett LLP [2026] EWCA Civ 2; [2026] P.N.L.R. 12
Carradine Properties Ltd v DJ Freeman & Co [1999] Lloyd's Rep P.N. 483
County Personnel (Employment Agency) Ltd v Alan R Pulver & Co [1987] 1 WLR 916
Dutfield v Gilbert H Stephens & Sons [1988] Fam Law 473
Gordeno v Irwin Mitchell LLP [2026] EWHC 136 (Ch); [2026] P.N.L.R. 17
Harwood v Taylor Vinters [2003] EWHC 471 (Ch)
Hughes-Holland v BBE Solicitors [2017] UKSC 21; [2018] AC 599
Neushul v Mellish Harkavy (1967) 111 Sol J. 399
Manchester Building Society v Grant Thornton UK LLP [2021] UKSC 20; [2022] AC 783
Meadows v Khan [2021] UKSC 21; [2022] AC 852
Newcastle International Airport Ltd v Eversheds LLP [2013] EWCA Civ 1514; [2014] 1 WLR 3073
Niprose Investments Ltd v Vincents Solicitors Ltd [2024] EWHC 801 (Ch), [2025] EWHC 14 (Ch), [2025] EWHC 2084 (Ch)
Petersen v Personal Representatives of Cyril B. Rivlin Deceased [2002] Lloyd's Rep P.N. 386
Pickersgill v Riley [2004] UKPC 14; [2004] P.N.L.R. 31.
Procter v Raleys Solicitors [2015] EWCA Civ 400; [2015] P.N.L.R. 24
Royal Mail Group Ltd v Efobi [2021] UKSC 33; [2021] 1 WLR 3863; [2021] ICR 1263
Tomlinson v Congleton BC [2003] UKHL 47; [2004] 1 AC 46
Yee Shi Yin v 174 Law Solicitors Ltd [2023] EWCA Civ 13; [2023] P.N.L.R. 15

His Honour Judge Hodge KC:

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Introduction

1. This is my considered judgment on the substantive trial, over three days between 21 and 23 July 2026, of a solicitor's negligence claim by the 60th claimant, Niprose Investments Limited (**the claimant**), against the 10th defendant, Vincents Solicitors Limited (**Vincents**). Mr Laurie Scher (of counsel) appears for the claimant. Mr Simon Wilton KC appears for Vincents. Both counsel have acted for those parties throughout this litigation.

Background

2. The claim arises out of the claimant's purchase of eight units in a partly buyer-funded, off-plan residential development scheme marketed as '*The Rise*' on Low Hill in the City of Liverpool. The development was never completed, apparently because the finance company (Amicus Finance Plc) that had been partly funding the development fell into administration in December 2018. On the failure of the development, the claimant lost all of its 50% up-front deposits. Vincents acted as the claimant's conveyancing solicitor, having been introduced to the claimant by the developer through its marketing agent, Certa Invest Ltd.

3. The claimant was a newly established family company incorporated specifically for the purpose of investing in these eight units by Mrs Ruth Nickoll, its sole director and majority shareholder (with the other two shares being held by each of her two infant children). Although Mrs Nickoll had been educated to graduate level, and had formerly worked as a relationship manager, first at Bank of New York and then at Goldman Sachs, she had effectively given up work outside the family home in 2011 when she

was pregnant with her first child. At the time of this transaction, Mrs Nickoll was in her late thirties. Her husband, Ian, who is four years older than his wife, was working long hours for Goldman Sachs acting as a conduit between the bank and institutional clients in the purchase of gilts and fixed income bonds. Both Mr and Mrs Nickoll had previous experience of purchasing and selling residential properties, but this was their first involvement in the field of investment property.

4. On or about 27 November 2017, the claimant paid an up-front, non-refundable reservation fee of £5,000 for each of the eight units even before retaining Vincents to act as its solicitor. On exchange of contracts, on 26 April 2018, the claimant paid a large, up-front '*deposit*' of £37,475 for each of the eight units, representing 50% of the balance of the purchase price. In total, the claimant paid over £299,800 to the seller's solicitors. It also paid £3,796 by way of Vincents' fees (which were payable on exchange of contracts). The development held out both the possibility of capital appreciation, and the '*promise*' of a guaranteed rental income, equivalent to a return of 8% per annum, for five years after completion. The development was partly '*buyer-funded*' in the sense that the deposit monies were payable to the developer's solicitor which (in accordance with clause 4.2 of the purchase contract) held them '*as stakeholder for the seller*' (i.e. the developer). These funds were then to be released on the terms provided in Schedule 2 to the purchase contract (headed '*Deposit Release Terms*'). These permitted them to be applied towards funding the marketing, sale, and construction costs of the development.

5. It appears that construction work had ceased by around May 2019, by which time the works consisted only of a steel-frame structure. The developer's holding company, Prime Site Developments Limited, entered into compulsory liquidation in October 2019. The developer and seller, Hill Top Rise Limited, entered into compulsory liquidation in June 2020. According to the liquidator's progress report for the year ending 18 June 2023, receivers appointed by the administrators of the developer's secured lender sold the uncompleted development for only £4 million. This was despite the fact that the value of work completed and approved by the developer's agent was in excess of £7.25 million. The individual purchasers were left with nothing.

6. The claimant complains that it has derived no value from its investment, and has lost the substantial up-front deposits, totalling £299,800, that it paid to the developer's solicitors as '*stakeholder*'. The claimant alleges that the loss of these deposits was the result of Vincents' breaches of duty in failing properly to advise the claimant of the risks of investing in this development. It seeks to recover this sum, together with Vincents' fees of £3,796.00, as damages for Vincents' breaches of duty. The claimant also seeks to recover interest and costs. The claimant pleads that if Vincents had discharged its duties as its solicitor by properly advising the claimant about the risks of proceeding with the purchases, and the claimant's lack of any meaningful security or protection against those risks, the claimant would not have entered into the transactions, and so would not have paid over, or suffered the loss of, its deposits. Indeed, the claimant asserts that these risks were so great that Vincents should have advised the claimant not to proceed with these purchases at all. The claimant accepts that it cannot seek to recover the £40,000 reservation fees because these had already been paid over to the developer before the claimant first retained Vincents to act as its solicitors.

7. This claim against Vincents was brought as part of a series of wider claims all initiated by way of a single Part 7 Claim Form, issued on 20 April 2022. Originally there were

no less than 94 claimants, who were suing ten separate solicitors and conveyancing practices. In total, the claimants agreed to purchase over 100 apartments, and paid more than £6,000,000 as so-called 'deposits'. The claims brought against Vincents alone involved 35 separate claimants (numbered 60 to 94) arising out of the purchase of no less than 50 separate residential units.

8. This litigation has already been the subject of three substantive judgments on interim applications that have come before me. The first, on Vincents' application to strike out, or for reverse summary judgment in its favour on, the claims made against it was handed down on 17 April 2024. It bears the neutral citation number **[2024] EWHC 801 (Ch)**. One of the difficulties that arose on that application was that the allegations raised by all 94 claimants against all ten defendants had been set out in a single, generic document, entitled '*Particulars of Claim*', and supplemented by an appended spreadsheet which was said to set out any particular material facts distinguishing one claimant from another. Vincents emphasise that the particulars of breach of duty and negligence in paragraph 45 of the original particulars of claim were, for the most part, directed at all ten defendants, save that three of the ten allegations were expressly (and, it says, rightly) not maintained against Vincents. Mr Wilton points out that this is perhaps not surprising as even the claimants acknowledge (at paragraphs 29.10.1 and 29.10.4 of the original particulars of claim) that Vincents' Report on Title was "*a long and detailed report with 17 substantive pages*", and that within the Report "*paragraphs 3.6 and 3.7 provided some advice about the risks of the transaction*". Effectively, this application was adjourned on the basis that the relevant claimants would seek to amend their particulars of claim as against Vincents.

9. My second judgment, which granted the relevant claimants limited permission to amend their claims against Vincents, was delivered on 17 January 2025. It bears the neutral citation number **[2025] EWHC 14 (Ch)**. Of particular relevance to this trial is that I refused permission to the claimants to amend the particulars of claim to include any allegation (within paragraph 29A, headed '*Individual advice*') that, in addition to the Report on Title, some of the claimants had received further advice from Vincents by email and/or telephone, as particularised in what was then proposed to be Appendix 2 to the draft particulars of claim, and that such advice was wrong for the reasons there set out. The claimant was one of those who had sought to rely upon such individual advice (at paragraph 2 of the then draft Appendix 2). However, in the case of this claimant, such individual advice was limited to the allegation that, on 19 December 2017, Mr Jack Andreae (of Vincents) had incorrectly advised Mrs Nickoll that should the development fail, it might be possible to take legal action against Prime Site Developments Limited, as the parent company of the developer, Hill Top Rise Ltd. There was no plea that Vincents had given any advice in relation to the extent of any security that this claimant might have in relation to its interest in the development. Indeed, only one of the claimants (Mr Moukhametzianov, the 78th claimant) ever sought to raise such an allegation. He had sought to plead that he was advised (by Mr Andreae, when asked what would happen if the building was not completed) "*that this could not happen, and that his interest would be protected as it was registered*". I remind myself, however, that paragraph 2.2 of what is now Appendix 2 to the amended particulars of claim (which purports to set out the claimant's mistaken understandings of Vincents' advice) does plead that Mrs Nickoll exchanged contracts on behalf of the claimant under the mistaken understanding *"... that even if the developer became insolvent, someone else would pick up and finish the project, and that the 60th claimant would*

be a stakeholder in it as it had a UN1 charge. She communicated this understanding to [Vincents] by telephone shortly before exchange, and was not corrected." Paragraph 2.4 of Appendix 2 also pleads that Mrs Nickoll "*did not understand the risk that the funds could have been spent or removed from the company without commensurate building work being done, and that the 60th claimant would have no real claim to the land or any future development*". However, these are not pleaded as discrete breaches of duty.

10. My third judgment, delivered on 6 August 2025, deals with the costs of these interim applications. It bears the neutral citation number **[2025] EWHC 2084 (Ch)**. These three judgments relate much of the background history leading up to the present trial. I do not propose to repeat this background history in the present judgment, which should be read in conjunction with these three earlier judgments.

11. I held a case management hearing, attended by counsel, on 30 July 2025. At that time, the only active claims were those being pursued against Vincents and the 2nd defendant (EAD Solicitors LLP, which was in administration). My order provided for the trial of lead claims against Vincents and the 2nd defendant, with all non-lead claims being stayed in the meantime. All of the claims against the 2nd defendant have since settled. My order provided for the claims against Vincents to proceed by way of four lead and two reserve lead claimants, with Vincents selecting two of the lead and one of the reserve claimants and the others to be nominated by the claimants. Unfortunately, due to the high volume of settlements, the claimant is now the sole remaining lead claimant (with no reserve claimant left). This trial has therefore proceeded with this claimant alone. Mr Scher recognises that it is not ideal to have only one lead claimant. He invites the court to bear in mind that the parties will seek to use this judgment to inform negotiations directed to settling the remaining claims. With the agreement of both counsel, I will seek to address alternative factual scenarios in this judgment in the hope that this may provide some guidance that will assist in the settlement of other, presently stayed, claims.

12. The documentation in this case is extensive although there is much repetition (particularly with email trails which, due to the way the documents have been assembled, are not always easy to follow chronologically). The two principal trial bundles (C and D) together extend to over 6,600 pages. There is a full transcript of the proceedings, which extends to 393 pages. I have re-read this transcript, with reference to the underlying documents referred to therein, for the purpose of preparing this reserved judgment. The sole witness in the case is Mrs Nickoll, who gave evidence for a little over three hours on the second day of the trial. Vincents has elected to call no evidence, despite having contemplated calling three witnesses in its costs budget (in 2024) and then one witness at the case management hearing in July 2025.

13. Both counsel have prepared extensive, and detailed, written skeleton arguments. These were supplemented by oral submissions on the first and third days of the hearing. I am greatly indebted to both counsel for their helpful submissions, both written and oral. I intend no disrespect to the quality of those submissions by not reproducing them in full in this judgment. It is unnecessary for me to do so in light of the written record. I confirm that I have had full regard to all the matters on which counsel have relied, both in support of, and in opposition to, this claim. Nor do I propose to identify all the evidence on which I have relied in reaching my decision, to elaborate at undue length upon my conclusions on all the issues that are said to arise on this claim, or to articulate

every detailed step in my reasoning. Rather, I shall refer only to the main issues and evidence in dispute, set out my crucial findings of fact, and explain how I have resolved those issues that are essential to my determination. But this does not mean that I have ignored the totality of the evidence, or the issues, in this case. Rather, I have given them anxious, and sustained, consideration.

14. The combined authorities bundle extends to 713 pages, and comprises 25 case law authorities together with substantial extracts from chapter 11 (on solicitors) of the 9th edn. of *Jackson & Powell on Professional Liability*.

The claimant's case in summary

15. As Mr Scher sets out in his written skeleton argument, the claimant says that it relied on Vincents' advice when it contracted to purchase eight units in the development. Mr Scher asserts that, when it reported on title, Vincents negligently failed to advise the claimant that Schedule 2 to the purchase agreement provided no meaningful protection or security for the claimant. The claimant paid its deposits over to the developer's solicitor, MSB Solicitors, which held the money "*as stakeholder for the Seller subject to the conditions set out in the Schedule 2*". MSB would then release the deposits to the developer on the terms set out in Schedule 2. These provided that MSB "*shall not be required to enquire into or verify the accuracy appropriateness or authenticity*" of the documents submitted on behalf of the developer when any moneys were requested. Mr Scher complains that Schedule 2 gave the illusion of security but, in reality, there was no effective protection whatsoever (for the reasons he gives at paragraph 40 of his skeleton argument). Practically all of the money paid over by the contracting purchasers by way of '*deposits*' was transferred to the developer before it entered into insolvent liquidation. None of it is recoverable.

16. Mr Scher points out that claimants to this litigation are not the first to find themselves in this situation. The extraordinary risks run by purchasers in developments funded by very large payments described as '*deposits*' are well-known, and were at the time of these transactions. The Solicitors Regulation Authority (**the SRA**) had issued a '*Warning Notice*' on 23 June 2017, around the time when the first of the claimants began purchasing units in the development. Mr Andreae, an administrative assistant at Vincents, sent a copy of this Warning Notice (described as '*SRA Guidance*' in the list of attachments) to Mrs Nickoll by email on 7 December 2017. The email reads:

Dear Mrs Nickoll,

I have sent to you a letter today with the Report on Title for the above named Properties, together with a copy of the Agreement for Sale for signature and return.

I have referred to various documentation with the Report on Title, which I attach herewith for your reference.

If you have any queries, please do not hesitate to contact me.

Kind regards

The '*SRA Guidance*' was one of some 13 attachments to this email.

17. The SRA Warning Notice lies at the heart of Mr Scher's submissions. Headed '*Warning notice*' (in large-size font), it extends to just over five pages of text (including notes). Mr Scher quotes extracts from it at paragraph 14 of his skeleton (with certain passages emphasised in bold). However, it is also necessary to reproduce a section towards the beginning of the notice headed '*Who is this warning notice relevant to?*', as follows:

> *All law firms should read this warning notice because so-called 'investment' schemes are being continually changed to avoid features that have been warned about previously. Practitioners in many fields of law may find that they are at risk of facilitating a dubious investment scheme.*
>
> *This warning is also relevant to members of the public who are considering paying money into what is promoted as an 'investment' scheme where a law firm or solicitor is involved. They also should also read this warning and other material we have published.*
>
> *We will be issuing a further direct warning to the public and law firms should ensure that they are familiar with that and all previous warnings.*

18. The extracts reproduced, and emphasised, by Mr Scher read as follows:

> ***Conveyancing or purported investment in land***
>
> *Financing a development*
>
> *Schemes are being promoted as involving the routine buying of a property when in reality the buyers' money is being used to finance a development or refurbishment. This is of particular concern when in unusual developments such as the buying of individual hotel rooms, rooms in care homes, or self-storage units.* ***Our concerns also apply to some extent to any 'off-plan' purchases. These may not be investment frauds but they still involve higher risk than the simple purchase of a property.***
>
> ***High deposits are used by property developers to finance their developments. Investors are not being advised, or properly advised, that this often presents a much higher risk than simply buying an existing house or apartment.***
>
> *Where you are acting for the buyers in these types of transactions,* ***you must advise clients fully about the transaction and how it significantly differs from the simple buying of an existing property****, such as:*
>
> *1. Buying a property not yet built or completed i.e. off plan or subject to significant refurbishment, involves substantial risk that the developer or seller could fail and money will be lost*
>
> *2. Promises of substantial returns are often illusory – and standard warnings in publicity about the risk of capital loss are not enough to ensure that a law firm has properly advised a client upon the transaction (see outcomes (1.1),(1.2),(1.12) of the Code of Conduct)*
>
> *3. High 'deposits' are being used to finance the development (see below).*

We are seeing cases of solicitors simply processing transactions for buyers and adopting the language of conveyancing. The effect is to mask what is really happening. For example, investors provide money for a 'deposit' which is ***released to the seller upon some (often spurious) condition****. The investor's money is used to buy the property or finance its building or refurbishment. This carries substantial risks such as the money being misappropriated, the seller failing to complete the scheme or the seller becoming insolvent.*

The usual deposit in a conveyancing transaction is 10 percent. It is paid to ensure that the buyer will complete the contract. In dubious schemes we have seen, the 'deposit' has been 30 percent or even 80 percent. These are not market standard deposits but involve both pre-payment of the price and effectively the providing of finance to the developer. Referring to them as deposits is part of the psychology of presenting a risky 'investment' as routine conveyancing. Clients are actually paying their money into often high-risk property development, and substantial losses have been suffered. ***You should ensure that clients fully understand the risks and it may well be necessary to strongly advise clients against entering into the transaction.*** *...*

The SRA Principles

You must ensure that you do not become involved in potentially-fraudulent financial schemes. You must also ensure that you advise your clients fully, frankly and in good faith. ...

Practical tips

a. Be familiar with all of our warnings.

b. Analyse the scheme or supposed transaction carefully and critically, with our warnings in mind.

c. Refuse to act or cease to act if you have concerns.

d. Look critically at documents to assess what they mean (if anything) and whether they are fair.

e. Apply the SRA Principles ...

19. Nevertheless, despite the very high risk, despite the SRA's warning, and despite the '*indulgent*' wording of Schedule 2, Mr Scher complains that the claimant was not advised that its deposits had no meaningful security or protection. Vincents failed to ensure that the claimant fully understood the risks, and failed to advise the claimant against entering into the transaction. The claimant seeks damages for this negligence.

20. The main breaches of duty on which Mr Scher relies against Vincents are:

(1) Failing to advise the claimant not to proceed with the purchase. This duty arose in the unusual circumstances of this particular case, including the SRA Warning Notice (which says in terms "*it may well be necessary to strongly advise clients against entering into the transaction*"); the '*red flags*' in the transaction; and the inexperience of the claimant. Mr Scher says that this has been described as the '*bargepole duty*' in earlier hearings.

(2) Failing to ensure that the claimant fully understood the risks of the transaction. This duty arose in the same unusual circumstances mentioned immediately above. Mr Scher suggests that this duty could have been satisfied by, for example, including a bold warning in the covering letter and the conclusion of the report. Mr Scher points to a form of '*disclaimer*' that was drafted by Mr Tim Grover of Vincents on or about 11 February 2020 specifically in the context of this development. This was after the developer's parent company, Prime Site Developments Limited, had entered into compulsory winding-up. Mr Grover suggested that this warning *"... should be sent to clients on off-plan property purchases when we send them the report on title. ... It maybe lays it on a bit thick and leans towards American-style litigiousness but I think it would peg back any arguments on our reports/advice in future.*" The document was headed 'WARNING!' in bold red type and a large-size font size. The first two bullet points read:

- Property investment is risky, particularly off-plan property purchases. You may lose all of the money you have invested and the associated transaction costs.

- Off-plan purchases are susceptible to changes in market conditions and there may be unforeseen or unknown problems that arise causing the development to stall or fail.

Vincents did not use this form of warning when it advised this claimant. In closing, Mr Scher suggested that this was effectively an admission by Vincents, after the event, that its Report on Title was not sufficient. There was no witness from Vincents who could be asked to what use this was put in practice.

(3) Failing to advise that the deposits had no meaningful security or protection. At the time MSB released the '*deposits*', the terms of Schedule 2 meant that no one owed the claimants any duty to consider the progress and value of the development. The purchase money was held effectively to the developer's order. The claimant was never advised about this.

21. Mr Scher submits that the claimant would not have entered into these purchases if Vincents had fulfilled its duties, either by advising it not to proceed, taking reasonable steps to ensure that its advice was understood, or giving non-negligent advice about the risks involved in the way the 50% '*deposit*' was held. In that event, the claimant would not have lost its £303,596; and it now seeks to recover that sum, together with interest and costs, from Vincents.

The Report on Title

22. In closing, Mr Scher emphasised that the same Report on Title was sent out to all of Vincents' clients who were engaged in purchasing units in The Rise without any differentiation according to their perceived level of sophistication. I have already quoted from the email of 7 December 2017 from Vincents to Mrs Nickoll which attached (amongst many other documents) the '*SRA Guidance*', and referenced the contemporaneous letter to the claimant, also dated 7 December 2017. That letter was signed by the relevant fee-earner at Vincents, Ms Sanya Motorwala. It enclosed a single Report on Title for all eight properties, a sample lease and underlease, a further email "*accompanying Additional Documents received from the Sellers Solicitor*", the agreement for sale, and a completion statement covering all eight units for the monies required to exchange, including Vincents' fees. The letter continues:

The Report on Title summarises the title documentation received from the sellers' solicitor, together with the terms of your purchase. We would be most grateful if you could review the Report on Title and the Additional Documents, and let us have any queries you may have before exchange of Contracts.

The claimant was required to sign the letter confirming "*that we have read and understood the contents of the attached report and reviewed the Additional Documents enclosed*". In the event, this was not done until 24 April 2018, shortly before exchange of contracts on 26 April. The letter concluded by inviting the claimant to "*note that if you knowingly give false information on this form you may be prosecuted*".

23. The Report on Title is dated 7 December and extends to 33 numbered pages. However, it is a far less formidable document than this bald enumeration might suggest. The first page is the front sheet. This is followed by eight pages giving particulars (in similar terms) of each of the eight individual constituent units that the claimant was purchasing. Section 1 (of just over one page) sets out various expressions used in the Report. Section 2 (a further page in length) is headed '*Scope of the review and limitation of liability*'. In evidence, Mrs Nickoll explained that she had bought properties before and at the beginning of every report on title there is always some kind of disclaimer. "*That is what it felt like - a disclaimer*." Section 3 is headed '*Purchase price and contract terms*'. It is really the heart of the Report. It comprises 23 sub-paragraphs, and extends for a little over four pages. I will return to it shortly. Section 4 sets out details of the property in just over two pages. Section 5 sets out the search results (over four pages). Sections six to ten deal with replies to pre-contract enquiries, planning and building regulations, stamp duty land tax, leasehold consultation, and insurance, all in just over two pages. Section 11, headed '*Conclusion*', reads:

Subject to the matters referred to in this report as stated above, we are of the opinion that upon completion of the purchase of the Property and registration at the Land Registry you will obtain a good and marketable title to the Property.

This section is clearly addressing the position on completion of the purchase and registration at the Land Registry, as distinct from the interval between exchange of contracts and completion. I am satisfied that this was clearly understood by Mrs Nickoll.

24. Schedule 1 summarises what Vincents considered to be the '*pertinent terms*' of the lease itself (in just over four pages). Schedule 2 summarises (in less than a page) what Vincents considered to be the '*pertinent terms*' of the underlease. This was superfluous in the present case because the claimant had negotiated for a proposed property management agreement, in place of an underlease of each unit, as the vehicle for generating the guaranteed rental income for each unit. There are then five pages which are blank apart from identifying the titles of various additional documents which were intended to form annexes to the Report on Title.

25. I return to section 3 of the Report on Title, comprising 23 sub-paragraphs and extending a little over four pages. I will set out sub-paragraphs 3.3 to 3.9 verbatim:

3.3 When the Contract is legally exchanged (which is when you will have legally and irrevocably committed yourself to purchasing the Property and to pay the sums due under the Contract), you will be required to immediately pay the First Deposit.

Following the receipt of your signed documents and the First Deposit from you, we will endeavour to exchange contracts without delay. Please note the Completion Date to be inserted into the Contract will be 'on notice' which means that practical completion (i.e. when the property is build complete/habitable) will not take place until notice is served by the Sellers solicitor. Due to the nature of this transaction a fixed completion date will not be provided.

3.4 The First Deposit and subsequent deposits will be held by the Seller's solicitor as stakeholder for the Seller. Accordingly, the Seller's solicitor is only able to give the money to the Seller subject to the conditions set out in the Schedule 2 of the contract. In essence, this schedule provides that immediately following exchange of contracts, the seller solicitors will release £10,000 to discharge the obligations contained in a Loan Agreement dated 13 April 2017 between The Lofts (Ormskirk) Management Limited, the Seller and Kerry Tomlinson (acting as Guarantor) (copy of the Loan Agreement attached with the Additional Documents). The Original Contract (defined in the Loan Agreement) has now completed and therefore it appears the Loan (defined in the Loan Agreement) has now been provided to the Seller for the purposes of developing the Property/Building. Whilst the Loan Agreement provides that in the event the full loan amount cannot be paid by 31 March 2018 and in the event of default, the Guarantor will 'pick up the tab' so to speak, we have not been any enquiries of the Sellers Solicitor in respect of the Guarantors financial standing and therefore are unable to advise further on the same.

3.5 The remainder of the First Deposit will only be released to the Seller by their solicitor in connection with the construction of the development, including marketing of the same. This gives you some protection as the monies cannot simply be sent to the Seller to use for their own means, i.e. in respect of anything other than developing the Property/Building.

3.6 The usual maximum deposit in a conveyancing transaction is 10% and it is paid to encourage that a buyer to complete the contract. The deposit required in this transaction is not a market standard deposit for a typical residential conveyancing transaction but involves both pre-payment of the price and effectively the providing of finance to the Seller. In this case buying off-plan properties presents a substantial risk that the developer/Seller could fail between exchange and completion. Any monies you have paid, and will have released to the Seller would be lost. We have raised this issue with the Seller's Solicitor who have advised the deposit required is in line with other developers, and therefore for the time being are not willing to change this arrangement. Please find SRA Guidance in respect of the same.

3.7 Further, whilst we have probed the Seller's solicitor in respect of providing some form of deposit protection scheme, unfortunately this has been rejected for the moment. Therefore it may be difficult (or even impossible) for you to recover any sums which you have paid to the Seller under the Contract, if, for instance the sale of the Property does not complete for whatever reason (for example, should the Seller be unable or refuse to complete or become insolvent or enter administration prior to your purchase of the Property).

3.8 Please note that we have not undertaken any checks on the Seller or any contractor(s) appointed under the Building Contract.

3.9 Following the exchange of the Contract, the Seller is obliged to carry out and complete the building works specified and in accordance with the Contract you are entering into. You should however note that there is no specific date by which the Seller is required to have completed all of the works. In addition, you must also be aware that the Seller (pursuant to paragraph 1.2 of Schedule 1) is entitled to make such reasonable alterations in the layout and design of the Property, upon the basis that such alterations do not materially alter the area and size of the Property, which is more than 5% as detailed in the Property Specification attached at Annex D and the Seller must ensure the alterations does not affect the valuation of the Property.

26. Clause 18 of the Agreement for Sale, which accompanied the Report on Title, is headed '*Registration of Property'*. By sub-clause 18.1:

The Seller agrees that upon formal exchange of this Agreement, the Buyer is entitled to lodge an application at HM Land Registry to place a notice of their interest under this Agreement on the Title Number and any other title relevant to the Property.

The Report on Title contains no reference to, or any explanation of the purpose or effect of this provision, or of the degree of protection that it might afford a contacting purchaser. However, there is no pleaded allegation that this omission constituted any breach of the duties Vincents owed to the claimant.

27. The reservation agreement signed by Mrs Nickoll on 23 November 2017 had provided for the purchase to be cancelled, for the property automatically to revert back to the seller, and for no monies to be returned to the claimant, if exchange of contracts, and the receipt by the seller's solicitors of the deposit payable upon exchange, had not taken place within the following 28-day period. In the event, there was a delay of just over five months between the reservation agreement and exchange of contracts. Although the reason for this is not really in dispute, I find that this delay was attributable to further due diligence undertaken on behalf of the claimant by Mrs Nickoll and her insistence (with the knowledge and support of her husband) that the developer should adhere to her '*red lines*'. The first of these was Mrs Nickoll's requirement that the developer should keep to its original promise (recorded by way of an amendment on the face of the reservation agreement) that instead of entering into five year underleases that would yield a guaranteed rental income for each of the eight units, there should be a property management agreement (or '*PMA*') "*stating assured income of £6396 per annum for five years*". The second '*red line*' was the claimant's insistence that the developer should provide satisfactory evidence that a planning condition relating to remediation works at the site of '*The Rise*' had been discharged. In passing, it is worth noting that Mrs Nickoll (or her husband) had successfully negotiated the benefit (noted as '*additional comments*' in the reservation agreement) of (1) a £6,500 "*multi unit incentive given from the developer to be deducted from completion payment*", and (2) a £2,000 cash back on each unit from Certa Invest, to be paid for each unit on exchange of contracts.

Mrs Nickoll's evidence

28. The only witness who gave evidence at the trial was Mrs Nickoll. Her witness statement is dated 28 April and extends to 16 pages. It was made at a time when Mrs Nickoll, and her legal representatives, were unaware that Vincents would not be calling any witness evidence at trial. Mrs Nickoll sets out her background and personal experience at

paragraphs 6 to 9. At the time of the transaction, she had been a homemaker for several years, following the birth of her first child, who had health issues. She sets out her very limited experience of property purchases. Importantly, she had never previously purchased any property off-plan. Mrs Nickoll details the facts leading up to her payment of the '*deposit*'. She explains how she was "*passed over to Vincents*", a choice made for her by Certa Invest. She sets out her understanding of the Report on Title and other documents sent to her by Vincents. She emphasises that she would have abandoned the transaction if she had been properly advised. It is fair to say that Mrs Nickoll was not at all shaken in her evidence during some three hours of cross-examination.

29. I found Mrs Nickoll to be an extremely impressive witness. She is obviously highly intelligent, analytical, articulate, attentive, capable, commercially astute, diligent, and resourceful. In her dealings with the developer and its marketing agent, Mrs Nickoll was well able to nail matters down and to stand her ground. She stuck firmly to her '*red lines*' by insisting upon a property management agreement in place of a five-year underlease as the mechanism for securing a guaranteed rental return, and insisting on adherence to her original fee agreement despite the additional work that Vincents would have to undertake in dealing with her mortgagee. Although Mrs Nickoll (and her husband) had no previous experience of investing in a partly buyer-funded, off-plan, residential property investment, they were the very opposite of naïve, unsophisticated purchasers. From the issues that she identified and raised, and the sources of further information that she accessed, Mrs Nickoll displayed a remarkable capacity to understand the nature, and the implications, of this transaction. She was well capable of understanding its potential downsides, and of weighing them against the potential upsides. I accept Mr Scher's submission in closing that if Mrs Nickoll seemed a little defensive at times, she was acutely conscious that she had lost £340,000 on a disastrous property purchase and this is her only chance of a remedy.

30. At paragraphs 30 and following of her witness statement, Mrs Nickoll relates that she recalls reading the Report on Title "*carefully and more than once as it was a lot of information to try and digest and not all of it was easy to understand*". She found it "*hard to distinguish the wheat from the chaff having never bought off plan before*". Mrs Nicholl does not recall her husband reading the Report on Title "*as he was working 12 hour days and did not have time*". I accept that evidence. I find that Mr Nickoll had been instrumental in identifying '*The Rise*' as a suitable investment for the family, and in negotiating the terms for its acquisition. Due to the stress he was under at work, he then left the transaction in the extremely capable hands of his wife to deal with the solicitors, the developer, and its agents, and to handle all the necessary paperwork.

31. However, I also find that Mrs Nickoll kept her husband fully informed of how the company's purchase was progressing since this was, and was always intended to be, an investment for the benefit of the entire Nickoll family, funded out of the family's hard-earned savings. Mrs Nickoll also consulted, and involved, her husband at times of any difficulty, as when she was being pressed by the developer, its agents, and even the claimant's own solicitors to proceed to an exchange of contracts before her '*red lines*' had been satisfactorily addressed. A good example of this (to which Mrs Nickoll alludes at paragraph 52 of her witness statement) is to be found in Mr Nickoll's abrupt response to a chasing email from Sanya Motorwala of Vincents, addressed to both Ruth and Ian Nickoll, sent at 10.00 am on 27 March 2018. Six minutes later Mr Nickolls replied:

Hi there — thank you for the update.

I think we have been over this numerous times now. We have been in contact with the developer and with Ricky at Certa Invest.

Nothing has changed from our perspective. Once approvals have been granted and building works have commenced in earnest I shall be happy to exchange. Until then I am not, so please refrain from chasing us until the above criteria has been met.

I find that the position was accurately summarised by Mrs Nickoll (at page 141 of the transcript) thus:

We were probably joint decision-makers where there were things to be decided upon, but in terms of understanding the documents and assessing the risk, that was my job.

I am entirely satisfied, however, that Mrs Nickoll would not have decided to pull out of the transaction without having first consulted her husband, and secured his express agreement to that course. Whatever hopes the Nickolls might have entertained about seeking to secure its recovery should they decide to withdraw from their purchase, they both stood to lose £40,000 of their hard-earned savings should they withdraw from the purchase.

32. Mrs Nickoll states that she assumed that the Report on Title would contain "*a summary of any key or important issues*" that she should be aware of with regard to '*The Rise*'. She states that she has reviewed the Report on Title to refresh her memory of its contents for the purposes of preparing her witness statement. In his opening submissions, Mr Wilton KC observed that it is now over eight years since contracts were exchanged on 26 April 2018. He referred to the insidious human tendency for witnesses sometimes to underplay the extent to which they did in fact know about the risks of a transaction in order to convince themselves that they did not have that knowledge, or that it was all the fault of someone else who had not emphasised those risks sufficiently to them. Mr Wilton KC suggested that there was an element of that going on here.

33. By way of useful reflections on such forensic dangers, Mr Wilton KC took me to observations of Mr Richard Farnhill (sitting as a Deputy Judge of the Chancery Division) in *Gordeno v Irwin Mitchell LLP* [2026] EWHC 136 (Ch); [2026] P.N.L.R. 17 at [15]-[17]:

15. The Gestmin v Credit Suisse line of cases is now so well-rehearsed it does not, I think, need to be set out in great detail, but those factors that go to influence memory were present here in the clearest terms. Mr Gordeno was poorly advised by Mr Acheson and Irwin Mitchell. The transaction that he entered into following that advice has cost him a very great deal, both financially and emotionally. Their error concerned precisely the event that came to pass. As he says in his witness statement, these proceedings represent a way, probably the only way, for him to recover some element of what he has lost.

16. One adds to that the fact that the test for causation in a case such as this is, principally, a subjective one. The issue with such a test was best summarised by Kirby J in the High Court of Australia in Chappel v Hart [1998] HCA 55 at paragraph 93(7):

> *The subjective criterion involves the danger of the 'malleability of the recollection' even of an upright witness. Once a disaster has occurred, it would be rare, at least where litigation has commenced, that a patient would not be persuaded, in his or her own mind, that a failure to warn had significant consequences for undertaking the medical procedure at all (where it was elective) or for postponing it and getting a more experienced surgeon (as in this case).*
>
> *17. That decision is one of medical rather than professional negligence, but the parties agree that the test here is equally a subjective one, and the risks are the same. This transaction has been a disaster for Mr Gordeno – it ultimately led to his bankruptcy. That hindsight in my view heavily, but I accept subconsciously, affected his evidence.*

34. In closing, Mr Wilton KC emphasised that Mr and Mrs Nickoll had been confident and wealthy enough to invest in purchasing eight units, not dipping their toes into the water and buying one or two, but diving in head first for a very large purchase. They were using a company for that purpose. Mrs. Nickoll had explained that she was alive to political discussions about the possibility of changes to taxation for those who owned second homes. She was also thinking ahead about the company being a tax-efficient vehicle to pass on wealth to her children in the longer term. That was a badge of sophistication. Mr Wilton KC also pointed to the fact that Mr and Mrs Nickoll had wanted something different to other purchasers; and they had achieved this. They had been able to dictate the pace (and also certain of the terms) of the transaction. They had not been going to budge on their two '*red lines*'; and they did not do so. They had not been cowed by the people they were dealing with. They had their own terms; and they stuck to them.

35. After Mrs Nickoll had reviewed the Report on Title, over four months passed before contracts were exchanged. Both before, and during, this interval of time, I am satisfied that Mrs Nickoll's actions demonstrated to Vincents a degree of sophistication, and commercial acumen and sense, as Mr Wilton KC explored during the course of his cross-examination, and emerges from a reading of the transcript. Indeed, this was apparent to Vincents from the outset.

36. In an email sent to Mr Andreae, at about 13.15 on 13 December 2017, Mrs Nickoll indicated that she had read through the Report on Title and wished to raise a few items, in order of priority. The first was the agreement that they should have a '*PMA document*' in the place of an underlease. She indicated the specific need for this to include similar language to that which she set out in her email. Mrs Nickoll next pointed to the fact that the £2,000 rebate that had been agreed with Certa Invest had not been documented. She then referred specifically to paragraph 2.2 (detailing the identity of the seller), and sought confirmation of her understanding that there would be no recourse against its parent "*should the development fail*". This particular wording is significant, given the distinction that Mrs Nickoll sought to draw in cross-examination between the failure of the '*developer*' and the failure of the '*development*'. She claimed that whilst she had appreciated the risk that the **developer** might fail, she had not appreciated that this might lead to the failure of her interest in the **development**. As regards section 3.9 of the Report on Title, Mrs Nickoll queried whether it would be possible to specify that the size of the units should not be reduced to less than 30 square metres, otherwise this could make securing a mortgage trickier. Concerning the insurance clause on page 23 of the Report on Title, Mrs Nickoll queried whether there

was any intention on the part of the seller to get insurance cover, but it had just not disclosed this. She inquired whether insurance cover was inappropriate where a building had not yet been constructed, or whether the seller was just not taking out any cover. Finally, concerning page 10 (the interpretation clause), Mrs Nickoll identified a possible '*typo*' in the definition of '*Completion Date*', perceptively suggesting that the second reference to '*Certificate*' in the phrase '*Certificate of Practical Certificate*' should read '*Completion*'.

37. Mr Andreae responded to some of these queries by his email of 19 December at 16.54. This followed a chasing email sent by Mrs Nickoll at about 13.38 on 18 December (copied to Mr Nickoll) in which she also raised certain further queries which she had first asked the agents to address (as referred to in the next paragraph) but which they had indicated should come through the solicitors.

38. Some 20 minutes after sending her initial email to Vincents, at 13.36 on 13 December 2017 Mrs Nickoll sent a second email to Mr Ricky Murphy of Certa Invest. She explained that as "*we*" had been going through the contracts, she had sent a few comments back to her lawyer; but she also had a few questions for Mr Murphy, as follows:

- Our counterpart to the sale is Hill Top Rise Ltd rather than Prime Site Developments Ltd. Do you have any financial reports for them so we can see what there is in the company?

- The Deposits and development loan are being guaranteed by a Kerry Tomlinson - do you have any details on this person's financial standing? ability to actually perform this obligation if required.

- Why has no form of deposit protection scheme been taken out by the vendor?

- Are the flats we are buying in the area of land impacted by the restrictive Covenant in place not to develop the land (Land edged in blue and showing number 1 on the land registry)?

- Can you give us an update on where the agent is with regards to clearing up the concerns from the environmental report? When do they expect to get the all clear?

Mr Nickoll later sent a chasing email to Ricky Murphy at 10.55 on 14 December 2017.

39. These emails serve as early illustrations of Mrs Nickoll's ability to grasp even the minor details of this transaction, and to identify and raise queries where that understanding was, or might be, lacking or incomplete, and also of her propensity to seek to nail matters down. The emails also demonstrate Mrs Nickoll working together with her husband. I find that the claimant (acting by Mrs Nickoll) was financially sophisticated and aware; and that she communicated and demonstrated this to Vincents. I agree with Mr Wilton KC's assessment in closing (at page 328 of the transcript) that Mrs Nickoll's entire conduct of this matter not only demonstrated a great deal of sophistication. It also demonstrated a high degree of agency, of the ability to make decisions, to canvass the whole scenario, and to decide whether, on balance, this was an investment which the claimant should be pursuing.

40. In the course of his submissions, both written and oral, Mr Scher repeatedly emphasised (by reference to familiar authorities such as *Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep P.N. 48) that the scope of a solicitor's duty to advise the client on matters reasonably incidental to a conveyance is affected by that client's experience. In my judgment, however, it is also conditioned by the solicitor's reasonable perception, if necessary after due inquiry, of the client's intelligence, and level and capacity of understanding the transaction in which they are engaged. In the present case, it was clear to Vincents – and rightly so – that in Mrs Nickoll they were dealing with a highly intelligent client, who had a remarkable level of understanding, and an ability to pick up on points that would have eluded many lay clients. She also had her equally capable and intelligent husband in the background, with an equal, albeit indirect, familial and financial interest in the transaction, upon whom she could call for clarification and support whenever this was required. Although Mrs Nickoll had no previous experience of this particular form of property investment, she had sufficient grounding in the world of property generally to know what to look out for in this transaction.

41. Mr Scher also referred this court to the Court of Appeal authority of *County Personnel (Employment Agency) Ltd v Alan R Pulver & Co* [1987] 1 WLR 916 as an illustration of the phenomenon that in the exercise of a reasonable professional judgment, a solicitor is expected to be alert to risks which might elude even an intelligent lay person, and is required to advise the client of such risks, or to explore the matter further. I have borne this element of a solicitor's duties firmly in mind in my approach to the evidence in this case.

42. In his closing submissions (from paragraph 329 of the transcript onwards), Mr Wilton KC heaped praise upon Mrs Nickoll. He rightly accepts her as an honest witness. He submits, nevertheless, that elements of her evidence must be distrusted, because of the insidious dangers of hindsight, and the tendency, even of honest witnesses, to reconstruct what must have happened. Mr Wilton KC cautions the court to treat Mrs Nickoll's evidence generally with great care. He reminds the court of the observations in the *Gordeno* case concerning the dangers of hindsight, and of the ability of witnesses to reconstruct evidence, particularly when something has gone wrong, and one is concerned with whether they were told about the dangers in advance. That is what Mr Wilton KC submits has happened here. Bubbling away inside her is the irresistible (but entirely understandable) tendency for Mrs Nickoll to engage in the conjectural reconstruction of events. In doing so, she is simply seeking comfort from the thought that the disastrous outcome of the present case is simply someone else's fault.

43. For the reasons he advances, Mr Wilton KC invites the court to make three findings in relation to Mrs Nickoll's evidence. First, that she clearly understood from the Report on Title that this was a buyer-funded investment scheme with a high degree of risk, where the buyers' deposits were financing the development, where the developer was at risk of failing, and where, in that event, the purchasers could lose everything. What we see from Mrs Nickoll's oral evidence is the human tendency to seek to deflect something which is an uncomfortable truth. Second, that Mrs Nickoll read the SRA Warning Notice. Third, that Ms Motorwala did not speak to Mrs Nickoll over the telephone shortly before exchange of contracts when she gave her the reassuring news that the claimant would still be protected should the development fail, and someone else had to step in and finish it off, because the claimant would still have the registered

title to its land. I make those three findings. I accept Mr Wilton KC's reasons, although (without derogating from them) I will express my reasoning in my own words.

44. First, I am satisfied that Mrs Nickoll read the Report on Title in great detail and queried with Vincents, and with Certa Invest, anything that she did not understand. Paragraph 3.6 made it entirely clear that: (1) The deposit required for this transaction was not a '*market standard*' deposit for a typical residential conveyancing transaction but involved both the pre-payment of a substantial part of the purchase price and, effectively, the provision of development finance to the seller. (2) Buying off-plan properties presented a substantial risk that the developer and seller could fail between exchange and completion. (3) In that event, any monies that the claimant had paid, and had been released to the seller, would be lost. (4) This was an issue that Vincents had raised with the seller's solicitors, who had advised that the deposit required was in line with other developers, and therefore for the time being they were not willing to change the arrangement. (5) The claimant was referred to SRA Guidance in respect of this. This warning was reiterated in paragraph 3.7, which: (6) Informed the claimant that Vincents had probed the seller's solicitor in respect of providing some form of deposit protection scheme but, unfortunately, this had been rejected for the moment. (7) Warned that it might be difficult (or even impossible) for the claimant to recover any sums which it had paid to the seller under the contract if, for instance the sale of the property did not complete for whatever reason (for example, should the seller be unable, or refuse, to complete, or become insolvent, or enter into administration prior to the claimant's purchase of the property).

45. This is a stark warning. Yet Mrs Nickoll raised no query in relation to either of those two paragraphs in her initial, carefully considered email to Vincents of 13 December 2017, or in any email thereafter. Had Mrs Nickoll not understood Vincents' repeated warnings about the risk of losing the claimant's deposits, I am certain she would have done so. Instead, in her email of 13 December 2017 to Certa Invest, she queried why no form of deposit protection scheme had been taken out by the vendor.

46. As Mr Wilton KC explained in closing, the language of paragraphs 3.6 and 3.7 is absolutely straightforward and clear: These sub-paragraphs refer to the risk that the developer might fail, and, if that should happen, the claimant might lose all of its deposits. In cross-examination, Mrs Nickoll (at pages 197-8) acknowledged that she understood the risk that the developer might fail between exchange and completion. But she said that, at the same time, she was being told by her lawyers that she would have a registered stake in the property. So there was a risk that the **developer** might fail, but not that the **development project** would fail. The claimant would still have a stake in the development. If someone else had to come in and finish the development off, the land, and its value, were still there; they would not disappear. Later (at page 201) Mrs Nickoll reiterated that she felt that she was buying into a project. She had a stake in the land, and would continue to do so. She had no reason to think otherwise. She had a UN1 charge registered, her name was on the land register, and she thought she would have a stake in the development. She was told that the UN1 would protect her.

47. I cannot accept Mrs Nickoll's evidence in this regard, or the account that she gives at paragraph 36 of her witness statement. I accept that she is not being deliberately dishonest, or seeking in any way to mislead the court. Rather, I find that Mrs Nickoll has been engaged in reconstructing the course of events with the benefit of hindsight,

and under the influence of the entirely understandable wish to transfer the blame for the disastrous outcome of this property venture to someone other than the claimant. At paragraph 2.2 of Appendix 2 to the amended particulars of claim the claimant's pleaded case is that Mrs Nickoll had "*understood that even if the developer became insolvent, someone else would pick up and finish the project*", and that the claimant "*would be a stakeholder in it as it had a UN1 charge*". She pleads that she "*communicated this understanding*" to Vincents "*by telephone shortly before exchange, and was not corrected*". In paragraph 36 of Mrs Nickoll's witness statement there is a subtle shift in the claimant's account of events, with Mrs Nickoll posing a question to Ms Motorwala, who then provides the relevant assurance that the claimant's stake in the development will be protected. The paragraph reads:

Paragraph 3.7 [of the Report on Title] I also recall reading at the time, but again, the language was challenging and difficult to understand. Vincents flagged that there was no deposit protection scheme. I can see from the email of 19 December 2017 that Jack Andreae of Vincents said that most developers would not offer a deposit protection scheme. I do remember discussing this over the phone with Sanya Motorwala, a solicitor at Vincents. She said that was market standard practice for there not to be one, which with those two answers and the RoT wording gave me comfort that this was not out of the ordinary. I asked her that if the development failed, would the Company have still bought a piece of the project, so if someone else had to come in to finish it off, would the Company still have a stake in it? Or if additional financing had to be raised, would the Company still have a stake in it? I recall Ms Motorwala saying that there was protection because the Company would still have the registered title on the land, and so someone else who came in later to develop it would still have to take that interest into account. I was aware of the fact that maybe something could go wrong, but I felt that if that did happen, the Company would still have a piece of land that had been paid for and so it was protected. If someone else had to come in and finish the build there might not be as much return as originally thought, but due to Ms Motorwala's response I did not envisage that the whole stake would be lost. The reassurances she gave me put my mind at rest. I would not have proceeded with the purchases if I understood the actual risk being taken and that the assurances given by Ms Motorwala were not correct.

48. I agree with Mr Wilton KC that none of this either makes sense or rings true. First, had Mrs Nickoll found the language of paragraph 3.7 to be "*challenging and difficult to understand*", she would have queried this, whether in her email of 13 December 2017 or otherwise, shortly after "*carefully*" reading the Report on Title "*and more than once*" (as she says she did). She would not have waited to do so until some two or so weeks before exchange of contracts in April 2018. I agree with Mr Wilton KC that the "*time gap is important*". Second, there is no discernible reason for Mrs Nickoll to have been revisiting this issue some four months after the Report on Title. Mrs Nickoll could provide no satisfactory explanation for having done so. It makes no sense in the context of the timescale and the history of the transaction. It has no logic or coherence about it. Nor was there any reason for Mrs Nickoll to have been referring to a UN1 charge or a '*stake*' in the project since these are not referenced in the Report on Title. I agree with Mr Wilton KC that this is not a reliable recollection. It comes after the event, with one possible source (suggested by Mr Wilton KC in closing) being an undated email from Ms Motorwala to Mrs Nickoll (probably sent in January 2019, but certainly after the development had run into difficulties) at page 3370 of Bundle D. This was written at a

time when Vincents were "*still waiting for the developer's solicitor to provide an update on the current status of the site and what the position is in trying to secure a lender*". The relevant paragraph reads:

... in theory if another developer steps in, your interest in the partially unbuilt property is protected under unilateral notices and as such I believe the contracts should be honoured. However, we cannot be certain what type of deal would be struck, if any, but certainly all notice holders would be informed prior to any disposition of the land being registered in alternative name.

49. Turning to the SRA Warning Notice, this is addressed at paragraphs 44 to 47 of Mrs Nickoll's witness statement. She acknowledges that this was "*one of the large stack of additional 13 documents (with a combined total of 169 pages) that were sent by Vincents with the email of 7 December 2017 timed at 16:41*". Mrs Nickolls says that she

... cannot remember if I read the Warning Notice at the time. I may have read the first few lines and thought oh it says all law firms should read this, so it was not for me, but I have no real recollection of the Warning Notice until after the whole thing had defaulted and I was trying to contact Vincents to see if anything could be done to recover the money. Given its importance, I am surprised that the Warning Notice was not given more prominence or summarised in the RoT like other documents were.

50. As Mrs Nickoll accepted in cross-examination (at page 225 of the transcript), it would not have taken much reading of the notice for Mrs Nickoll to have seen that it was clearly designed for **clients**, as well as for **solicitors**, since this is clearly stated in the third substantive paragraph on the first page (under the heading '*Who is this warning notice relevant to?*'). So I cannot accept that Mrs Nickoll read only "*the first few lines*" of the SRA document. As Mr Wilton KC suggested in closing, this was a witness seeking to distance herself from an uncomfortable truth. I have no doubt that this Warning Notice was read by Mrs Nickoll, and in full, and with understanding. It was clearly referred to at the end of paragraph 3.6 of the Report on Title. Although it was referred to (both there, and in the title of the PDF attachment to Vincents' email of 7 December 2017) as '*SRA Guidance'*, rather than '*SRA Warning*', I do not consider that this prevented Mrs Nickoll from appreciating the relevance, and the potential significance, of this document.

51. I am satisfied that Mrs Nickoll is, and was, a highly intelligent individual who displayed a keen interest in all documents and information that might be of any conceivable relevance to the substantial property investment she was making on behalf of her family. I am satisfied that Vincents had no need to highlight its importance to her, or to tell Mrs Nickoll to read it. Indeed, if anything, the cryptic reference at the end of paragraph 3.6 of the Report on Title - "*Please find SRA Guidance in respect of the same*" – would have been calculated to have aroused Mrs Nickoll's fertile curiosity. I am satisfied that Mrs Nickoll had no need for Vincents to explain the relevance, or the impact, of the Warning Notice to her. Nor did she have any need for any bold, emphatic warning in the body of the Report on Title or its conclusion, in the covering letter, or in the contemporaneous email. I reject entirely the suggestion, advanced for the first time under cross-examination (at pages 182-3 of the transcript), and foreshadowed neither in the claimant's pleading nor in Mrs Nickoll's witness statement, that she may not have read the SRA document because it was not included within the bundle of hard

copy documents that she had asked Vincents to forward to her. Had it been missing, I have no doubt that Mrs Nickoll would have appreciated that fact, and would have asked for a copy. This is an instance of a witness seeking to distance herself from what would otherwise be an uncomfortable truth. It detracts substantially from the overall reliability of Mrs Nickoll's recollection, and the credibility of her evidence, despite its honesty.

52. Very much by way of a fall-back submission, if all else failed, Mr Scher suggests that had she read the SRA Warning Notice, Mrs Nickoll may well have taken comfort from the fact that Vincents never advised the claimant against entering into the transaction. However, consistently with her evidence that she could not recall having read the Warning Notice, Mrs Nickoll never suggested that this omission had lulled her into any false sense of security.

The missing witnesses

53. Absent from the witness box were Mr Nickoll (for the claimant) and any witness for Vincents. I was told that the two relevant fee-earners at Vincents, Mr Wellman and Ms Motorwala, no longer work for Vincents. Ms Motorwala was said to have moved to Dubai. However, there was no suggestion that either of them, or anyone else who was working for Vincents at the time of this transaction, would have been unable to give evidence at trial, even if remotely. Nor was there any suggestion that Mr Nickoll could not have made himself available to give evidence at trial. The reason for his absence was said to be that he had no relevant evidence to give because, after his initial role in identifying the property investment and negotiating its terms, he had handed everything over to his wife because of the pressures and stress of his work at Goldman Sachs.

54. I was taken to the following guidance provided by Lord Leggatt JSC (with the agreement of the entire court) in *Royal Mail Group Ltd v Efobi* [2021] UKSC 33, [2021] 1 WLR 3863, [2021] ICR 1263 at [41]:

> *The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.*

55. In the present case, I bear in mind that I have heard no evidence from Vincents in support of its defence to this claim. In closing, Mr Scher emphasised that the responsible fee earners at Vincents will have had material evidence to give on the

questions of Vincents' knowledge of the '*red flags*', including the misleading marketing materials, the claimant's lack of experience, and the telephone call on which Mr Wilton KC challenged Mrs Nickoll in cross-examination. Mr Wilton KC's response was that the pleaded claim is firmly rooted in the documents, specifically the Report on Title, and not on any conversation between Mrs Nickoll and any fee earner at Vincents. Where I find the evidence of Mrs Nickoll, honestly given as I am sure it is, to be credible and reliable, there is no evidence to gainsay it. But, for the reasons I have given, I do not find material parts of her evidence to be credible and reliable.

56. I reject the submission made by Mr Wilton KC in closing that there has been a deliberate forensic attempt to underplay Mr. Nickoll's own involvement and to marginalise him within this litigation after sophistication emerged as a key issue. I draw no inferences adverse to the claimant's case from Mr Nickoll's failure to give evidence. That failure does not detract from Mrs Nickoll's own evidence, where this is credible and reliable. I accept that virtually all the claimant's dealings with Vincents were undertaken through the agency of Mrs Nickoll. Where this was not the case, Mr Nickoll's own involvement is clearly, and fully, documented in email texts. However, I am satisfied that Mr Nickoll did have relevant evidence to give on issues of causation. As Mrs Nickoll accepted (at page 139 of the transcript):

If there was something big that came up that I thought the documents did not reflect what we had agreed or there was something I ... thought was a risk we had not seen or been made aware of, then I would flag it to him, yes.

57. The relevance of Mr Nickoll's potential evidence was also apparent from the following exchange in cross-examination (recorded at pages 170-1 of the transcript):

Q: *... If a commercial lender is backing it, that is a good sign, is it not, because one can infer that the commercial lender will have done its own checks before putting its money behind the proposition?*

A: *That would have been my assumption, yes.*

Q: *That is probably what your husband thought too, is it not?*

A: *I do not know.*

58. Mr Nickoll was just as much an ultimate decision-maker as his wife. I am certain that she would never have withdrawn from the transaction, with the likely consequent loss of the £40,000 reservation fees, without her husband's agreement. That means that Mrs Nickoll's evidence on issues relevant to causation is lacking any support from her husband's testimony. As Mr Wilton KC observed in closing, it is a striking fact that only one of the two decision-makers is present in court; and there is no reason why both could not have been witnesses.

Breaches of duty

59. In his skeleton argument, Mr Wilton KC identifies a number of relevant legal principles, as follows:

(1) A solicitor is only obliged to advise on matters that fall within the compass of the solicitor's retainer, subject, if the need arises, to the requirement to advise of any

additional risks which may come to his or her attention in the course of that retainer.

(2) A solicitor may also have to go further when advising an '*unsophisticated*' client: the extent of the duty to give advice may depend on the extent to which the client appears to need it.

(3) A solicitor is not a general adviser on matters of business and is generally under no duty to advise whether, legal considerations apart, a transaction is a prudent one: see *Jackson & Powell on Professional Liability* (9th edn.) at para 11-177 and *Pickersgill v Riley* [2004] UKPC 14, [2004] P.N.L.R. 31.

(4) Any such duty will arise only exceptionally, such as where it is plain that a client, particularly an inexperienced one, is "*rushing into an unwise, not to say disastrous, venture*": see *Jackson & Powell* at para 11-179 and the dictum of Danckwerts LJ in *Neushul v Mellish Harkavy* (1967) 111 Sol J. 399 cited there. Mr Wilton KC submits that this proposition makes evident good sense because were the court to hold that such an exceptional duty was too readily applicable, that would: (a) be inconsistent with the limited role solicitors typically assume in relation to transactional work; (b) tend to undermine client autonomy and the ordinary operation of commercial activity; and (c) expose advisers to unjustified claims whereby clients seek to reallocate risk to an insured professional after going ahead with a transaction. That is all at odds with common law values, which place a premium on individual autonomy and responsibility: compare *Tomlinson v Congleton BC* [2003] UKHL 47; [2004] 1 AC 46 at [47]-[48] per Lord Hoffmann. It is for the professional to draw attention to any risks his particular skill and expertise should identify; but the decision whether to proceed is for the client, who will typically rely upon a range of factors, to many of which the professional will not be privy, and some of which will be within the province of advisers with a different expertise.

(5) A solicitor must take reasonable care to advise clearly, but there is no duty to take steps to ensure that advice has been understood unless the solicitor is on notice that the client did not understand. Otherwise, a solicitor is entitled to assume that advice has been understood: see *Kandola v Mirza Solicitors LLP* [2015] EWHC 460 (Ch); [2015] P.N.L.R. 19 per HHJ Cooke at [47]:

An inexperienced client, or one dealing in matters he is not familiar with, may require more explanation before he can sufficiently understand the risk he is about to take. An experienced client may need less explanation, or even none at all. When an explanation is given, the solicitor may appropriately tailor it to fit his knowledge of the client's understanding. Of course if the client asks for more explanation or appears not to understand, the solicitor may have to go into more detail. But the solicitor is not a guarantor of his client's subjective understanding, and will have fulfilled his duty if he gives an explanation in terms the client reasonably appears to him to be able to understand, and to have understood, even if the client later alleges that he did not in fact understand what was said.

(6) Negligence requires proof that the solicitor has acted in a way which no reasonably competent practitioner could have done in the circumstances. The solicitor is not to be judged by the standards of the "*particularly meticulous and conscientious practitioner*": "*The test is what the reasonably competent practitioner would do…*" per Oliver J in *Midland Bank v Hett, Stubbs & Kemp* [1979] Ch 384 at 402-403.

I do not consider any of this to be controversial, although the precise content and extent of the duty in any particular case will inevitably be fact-sensitive, and may be susceptible to differences of emphasis.

60. I now turn to the three alleged breaches of duty which are identified in Mr Scher's skeleton argument as the foundation of his claim. Logically, it seems sensible for me to take the third of Mr Scher's alleged breaches before the other two.

(a) Failure to advise that the deposits had no meaningful security or protection.

61. Mr Scher complains that para 3.5 of the Report on Title was false, and negligently so. In reality, there was no meaningful security or protection for the buyers' deposits. By clause 4.2 of the Sale Agreement, MSB (as the developer's solicitors) held the money as "*stakeholder for the Seller subject to the conditions set out in the Schedule 2*". Mr Scher submits that there are a number of problems with this:

(1) The description '*stakeholder for the Seller*' is not a term which conveys any legal rights on the buyer. A stakeholder relationship is (at least) tripartite: this was not a tripartite relationship. There was no privity of contract between MSB and the claimant. This is far riskier than the escrow or stakeholder arrangements promised in the marketing material.

(2) Even if MSB might have owed some kind of duty to the claimant, it is nullified by the terms of Schedule 2 itself. By paragraph 5: "*The Buyer acknowledges that the Seller's Solicitors shall not be required to enquire into or verify the accuracy appropriateness or authenticity of the invoices referred to in paragraph 6 or the Valuation Certificates referred to in paragraph 4*". MSB would have a complete defence to any claim by the claimant. (I mention, in passing, that the internal references to paragraphs 4 and 6 make no sense: paragraph 6 does not refer to invoices and paragraph 4 does not refer to Valuation Certificates.)

(3) A '*Valuation Certificate*' means a certificate to be issued by the Seller's Agent. '*Seller's Agent*' is defined as "*such architect or surveyor or building control inspector representing the Seller or person of equivalent standing and qualification as the Seller may from time to time notify to the Buyer*". Mr Scher objects that such a person owes no duties to the buyer – only to the seller. There is no scrutiny of the costs drawn down by the developer by anyone representing the interests of the buyer (such as a quantity surveyor nominated by the buyer). Moreover, the term '*Valuation Certificate*' is misleading: the document did not certify the value of anything, but is merely "*a certificate to be issued by the Seller's Agent itemising costs and expenses incurred by the Seller*".

62. Mr Scher submits that, on a close analysis, clause 4.2 and Schedule 2 offer no meaningful security or protection to the claimant. He says that this is precisely the type of '*spurious*' condition to which the SRA Warning Notice alerted the solicitors' profession. It stands in stark contrast to the purported security described by the marketing material. The initial email that Certa Invest sent to Mr Nickoll on 13 November 2017 (which he forwarded to his wife) boasted of "*Funds held securely in Escrow accounts*" and a "*safe and Secure Staged Payment Process*". Further, the glossy, illustrated marketing brochure made the investment appear incredibly attractive and low-risk. In the '*FAQs*' section, it provided as follows:

How are my funds used during construction?

Funds received are held with solicitors in a client stakeholder account until they are required for use in construction development and management. When further funds are required a site valuation is submitted to the Architects. Once assessed and accepted as an accurate requirement of funds a valuation certificate is issued to solicitors. Only on receipt of the certificate will funds be released to the Developer and under the terms set as stakeholder. This ringfences your funds in the event of any difficulties as only funds used in line with the client stakeholder account terms and against the last valuation have been drawn and made available. Therefore all other amounts paid are still held in a client stakeholder and only made available to the Developer once the next valuation is submitted and authorized.

Similar text appears a little later on under the heading '*Due Diligence*'.

63. Mr Wilton KC emphasises that paragraph 3.5 of the Report on Title advises that the arrangements for the release of the deposits only confer "*some protection*", i.e., that this is not '*complete protection*'. It explains that (after the release of the £10,000 to discharge the developer's loan obligations), the remainder of the deposit will only be released to the seller by their solicitor "*in connection with the construction of the development, including marketing of the same*" so "*the monies cannot simply be sent to the Seller to use for their own means*". The extent of that limited protection is then spelled out in paragraphs 3.6 and 3.7, which explain the risks involved in the pre-payment of non-standard deposits as part of the purchase price, and their use as development finance in the event of the insolvency of the developer before completion of the claimant's purchase. In my judgment, those particular risks were accurately, and adequately, identified and explained. From her evidence, they were understood by Mrs Nickoll. True it is that MSB Solicitors, who were identified as the seller's solicitors in the sale agreement, were acting as stakeholder for the developer (and seller), rather than for the buyers. Nonetheless, they also owed duties to the buyers only to release the deposits strictly in accordance with the terms of clause 4.2 and Schedule 2 of and to the sale agreement: compare *Yee Shi Yin v 174 Law Solicitors Ltd* [2023] EWCA Civ 13; [2023] P.N.L.R. 15. There is no pleaded case, and no evidence, that MSB Solicitors ever failed to comply with those duties, or that any of the deposits it released to the developer were ever applied otherwise than for the purposes authorised by the sale agreement. This was a point highlighted by Mr Wilton KC in cross-examination (at page 224 of the transcript), provoking the response:

If I had deeper pockets than I have, I would have loved to. But quite frankly, getting this case to this court has been extortionately expensive and I just do not have the funds to keep bringing that in. I wish I did. I wish the system was set up differently.

64. I find that Ms Motorwala visited the marketing agent's web-site. Vincents was on the developer's panel of solicitors recommended to potential buyers. Vincents' logo appears on the marketing brochure for the development. In the absence of any contrary evidence from Vincents, I am therefore prepared to accept that it was aware, or at least was on notice of, the marketing materials being disseminated to potential purchasers of apartments at '*The Rise*'. In my judgment, Vincents' duties as solicitors for the purchasers did not extend to highlighting expressly any discrepancies between statements in the marketing materials and the provisions of the proposed sale agreement. Particularly given the level of fees being charged to prospective purchasers,

this would be to impose an undue burden upon conveyancing solicitors. Rather, Vincents' duty was to explain, fully and fairly, the relevant terms of the Sale Agreement. In discharging this duty, however, Vincents were, in my judgment, required to be alive to any false expectations that may have been created by inaccurate statements in the marketing materials.

65. Mr Wilton KC submits that Vincents discharged the duty that they owed to purchasers to explain the limited protection that was afforded to their deposits under the Sale Agreement. He contends that the arrangements for the holding of the deposits plainly did provide '*some protection*', as they gave rise to a stakeholding arrangement to which the developer's solicitors were party, and imposed a contractual fetter on what they could do with the funds. The monies were also to be held on the trusts affecting a solicitor's client account. Buyers would have rights of recourse against the developer's solicitors if those protections were not observed. The arrangements provided a measure of protection. Mr Wilton KC does not suggest that these arrangements would protect the funds in all circumstances, such as in the event of any fraud by the developer or its solicitors. But Vincents never suggested that they would: it only advised that the deposit arrangements would provide "*some protection*". Mr Wilton KC submits that that qualified representation was perfectly reasonable. It cannot have provided any untoward assurance given that the Report on Title emphasised that the deposits were non-standard and amounted to providing finance to the developer (which had little or no substance); reported that there was a "*substantial risk*" that the developer could fail between exchange and completion, whereupon the buyer would lose all released monies; and that the Developer would not offer any form of deposit protection scheme. Given that the arrangement did provide some protection, and the very clear warnings about risks, Mr Wilton KC submits that Vincents' advice was unexceptionable and was not a breach of duty at all. I accept those submissions up to a point, and subject to one important qualification.

66. What the standard-form Report on Title did not do was to alert buyers to the unusual provisions governing the release of the deposits contained within Schedule 2 to the Agreement for Sale to which Mr Scher has drawn the court's attention, as summarised at sub-paragraphs 61 (2) and (3) above. I agree with Mr Scher that this is precisely the type of '*spurious*' condition to which the SRA Warning Notice alerted the solicitors' profession. It also involved the employment of a law firm (the seller's solicitor) "*to give an impression of credibility or security*". In my judgment the Schedule 2 provisions gave rise to the sort of risk which might elude even an intelligent lay person, and which, on the authority of *County Personnel*, a solicitor is required to draw to the attention of the client, and advise specifically about the nature of the risk and its dangers. This is something that Vincents did not do.

67. At paragraph 35 of her witness statement, Mrs Nickoll addresses paragraph 3.5 of the Report on Title, and explains how she understood this paragraph. Mrs Nickoll "*understood this to mean that she was paying money in, but that money could only be used to progress the build*". She "*thought it was saying the money will only be released in accordance with the building programme and would only be spent on The Rise and it could not be used for anything else*". At paragraph 43, Mrs Nickoll explains her understanding of Schedule 2 to the Agreement for Sale. She explains that the reference to '*Valuation Certificates*' (as defined), and the fact that the seller's solicitors would be paying over the deposits on the basis of invoices presented to them, gave her

"*reassurance that there would be a level of professionalism and care as this looked like an industry standard term*". She did not notice at the time that paragraph 5 of Schedule 2 "*had the effect that monies could be released with no checks*". She explains that if she had understood this, she would not have proceeded with the purchases as she would have understood the risk that the developer "*could just empty the bank account and walk away*". Her expectation was that monies would only "*be released in line with works done and evidenced by Valuation Certificates provided by an architect or similar professional*", which is what Mrs Nickoll had been told during the sales process, as "*echoed*" in the marketing documentation, and was implicit in Schedule 2 by the reference to '*Valuation Certificates*'.

68. Mr Wilton KC cross examined Mrs Nicoll about paragraph 43 of her witness statement between pages 219 and 224 of the transcript. The whole of this section of the cross examination is worth revisiting, but pages 223-4 merit citation:

***Mrs Nickoll**: ...I wish that someone had said to me be aware that, really be careful with this, because actually they can just empty the coffers and walk away based on a made-up piece of paper. When I read this it reads in technical legal language. My lawyers had not flagged to me that it could be a problem. It read to me as something legitimate, they are only going to spend money on building it or marketing it and it is going to be in line with the certificate that they are going to be paying out funds.*

***Q:** You were told it was going to provide you with some protection.*

***A:** No protection.*

***Q:** It does because there has to be an itemisation of costs and expenses which have been incurred. That has to be certified by a professional person and the solicitor has to receive not just that certificate but also the primary documents.*

***A:** Yes, but it is smoke and mirrors, is it not, because then it goes on to say they have no requirements to verify the accuracy or the appropriateness or authenticity of the invoices. It literally gave me zero, it gave me zero protection and I did not appreciate that at the time and I am still angry about it.*

69. Whilst, as I have explained, I treat aspects of Mrs Nickoll's evidence with caution, I accept this part of her evidence. I find that Mrs Nickoll failed to appreciate the true limitations on the protection afforded by Schedule 2 because otherwise she would have flagged this up in her email to Mr Andreae of 13 December 2017. I also find that had Mrs Nickoll appreciated his, she would probably have withdrawn from the purchases. Indeed, I consider that she would probably have also sought to recover the claimant's reservation fees, asserting misrepresentations contained within the marketing materials as to the protection afforded to the deposits. During her evidence, Mrs Nickoll placed great weight upon the fact that the development was selling well, thereby generating the buyers' funds that she appreciated were required to complete the development. Although Mrs Nickoll took comfort from the involvement of an institutional funder, she also understood that the deposits were a crucial part of the buyer-funded development model. Had she appreciated that the developer could "*just empty the coffers and walk away based on a made-up piece of paper*", I find that Mrs Nickoll would have been very angry. She would also have felt that she had been sorely misled by the marketing material. She would not have needed Vincents to draw her attention

to the disparity between the situation that had been represented to her, and the reality. Although I have not heard from him, I am prepared to find that Mr Nickoll would have shared his wife's anger and frustration, and would have supported her decision.

70. To the limited extent that Vincents failed to advise the claimant about the true meaning and effect of the mechanism for the release of the deposits contained within Schedule 2 to the Agreement for Sale, and the limited protection that this afforded to contracting purchasers, such as the claimant, I find that Vincents were in breach of the duties they owed to the claimant in failing to advise that the deposits had no meaningful security or protection. Otherwise, I find that the claimant has not established any more extensive breach of this duty.

(b) Failure to advise the claimant not to proceed with the transaction

71. Mr Scher begins by considering the effect of the SRA Warning Notice and, in particular, the sentence:

You should ensure that clients fully understand the risks and it may well be necessary to strongly advise clients against entering into the transaction.

He submits that this communication from the solicitors' regulator has three principal effects:

(1) It represents a distillation, or codification, of existing good practice, and constitutes weighty evidence of what a reasonably competent solicitor, having regard to the standards normally adopted in their profession, should have been doing.

(2) Even if the SRA Warning Notice is not direct evidence of any duty, Vincents' awareness of its terms put it on notice of the extremely high risks of the transaction in question. It served as a '*red flag*'. Vincents' knowledge of such risks gave rise to an enhanced duty to ensure that its advice was understood, and to warn its clients not to proceed with the transaction. By this alternative route also the SRA Warning Notice supports the existence of the pleaded duties.

(3) By mentioning the SRA Warning Notice in the Report on Title (albeit referring to it only as '*Guidance*') and by sending it to the claimants, Vincents assumed a duty to advise properly as to its contents, including the implications of the crucial sentence cited earlier in this paragraph. This is said to be the answer to Mr Wilton KC's submission founded upon the effect of hindsight. Vincents already had enough notice of the need to advise its clients not to proceed, and to ensure that such advice was fully understood, even before any of the developer's parent's other developments began to experience any financial difficulties. That was the position that Vincents eventually assumed when they ceased exchanging contracts after the failure of the developer's parent's Herculaneum Quay development. Mr Scher says that this should have been the position adopted by Vincents even before then.

72. Mr Scher submits that this duty is not limited, as Mr Wilton KC suggests, to situations such as that identified in *Neushul v Mellish Harkavy* of "*rushing into an unwise, not to say disastrous, venture*". He says that such a duty was held to have arisen in the *County Personnel* case where (with the agreement of Sir Nicolas Browe-Wilkinson V-C and Stephen Brown LJ) Bingham LJ said that the solicitor should have advised the plaintiff

not to consider entering into an underlease which contained a particularly detrimental rent review clause.

73. Mr Scher further submits that this was an unusual transaction, surrounded by '*red flags*' and sufficient risks for a similar duty to arise. He relies upon the following factors:

(1) The SRA Warning Notice explicitly warned solicitors that "*it may well be necessary to strongly advise clients against entering into the transaction*".

(2) The deposits required were extremely high (50% rather than 10%), exposing far more of the claimant's money to risk than would have been usual.

(3) The transaction was in the nature of development finance rather than a simple off-plan purchase.

(4) There was no meaningful security or protection for the deposits.

(5) There was a serious mismatch between the security promised in the marketing material and the contract.

(6) The development (which promised secure, high, and quick returns on relatively small capital investments) would have been particularly attractive to inexperienced clients. In closing, Mr Scher submitted that this was not an ordinary commercial activity, and client autonomy had already been eroded by the seductive nature of the development and the solicitor's cloak of responsibility.

(7) The claimants' money could be used for "*the marketing and sale and/or lease of any part of the building*", implying that the development was not fully financed, and thus implying a risk that the developer might not obtain sufficient '*deposits*' to finance the development.

(8) The use of the words '*deposit*', '*valuation certificate*' and '*stakeholder*' in the agreement for sale was misleading.

(9) The claimant, and Mrs Nickoll, were inexperienced in similar transactions.

(10) The developer had refused to accept any changes to the standard documentation, which is itself described as a '*red flag indicator*' in the SRA Warning Notice.

(11) The developer's agent (Certa Invest) had selected Vincents as the solicitor to act for the claimant (again described as a '*red flag indicator*' in the SRA Warning Notice).

(12) The day before exchange of contracts (at 09.57 on 25 April 2018), Vincents sent an email to Mr and Mrs Nickoll informing them that Vincents had been told by the developer's solicitor that the long-stop date was to be amended for the development. Vincents reported that the current long stop date was 19 December 2019. The developer still hoped to have the development completed by then, but it wished to amend the long stop date to March 2020 in case of any unexpected delays. The claimant was asked to confirm that it was aware of this, and was still happy to proceed to exchange.

74. Mr Scher submits that the Report on Title included negligent advice about the effect and implications of Schedule 2. Whilst that report included advice on some risks, including the insolvency of the developer, such advice was unclear, was not sufficiently emphasised, and was detracted from by the conclusion (at section 11) that upon completion and registration the claimant would obtain "*a good and marketable title to the Property*"). This cannot be said to be "*non-negligent*". Mr Scher invites the court to infer that Vincents itself regarded the Report on Title to be inadequate from the fact that they have tendered no witness to give evidence, and be cross-examined, about its contents.

75. Further, Mr Scher argues that the reference to, and attachment of, the Warning Notice did not amount to non-negligent advice about the matters contained within it because:

(1) The Report on Title euphemistically referred to '*SRA Guidance*', without setting out its contents.

(2) The SRA Warning Notice was enclosed with 13 documents amounting to 169 pages. Mrs Nickoll states (at paragraph 44) that:

No one at Vincents told me to read the Warning Notice, nor did they explain it to me nor take me to the concerns it highlighted.

She does not recall whether she read it at the time.

(3) Sending the SRA Warning Notice in this fashion cannot be said to satisfy the duties referred to in the SRA Warning Notice, notably:

You should ensure that clients fully understand the risks and it may well be necessary to strongly advise clients against entering into the transaction.

76. Mr Wilton KC submits that neither the nature of this particular transaction, nor the circumstances of this particular claimant, gave rise to any exceptional duty to advise the claimant not to go ahead with the transaction.

77. The starting point is said to be Vincents' retainer. It was offering the services of a conveyancing solicitor in relation to the purchase of an investment property. There was nothing in the retainer to support the implication of exceptional duties. The Report on Title confirmed the limited scope of Vincents' services. The claimant never sought to vary that retainer. It did not demur at the offer of the conventional services of a conveyancing solicitor which, Mr Wilton KC submits, was all it was entitled to receive.

78. Mr Wilton KC accepts that there were plainly features of the transaction which did give rise to risks. Some such risks are the inevitable features of a property investment, particularly one offering such attractive returns as this one. Others were specific to the buyer-funder arrangement in this case. Only some of those risks lay within the province of a solicitor. Insofar as they did, they were addressed by Vincents in the Report on Title. Adequate advice was given about the contractual terms and Schedule 2. There were significant risks; but there was no obvious indication that the whole venture was foolhardy, such that Vincents had an exceptional duty either: (1) to step in and advise the claimant against proceeding, or (2) to verify that each risk had been specifically

understood. In closing, Mr Wilton KC submitted that this was not a transaction which shouted out that it was foolhardy, or contained some fundamental threat to a client's interests which meant that it was reckless to proceed, or something of that kind (as in the *County Personnel* case). So Vincents had no duty either to say do not go ahead, or any exceptional duty to verify that the client had in fact understood the solicitor's advice.

79. Mr Wilton KC submits that the SRA Warning did not impose any such duties. It addresses many different forms of property investment, and does not mandate that advice not to proceed has to be given. Nor is there any evidence that buyer-funded developments of this kind presented an exceptionally high likelihood of failure, still less that Vincents knew, or should have known, this even if it was the case. Nor is there any evidence that Vincents knew that this particular developer or development was especially at risk of failure. Vincents did not have the full range of information, including as to the likely '*upside*' of proceeding, or the expertise necessary to assess whether, in the round, it made sense to proceed. The claimant certainly did not provide Vincents with any such information, and ask it to take a view. It is unrealistic, and uncommercial, to assert that Vincents, with limited information and expertise, and without any specialist financial, valuation, and construction input, including as to the '*upside risks*', should have taken a unilateral view on whether the claimant should proceed, and advised against it doing so. Mr Wilton KC asks rhetorically: What if Vincents had said "*Don't do it*" and the claimant had withdrawn from the transaction but Amicus had not entered into administration, or re-financing had been achieved, and the development had succeeded? I note that in that scenario, the claimant would have lost out on its £40,000 deposits.

80. Mr Wilton KC submits that there is no evidence that Vincents was aware of the remarkable range of factors pleaded and relied upon at paragraph 2 of Appendix 1 to the amended particulars of claim (which, incidentally, he said focus entirely upon Mrs Nickoll, to the exclusion of her husband, and effective joint venturer, Mr Nickoll) as tending to show an alleged low level of financial sophistication on the part of the claimant. Nor does it make any sense to suppose that Vincents should have taken any steps to ascertain these factors. The contention that Vincents had any obligation to discover such matters has no basis in the retainer or in authority, and is transparently unrealistic and impractical. The claimant was not a client that needed any special regard either. Mr and Mrs Nickoll (and thus the claimant) were highly sophisticated, and well able to understand a complicated transaction and assess risk.

81. Mr Wilton KC accepts that Vincents had an obligation to take care to advise about the salient risks within its province in suitably clear terms; but that is all that its legal obligations, and the SRA Warning, required. There is no suggestion that the Warning mandated some additional process of interrogating clients to ensure that the message had got through to them, and was fully comprehended. Any such duty would be extraordinary, and is not warranted by the case-law, or by the Warning, or by anything which happened during the retainer. The claimant was perfectly capable of understanding what it was told; and it confirmed that it had in fact done so.

82. Mr Wilton KC submits that Vincents drew the claimant's attention to all the risks within its sphere of responsibility, and identified additional issues in respect of which the claimant might wish to seek its own advice. He says that it is hopeless to contend that any more extensive duty arose, so as to oblige Vincents to counsel against the

transaction. There is no basis for saying that Vincents knew, or should have realised, that the development would inevitably fail; nor has the claimant adduced any cogent evidence that could have suggested at the time that this development was '*doomed*' to failure. Having been warned of the risks, it was a matter for the claimant to assess whether these were worth running, bearing in mind the potential upside. That was what the claimant did: its desire to make a profit outweighed any concerns about potential downside risks. It is to attribute an unrealistic, and exorbitant, responsibility to Vincents to contend that it should have advised the claimant not to proceed woth the transaction. Vincents did not have the information, or the expertise, to make a commercial judgment of that kind.

83. I accept Mr Wilton KC's submissions in preference to those of Mr Scher. Certain of the latter have already been addressed, and answered, by my findings in relation to Mrs Nickoll's evidence. In my judgment, the SRA Warning Notice created no new duty on the part of conveyancing solicitors; nor did it seek to do so. It was concerned to focus the attention of solicitors (and potentially affected members of the public) on dubious or risky investment schemes, which were being presented as routine conveyancing transactions, or investment in land, when the reality was very different. It was intended to draw attention to the need to apply the conventional duties owed by solicitors to their clients in such situations to ensure that they fully understand risks that might well not be obvious to an inexperienced non-lawyer. It also reminded solicitors that "*it may well be necessary to strongly advise clients against entering into the transaction*". It does not suggest that such advice should invariably be given. Nor, in my judgment, did it seek to extend the range of circumstances in which such exceptional advice should be given. Without seeking to provide an exhaustive account of all such circumstances, existing case law indicates that advice against entering into a transaction may be appropriate, and indeed necessary, in two principal sets of circumstances.

84. The first, exemplified by *Neushul v Mellish Harkavy*, is where the client is proposing to enter into a rash, or even an unwise, transaction. The second (exemplified by the *County Personnel* case) is where the client is proposing to enter into a transaction which carries risks which should have been apparent to a professional legal adviser but would have been most unlikely to occur even to an intelligent lay person. It is, however, important to bear in mind the full circumstances of the *County Personnel* case. The prospective underlessor had not wanted the underlessee or his solicitors to know the rent that he was paying under the head-lease: see p. 922F. It was against that background that Bingham LJ (who delivered the leading judgment) stated that the solicitor should have advised the client that it should not consider entering into a lease which contained the proposed rent review clause. But this was expressly "*on existing information*" and "*as matters stood*": see p. 923F-H. At p. 927F Sir Nicolas Browne-Wilkinson V-C formulated the duty slightly differently, in terms of having "*to warn the client plaintiffs of the risks involved in accepting such a clause, at least without knowing the rent payable under the headlease*". Clearly, both the need for any duty to advise against entering into a transaction, and the terms in which such advice is to be tendered, are extremely fact-sensitive.

85. In the present case, I find that there was no duty on Vincents to advise the claimant against entering into the transaction. There was nothing known to, or reasonably discoverable by, Vincents to suggest that this was a rash, or unwise, transaction, There was nothing to indicate that this development involved any dubious investment scheme,

masquerading as an investment in land, when the reality was very different. Nor is there any pleaded case, still less any evidence, that this was indeed the case. Everything indicates that this was a genuine property investment opportunity, which only failed because of the unrelated insolvency of its commercial funder. Mr and Mrs Nickoll undertook considerable due diligence in connection with the claimant's investment, which continued throughout the five months between retaining Vincents to act as the claimant's solicitor and exchange of contracts. There were clear risks attending the payment of substantial deposits to the developer's solicitors with the limited protections contained within the agreement for sale. But Vincents had fully alerted the claimant to the resulting risks in stark terms, warning them that "*buying off-plan properties presents a substantial risk that the developer/Seller could fail between exchange and completion*", in which event "*Any monies you have paid, and will have released to the Seller would be lost.*" In my judgment, had Vincents also advised the claimant about the true meaning and effect of the mechanism for the release of the deposits contained within Schedule 2 to the Agreement for Sale, and the limited protection that this afforded to contracting purchasers, such as the claimant, that would have amounted to a full and sufficient discharge of the duties that Vincents owed to the claimant. As Mr Wilton KC observed at the end of his oral opening (at pages 112-113 of the transcript):

Whilst it is obviously important that solicitors do their job properly because they fulfil a vital role in society, they are not nursemaids. They are not gatekeepers on commercial activity. It is unfair to treat them as such, absent exceptional facts. The reason it is unfair is because by such means one gets an unfair reallocation of risk and that is particularly pertinent in the context of an investment purchase, where risks are inevitable and they are the counterpart of reward and where we submit those risks were adequately understood, not least because of the advice given by my clients.

86. In my judgment, and for these reasons, Vincents owed no duty to advise the claimant not to proceed with the transaction.

(c) Failure to ensure that the claimant fully understood the risks of the transaction

87. Mr Scher submits that in all the circumstances Vincents owed a duty to ensure (or to take reasonable steps to ensure) that the claimant fully understood its advice. Those circumstances included:

(1) The terms of the SRA Warning Notice, which stated clearly:

You should ensure that clients fully understand the risks …; and

(2) The '*red flags*' previously identified. In this case, Mr Scher says that the claimant was dazzled by the desirability of the development; and Vincents should have taken extra care to ensure that the advice buried within the Report on Title was fully, and properly, understood.

88. Mr Scher submits that this duty was not complied with in the present case. Mrs Nickoll was labouring under the misunderstandings set out in her witness statement, and in paragraph 2 of Appendix 2 to the amended particulars of claim. Vincents did not take reasonable steps to ensure that Mrs Nickoll fully understood the advice given. Vincents could have (but did not) highlight the level of risk, either in a prominent warning, or by

including sufficient advice in the Report on Title as to the contents of the SRA Warning Notice. Mr Scher says that this stands in stark contrast to the detailed advice given about the other documents enclosed with the Report on Title, such as the (far less alarming) search results, which have their own separate section in the Report On Title. There is also no explanation from Vincents as to why they described the Warning Notice as (mere) '*Guidance*', nor why they chose to minimise this advice in the Report on Title.

89. Mr Scher relies upon the following three case law authorities:

(1) *Harwood v Taylor Vinters* [2003] EWHC 471 (Ch). At [84]) HHJ Richard Seymour QC did not accept that it is ever necessary, as a matter of law, for a solicitor to give advice in writing, rather than orally. He continued:

The only hard and fast rule, as it seems to me, is that a solicitor should give whatever advice a reasonably competent solicitor would in the particular circumstances of the case, and give it clearly and so that the client appears to understand it. Manifestly no useful purpose is served by giving advice in terms which are not understood. However, the giving of advice is, in my judgment, an inter-active process in which the client can reasonably be expected to participate, in particular by seeking further elucidation of anything which he does not understand. A solicitor cannot, any more than anyone else, see into his client's mind and satisfy himself that the client does in fact understand the advice which he is given. All he can do is to take reasonable steps to satisfy himself that his client seems to understand. Those reasonable steps, at least in the ordinary case of a client who appears to be of sound mind and average intelligence, would not seem to me to involve an interrogation of the client as to what he has understood. Such would be personally offensive and totally unprofessional. An assessment of what a client appears to understand is probably most conveniently made during the course of a discussion with him about the advice given.

(2) *Procter v Raleys Solicitors* [2015] EWCA Civ 400; [2015] P.N.L.R. 24 where all the circumstances (including the inexperience of the client)

... cried out for a short discussion with the client, preferably face to face, but if necessary over the telephone, in order to ensure that the client understood the circumstances in which a claim for compensation, to reflect the inability to carry out, without assistance, routine domestic tasks, could be made: see [45]

At [46], Tomlinson LJ added:

Obviously the question what in any given case a solicitor should do so as to ensure that his advice is understood is a question of fact and degree. There can plainly be no hard and fast rule that it is no part of a solicitor's duty to test the client's understanding ...

(3) *Dutfield v Gilbert H Stephens & Sons* [1988] Fam Law 473, where Anthony Lincoln J said that:

It was the duty of the solicitor to inform and advise, ensuring that the information and advice was understood by the client.

90. Mr Wilton KC accepts that Vincents had an obligation to take care to advise about the salient risks within its province in suitably clear terms; but that is all that its legal obligations, and the SRA Warning Notice, required it to do. There is no suggestion that the Notice mandated some additional process of interrogating clients to ensure that the message had got through to, and was fully comprehended, by them. Such a duty would be extraordinary, and is not warranted by the case-law or by the Warning Notice, or by anything else which happened during the course of its retainer. The claimant was perfectly capable of understanding what it was told; and it confirmed that it had in fact done so.

91. Mr Wilton KC submits that Vincents owed no exceptional duty to ensure that its advice was understood. It clearly emphasised the salient risks within its field of practice, including the high level of the '*deposits*', the fact that the buyer was providing a form of financing for the development which involved higher risks, and also that there was a substantial risk that everything could be lost because the developer might fail to complete the development or become insolvent. The SRA Warning Notice further underlined the risks. That was sufficient to bring home to the claimant the risks it was running. Mr Wilton KC submits that the transaction was not so patently unwise that Vincents had any obligation to go further than giving the very clear advice it did provide. Such advice was perfectly clear, and was given in an important document which clients who were making a substantial capital commitment could be expected to read carefully and query if anything was not understood. Vincents went to great lengths to identify the risks, and it emphasised such matters by attaching the SRA Warning Notice. The claimant also signed the letter which had enclosed the Report on Title by way of confirmation that it had read and understood the Report and the other documentation (including the SRA Warning) that Vincents had provided to it. If Vincents had any duty of the kind alleged, it was discharged by the clear and detailed advice that Vincents gave, and by the fact the claimant confirmed it had understood what it had been told. In closing, Mr Wilton KC pointed out that there had been a four-month period between the Report on Title and exchange of contracts. Nothing was forthcoming to indicate at any stage in that period, during which there was a huge amount of communication backwards and forwards, any failure to understand the critical risks in this case. Nor was it at all plausible that there should be such a misunderstanding, given how clearly these had been communicated in the Report on Title, accompanied by the Warning Notice, and given the nature of the client's response to all that material.

92. Further, and in any event, Mr Wilton KC points to paragraph 2 of Appendix 2 to the amended particulars of claim, wherein the claimant comprehensively lists its "*mistaken understandings*". The clear implication is that the claimant understood everything else, including the very risks which led to the failure of the development and the claimant's losses, namely the risk that the developer might be unable to complete the development and the risk of its insolvency. In my judgment, however, this submission ignores paragraph 2 of Appendix 2, where the claimant pleads that Mrs Nickoll

> *… understood that even if the Developer became insolvent, someone else would pick up and finish the project, and that [the claimant] would be a stakeholder in it as it had a UN1 charge. She communicated this understanding to the Tenth Defendant by telephone shortly before exchange, and was not corrected.*

Had I accepted the claimant's evidence and case on this point, it would not be open to Mr Wilton KC to say that the claimant had accepted all of the salient risks.

93. Subject to this last qualification, however, and subject to my finding that Vincents failed to discharge its duty adequately to advise the claimant concerning the mechanism for the release of the deposits contained within Schedule 2 to the Agreement for Sale, and the limited protection that this afforded to contracting purchasers, I accept Mr Wilton KC's submissions; and I reject the competing submissions of Mr Scher. As HHJ Seymour QC observed in the Harwood case, "*the only hard and fast rule … is that a solicitor should give whatever advice a reasonably competent solicitor would in the particular circumstances of the case, and give it clearly and so that the client appears to understand it*". I have no doubt whatsoever that Vincents discharged this duty in the present case, save in relation to the deposit release mechanism. The relevant risk – the "*substantial risk*" that the entire deposits could be lost should the developer and seller fail between exchange and completion – was explicitly, and clearly, flagged up in the Report on Title. I am satisfied that this was appreciated, and fully understood, by the claimant. The reassuring conclusion, at section 11 of the Report on Title, was clearly addressing a later point in time: the situation on completion of the purchase, and subsequent registration at the Land Registry. I am satisfied that this too was appreciated and fully understood by the claimant.

94. In any event, what more could Vincents have done? The email of 7 December 2017 had concluded by inviting the claimant to contact Vincents if it had any queries. Mrs Nickoll proceeded to do precisely that on 13 December. Extensive email communications followed over the next four months wherein Mrs Nickoll raised various questions and clearly evidenced her understanding of the transaction. Finally, on 24 April 2018, just before exchange of contracts, the claimant returned the letter that had accompanied the Report on Title, duly signed by way of confirmation (under threat of prosecution) "*that we have read and understood the contents of the attached report and reviewed the Additional Documents enclosed*". Given that Mr and Mrs Nickoll were living in London, and given also their respective work and family responsibilities, a face-to-face meeting was impracticable, even if that might have seemed necessary or desirable (which it did not). In those pre-Covid days, video meetings (by Zoom or Teams) were still in the future. In my judgment there was nothing more that Vincents could have done to ensure that the claimant fully understood the risks of the transaction.

95. For these reasons, I find that the claimant has failed to make out the allegation of breach of duty in ensuring that the claimant fully understood the risks of the transaction, save in relation to Vincents' failure to discharge its duty adequately to advise the claimant concerning the mechanism for the release of the deposits contained within Schedule 2 to the Agreement for Sale, and the limited protection that this afforded to contracting purchasers.

(d) Other unpleaded breaches of duty

96. During his oral opening, Mr Scher pointed to email traffic evidencing Vincents' keenness to attract conveyancing work (and resulting lucrative fee income) from this developer and its marketing agent. He emphasised that on the afternoon of 24 October 2017, Ms Motorwala had emailed her principal, Mr Ross Wellman, reporting that:

I have spoken to Certa Invest and they want to start sending reservations through today/tomorrow, even though the replies to enquiries and report are not finalised just so that we can get on with client care requirements.

Mr Wellman's response, the following morning, was brief:

Well done. £1m here we come !!

However, there is no pleaded case that Vincents was placed in any situation of conflict between its duties to its clients and its personal interests. Nor is there any evidence that Vincents in any way sought to promote or prefer its own financial interests over its duties to its clients. Reference to this email was simply intended to taint the court's mind.

97. Vincents' Report on Title contains no reference to clause 18.1 of the proposed sale agreement, permitting the registration of a unilateral notice against the title to the development land. Nor does it refer to the limited protection that such a notice might confer on any contracting purchaser in the event of a sale by a prior registered legal chargee. Given that the Report on Title contains no reference to the protection that a UN1 might confer on a purchaser, I am not sure that there was any duty on the part of Vincents to draw the purchaser's attention to the risk that a prior registered chargee might be able to override such protection. In any event, no such duty is pleaded; nor is there any pleaded breach of any such duty. Further, I have already rejected Mrs Nickoll's evidence that she had understood that someone else would pick up and finish the project in the event of the developer's insolvency, and that the claimant would be a stakeholder in the development because of its UN1 charge.

98. In the circumstances, I need say no more about these potential, but unpleaded, duties.

Factual causation

99. Mr Wilton KC submits that a claimant must establish reliance on the negligent advice, in the sense that it would not have proceeded with the transaction had it not received such advice. A claimant who would have paid no heed to non-negligent advice had it been tendered will fail for want of causation. He cites *Newcastle International Airport Ltd v Eversheds LLP* [2013] EWCA Civ 1514; [2014] 1 WLR 3073 as an instance of a solicitor's negligence claim which failed on causation grounds. There the claimant would have concluded contracts in the same terms even if the solicitor's breach of duty had not occurred so the breach was not causative of any substantial loss.

100. Mr Scher relies upon the evidence of Mrs Nickoll that had Vincents advised the claimant not to proceed, or ensured that she had correctly understood the advice given, or correctly advised that the '*deposits*' would have no real security or protection, the claimant would not have proceeded with its purchases.

101. In closing, Mr Wilton KC rightly recognised that the issue of factual reliance is very sensitive to the court's findings of fact. He invites the court to find that the claimant would always have proceeded with these transactions in the way that it did whatever advice had been received from Vincents. He invites the court to keep in mind the many reasons why the claimant was attracted to this investment, including the prospect of

capital and income gains, as accentuated by the marketing materials, the numerous reasons for thinking that both the developer and the development appeared to be worth backing, the concessions the claimant had negotiated, and the fact that it had already invested a (non-refundable) reservation payment of £40,000, and had incurred other costs it would lose if it pulled out of the transaction.

102. Mr Wilton KC also submits (citing *Gordeno*) that the court needs to be alive to the dangers of hindsight when it assesses Mrs Nickoll's evidence as to whether or not the claimant would have decided to proceed with the transaction. Following any disastrous outcome, there is always the obvious danger of a claimant convincing itself that risks were not properly appreciated, and that proper warnings were not given, or were not fully understood because they were not sufficiently emphasised, thereby diminishing the many reasons which may have strongly impelled the claimant towards proceeding at the time, so as to enable the claimant to say that if only more had been done to highlight the risks, the claimant would never have gone ahead.

103. I have already set out my findings concerning Mrs Nickoll. I have concluded that she would not have decided to pull out of the transaction without first consulting her husband, and securing his express agreement to that course. I remind myself that I have received no evidence from Mr Nickoll. I have found that Mrs Nickoll carefully read the Report on Title, and queried anything that she thought she did not understand with Vincents and the marketing agents. I have also found that Mrs Nickoll read the SRA Warning Notice. I am satisfied that she took its contents fully on board. Despite all this, she went ahead with the transaction. I find that she did so with a full understanding of the risks that the development might fail, with the consequent loss of the claimant's deposits. Save for the mechanism concerning the release of the deposits, I find that Mrs Nickoll fully appreciated the risks of the transaction, yet she proceeded to exchange of contracts. I find that had Vincents advised Mrs Nickoll that she should not proceed with the claimant's purchases, she would have interrogated Vincents as to the reasons why. She would have discussed these reasons with her husband. On the balance of probabilities, and based upon their own researches and due diligence, I find that, apart from any concerns about the deposit release mechanism, the claimant would have rejected any concerns that this was a fraudulent, or a sham, or a dubious, or a high-risk property investment, and would have proceeded to an exchange of contracts. In such circumstances, I would have held that this claim failed for want of factual causation.

104. However, as I have already found, Mrs Nickoll did not appreciate the true limitations on the protection afforded by Schedule 2. Had she done so, I find that the probability is that the claimant would have withdrawn from the transaction, and have sought to recover the claimant's reservation fees from the developer, asserting misrepresentations contained within the marketing materials as to the level of protection afforded to the deposits. On this basis, factual causation is established.

The duty nexus question

105. It is common ground that the loss claimed in a solicitor's liability claim must fall within the scope of the solicitor's duty. '*Scope of duty*' and '*duty nexus*' questions are now central to any professional liability claim, as underlined by the decisions of the Supreme Court in *Manchester Building Society v Grant Thornton UK LLP* ('***MBS***') [2021] UKSC 20; [2022] AC 783 and *Meadows v Khan* ('***Meadows***') [2021] UKSC 21; [2022] AC 852. In their joint leading judgment in *MBS*, Lord Hodge DPSC and Lord Sales

JSC (with whom Lord Reed JSC, Lord Kitchin JSC and Lady Black all agreed) explained (at [3]) that they were unable to support Lord Leggatt JSC's approach to *SAAMCO* and the question of the scope of the duty of the accountants in that case. Their approach was closer to, but not fully aligned with, that of Lord Burrows JSC. The majority view was summarised at [4] thus:

(i) the scope of duty question should be located within a general conceptual framework in the law of the tort of negligence; (ii) the scope of the duty of care assumed by a professional adviser is governed by the purpose of the duty, judged on an objective basis by reference to the purpose for which the advice is being given (in the context of this judgment, we use the expression 'purpose of the duty' in this sense); (iii) in line with the judgment of Lord Sumption JSC in Hughes-Holland v BBE Solicitors [2017] UKSC 21; [2018] AC 599 at [39]-[44], the distinction between 'advice' cases and 'information' cases drawn by Lord Hoffmann in his speech in SAAMCO should not be treated as a rigid straitjacket; and, following on from this, (iv) counterfactual analysis of the kind proposed by Lord Hoffmann in SAAMCO should be regarded only as a tool to cross-check the result given pursuant to analysis of the purpose of the duty at (ii), but one which is subordinate to that analysis and which should not supplant or subsume it.

106. At [5] of *MBS* the majority explained that in their view the scope of duty principle could more readily be understood without placing the emphasis which Lord Leggatt JSC does on causation and the counterfactual test, which distracts attention from the primary task of identifying the scope of the defendant's duty. The majority were in broad agreement with what Lord Burrows JSC says about those matters. However, they differed from him in their understanding of the location of the scope of duty issue in the scheme of the law of tort, and in thinking that the focus for the analysis of that issue should be on the purpose of the duty, without involving reference back to policy. *"A focus on the purpose of the duty is, in our view, both more principled and more in line with authority."*

107. At [6] of *MBS*, Lord Hodge and Lord Sales analysed the place of the scope of duty principle in the tort of negligence in the following way.

When a claimant seeks damages from a defendant in the tort of negligence, a series of questions arise:

(1) Is the harm (loss, injury and damage) which is the subject matter of the claim actionable in negligence? (the actionability question)

(2) What are the risks of harm to the claimant against which the law imposes on the defendant a duty to take care? (the scope of duty question)

(3) Did the defendant breach his or her duty by his or her act or omission? (the breach question)

(4) Is the loss for which the claimant seeks damages the consequence of the defendant's act or omission? (the factual causation question)

(5) Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and the subject matter of the defendant's duty of care as

analysed at stage 2 above? (the duty nexus question)

(6) Is a particular element of the harm for which the claimant seeks damages irrecoverable because it is too remote, or because there is a different effective cause (including novus actus interveniens) in relation to it or because the claimant has mitigated his or her loss or has failed to avoid loss which he or she could reasonably have been expected to avoid? (the legal responsibility question).

Application of this analysis gives the value of the claimant's claim for damages in accordance with the principle that the law in awarding damages seeks, so far as money can, to place the claimant in the position he or she would have been in absent the defendant's negligence.

108. At [11] of *MBS*, the lead judgment emphasises that "*the burden of proof lies on the claimant to show that the loss for which he claims damages lies within the scope of the duty of care owed to him by the defendant*". As Mr Wilton KC emphasises, the scope of duty question and the duty nexus question are plainly inter-related. As the Supreme Court explains in *MBS* at [17]:

… in the case of negligent advice given by a professional adviser one looks to see what risk the duty was supposed to guard against and then looks to see whether the loss suffered represented the fruition of that risk.

That echoes Lord Sumption JSC's comment in *Hughes-Holland v BPE Solicitors* (***BPE***) at [38] where he said that the overall principle was not concerned with causation, but, rather with:

… whether the losses flowed from the right thing i.e. from the particular feature of the defendant's conduct which made it wrongful.

At [27] the majority judgment emphasises "*the purpose of the duty of care as the relevant test*".

109. Mr Wilton KC observes that this reflects the purpose of the scope of duty and the duty nexus principles i.e. to ensure a fair distribution of risk. A loss will be for a professional's account if he owed a duty embracing the loss and there is a sufficient connection between its eventuation and what the professional got wrong when advising about the risk producing such a loss. Where, very unusually, a professional is taking responsibility for all aspects of the transaction, and thus is legally responsible for the entirety of the decision to proceed, then the scope of duty and the duty nexus questions potentially embrace all risks and foreseeable losses. But, ordinarily, a professional is only responsible for advice on particular issues within his retainer and sphere of expertise.

110. *Meadows* is said to be a particularly useful illustration because of the clarity of the facts and the decision that a doctor who had negligently failed to identify a risk of haemophilia in an unborn child when consulted in relation to that risk was only liable for the losses referable to the haemophilia and not for losses referable to the child's co-incidental autism, even though correct advice about the haemophilia risk would have led the claimant to terminate the pregnancy. That loss was held not to fall within the

scope of the doctor's duty, or to be attributable to what the doctor got wrong: it was, in effect, an inherent risk of birth, which was for the patient's account.

111. Mr Wilton KC says that the recent decision of the Court of Appeal in *Afan Valley Ltd v Lupton Fawcett LLP* [2026] EWCA Civ 2; [2026] P.N.L.R. 12 confirms the continuing vitality of these principles: the appellants could not recover damages for any of their losses since, amongst other reasons, they were not attributable to what it was the respondent solicitors allegedly got wrong, i.e. advising that the investment schemes were not collective investment schemes. Since the schemes had been operated as a Ponzi scheme from the start, the claimants would have been in the same position had they been properly advised; and there was therefore no adequate causal link between the alleged negligence and the claimed loss.

112. Mr Wilton KC cites the Court of Appeal's decision in *Petersen v Personal Representatives of Cyril B. Rivlin Deceased* [2002] Lloyd's Rep P.N. 386 to demonstrate that, for like reasons, there is no liability where the critical risk is one the claimant knew about. Where a claimant understands, and implicitly accepts, a risk – in that case that under the terms of an indemnity given to the vendors of property, he might be liable to pay a contribution to their costs of litigation – the corresponding loss cannot be attributable to anything that the defendant got wrong, notwithstanding that the claimant would not have given the indemnity if he had been competently advised. Mr Wilton KC submits that the same must follow where a defendant does identify the relevant risk, for in that case there is also an actual, or deemed, acceptance of the risk by the client. Thus, Mr Wilton KC contends that there is no liability where either: (1) the defendant had no duty to advise about the particular risk (a scope of duty point); or (2) a particular loss was not attributable to the advice that the defendant got wrong (a duty nexus point). This also encompasses situations where the risk from which the loss eventuates is known about by the claimant and/or is sufficiently addressed by the defendant (all duty nexus points). Such risks are for the claimant's account: corresponding losses are not attributable to any deficiency in the defendant's advice.

113. Mr Wilton KC submits that the position is no different if, exceptionally, the defendant's duty requires it to advise the claimant not to proceed. He contends that the suggestion that a professional who is providing advice on only some aspects of a transaction should be liable for losses attributable to the eventuation of a risk which was identified in advance simply because he should have advised the client not to go ahead at all is fundamentally at odds with the *SAAMCO* line of authority and the allocation of risk it implies. He says that there is no suggestion in the authorities that even an '*adviser*' (in Lord Hoffmann's categorisation) would be liable for the consequences of a risk where the professional had identified that risk but the client went ahead anyway, simply because the client would not have gone ahead if other matters had been properly reported to him. All the risks will be within the scope of the '*adviser*'s duty; but in this scenario the loss is not referable to anything the adviser got wrong. To hold otherwise would offend against the basic risk allocation which underpins the case-law. Mr Wilton KC submits that the same must apply where a professional does not have an all-encompassing duty since it is clear that a client cannot recover in respect of losses which eventuate due to risks that the professional was under no obligation to identify, or which were not attributable to what the defendant actually got wrong, e.g. because they were due to risks which the defendant had sufficiently identified.

114. The Court of Appeal's decision in *Andrews v Barnett Waddingham* [2006] EWCA Civ 93; [2006] P.N.L.R. 24 is said to further illustrate all of this. There the defendant pensions adviser should have spotted and warned that an element of the pension provision he was recommending with Equitable Life would not be covered by the Policyholders' Protection Act 1975 if the pension provider was in liquidation. The claimant "*would not have touched a with-profits annuity with a barge-pole*" if that had been properly explained to him; but the disappointing outcome was due to Equitable Life's problems, and not to any insolvency, or absence of protection under the 1975 Act, so there was no recovery. The loss did not flow from anything the adviser got wrong. There is no indication that the result would have been different if the adviser should have advised not just that an element of the pension was not protected by the 1975 Act, but that the client "*should not touch it with a barge-pole*" for that reason. That should have made no difference.

115. Mr Wilton KC therefore submits that it makes no difference if the professional had a duty to advise the client not to proceed. A risk properly identified is still one for the client's own account. To hold otherwise would be to reintroduce the heresy, extinguished in *BPE*, that where correct advice would have disclosed that the transaction was not viable, or was fundamentally flawed, then the professional is responsible for all the consequences of proceeding. Just because the advice which should have been given would have demonstrated a fundamental problem, that does not make the professional the equivalent of Lord Hoffmann's '*adviser*', who is legally responsible for all the consequences of a decision to proceed. A claimant still has to show that his losses are attributable to something the adviser got wrong. The grave nature of a breach of duty does not mandate a different approach, as was recently confirmed by Mr Richard Farnhill in *Gordeno* at [155]-[156]. The loss which eventuates must be the fruition of a risk as to which negligent advice was given, even in a case where the advice which should have been given was not to proceed with the transaction at all.

116. Happily, I do not have to decide this issue since this is not a case where I have found that Vincents was in breach of any duty to advise the claimant not to proceed with the transaction. The issue is one of law, and not one of fact turning on matters of evidence. It does not call for a decision from me which is not required on my findings of fact.

117. Mr Wilton KC points out that there is no pleaded case, nor is there any evidence to suggest, that the failure of the development, and the claimant's loss of its deposits, were attributable to anything Vincents got wrong when advising the claimant; or that, to use the language of *MBS*, it was the '*fruition*" of any risk that Vincents had a duty to guard against.

118. Mr Wilton KC reminds the court that, when seeking to amend, the claimant was refused permission to plead a case that the development failed by reason of some misuse of the deposit monies: see [108-110] of the second judgment. There is nothing in the evidence to show, for example, that some inadequacy in the deposit-holding arrangements allowed funds to be misused, and that this caused the failure of the development. The claimant pleads (at paragraph 26.4.5 of the amended particulars of claim) that those arrangements contained "*nothing that could prevent an unscrupulous or incompetent developer or agent accessing the buyer's money claiming unreasonably high sums for permitted categories of expenditure, or even by way of documents falsely stating the value of the work done so far*". But there is no evidence that this is what in fact

happened. At paragraph 38 of the amended particulars, the claimant references an email sent on 13 January 2022 by the seller's solicitors stating that *"... the majority of the deposits under the exchanged contracts have been used as per the contract terms for the payment of works however you will see that we do still hold some moneys*". Mr Wilton KC points to an email "*sent on 16 March 2020*", but which was clearly written contemporaneously with the call it records because it concludes with the statement that the writer will be out of the office until Thursday 5 December 2019. This refers to a conference call on 2 December 2019 between representatives of Vincents and the developer's solicitors (MSB) to address the former's "*concerns*" about the administration of the funder and why Vincents had not been told about this earlier, before the release of more of the deposits. A section of the email headed '*The valuation certificate*' records: "*MSB have confirmed that they received a valuation certificate before they released funds to the developer and that this was signed by a chartered surveyor. They assure us that they would not have released funds without this*". Mr Wilton KC observes that there is no reason to think that this was not true. Certainly, the claimant has adduced no evidence to the contrary.

119. Mr Wilton KC suggests that one can further test this by applying a *SAAMCO* counterfactual analysis: if the deposit-holding arrangements had provided the level of "*some protection*" that Vincents had suggested, would the losses still have occurred? Mr Wilton KC says that the answer is clearly '*Yes*' because there is no evidence that any weakness in the arrangements for the release of the deposits played any part in the occasioning of their loss.

120. For these reasons, Mr Wilton KC submits that the claimant cannot establish any duty which extends to embrace the losses arising by reason of the developer's insolvency. It cannot show the requisite connection between anything Vincents got wrong and the eventuation of any loss. The claimant cannot establish that the losses represent the coming to fruition of any risk in respect of which inadequate advice was given. The duty nexus question therefore falls to be answered in Vincents' favour; and that is a bar to any recovery by the claimant.

121. Mr Scher acknowledges that Vincents had no duty to guard against the failure of the development. But he submits that there was a duty to take reasonable care to prevent the loss of the deposits in the event of such failure. In his skeleton argument, Mr Scher argues that the purpose of the duty to advise that the deposits had no meaningful security or protection was to guard against the risk of the claimant underestimating the risk that the transaction posed to the claimant's deposits. The development failed. Mr Scher accepts that there is no conclusive evidence why it did, in the sense of precisely which risk eventuated. Mr Scher says that it is no answer to say that the development failed because of the insolvency of the developer because that begs the question why the developer fell into insolvency. Mr Scher accepts that the court does not have the material to answer this question conclusively.

122. Mr Scher points out that the claimant paid money to the developer on exchange of contracts. From that moment on, the money was locked into an extremely risky investment, with no real security or protection. It was irrecoverable. Mr Scher submits that it is likely (but, again, inconclusive on the evidence) that the claimant would have been exposed to less risk if its '*deposits*' had enjoyed meaningful security or protection. Therefore, he submits that the loss falls within the scope of Vincents' duty.

123. I reject Mr Scher's submissions, which seem to me to fall far short of confronting the difficulties presented to the claimant by the duty nexus question on the evidence that was adduced at trial in the instant case. I accept the analysis and conclusion advanced by Mr Wilton KC.

124. I remind myself that that I have found that Vincents' breach of duty is confined to the single failure to advise the claimant about the true meaning and effect of the mechanism for the release of the deposits contained within Schedule 2 to the Agreement for Sale, and the limited protection that this afforded to contracting purchasers, such as the claimant. I must therefore consider whether there is any sufficient connection between the claimant's loss of its deposits and the risks of harm to the claimant against which the law imposed a duty on Vincents to take reasonable care to provide such advice. That requires me to "*look to see what risk the duty was supposed to guard against and then look to see whether the loss suffered represented the fruition of that risk*".

125. In my judgment, the relevant risk against which the duty to advise the claimant accurately and adequately about the deposit release mechanism in Schedule 2 to the sale agreement, and the limited protection that this afforded to contracting purchasers, was the risk that the deposits received from contracting purchasers might be released otherwise than solely for the purposes permitted by paragraph 3 of Schedule 2, i.e. otherwise than for purposes connected with the marketing, construction, and completion of the development. That duty was nothing to do with the risk of the developer's insolvency, or the failure of the development for any reason otherwise than, or collateral to, the unauthorised and improper release of the deposits. Vincents had advised separately, and adequately, in relation to this latter range of risks; and these had been freely assumed by the claimant.

126. The lead judgment in *MBS* emphasises at [11] (cited above) that "*the burden of proof lies on the claimant to show that the loss for which he claims damages lies within the scope of the duty of care owed to him by the defendant*". The claimant has simply failed to discharge that burden. It has adduced no evidence to show that the loss of the claimant's deposits lies within the scope of the single duty that I have found that Vincents breached.

127. I apply a counterfactual analysis to cross-check the result at which I have arrived by analysing the purpose of the duty that Vincents breached. In doing so, I remind myself that this cross-check is subordinate to that primary analysis, and must not supplant or subsume it. For this purpose, it seems to me that I should assume that the deposit-holding arrangements did indeed provide adequate safeguards to ensure that the deposits could only be released for the purposes permitted by paragraph 3 of Schedule 2, i.e. only for purposes connected with the marketing, construction, and completion of the development. In that hypothetical scenario, I find that the deposits would still have been irretrievably lost because there is no evidence that any weakness in the arrangements for the release of the deposits played any part in the occasioning of their loss.

128. The claimant has failed to establish that Vincents breached any duty that extends far enough to embrace the losses that the claimant has suffered as a result of the developer's insolvency and the failure of the development. In my judgment, the claimant has failed to establish the necessary legal connection between anything Vincents got wrong and the loss of the claimant's deposits. The claimant has not established that such loss

represents the coming to fruition of any particular risk in respect of which inadequate advice was given. The duty nexus question therefore falls to be answered in Vincents' favour; and that is a bar to any recovery by the claimant.

129. I can well understand that the claimant will object: But the court has found that the claimant would not have entered into the transaction had adequate advice been given about the mechanism for the release of the deposits and the protection that this afforded to the claimant. Had the claimant not entered into this transaction, it would not have paid over the deposits, so they would never have been irretrievably lost. Why, then, has my claim failed? I fear that the answer is that a solicitor is only legally responsible for losses that flow from the particular risk in respect of which that solicitor gave inadequate advice – in this case, the inadequacy of the deposit release arrangements – and not for losses that flow from other risks – in this case, the insolvency of the developer and the non-completion of the development – in relation to which adequate advice **was** given. As Mr Wilton KC explained in closing, a claimant has to show that the loss is referable to some deficiency in the advice that was given; that it is the fruition of a risk that the solicitor failed properly to advise about. I fear that this explanation will come as little comfort to the claimant.

Contributory negligence

130. Mr Wilton KC submits that if there is any liability on the part of Vincents, then there should be an apportionment for the claimant's contributory fault, as pleaded at paragraph 50 of the amended defence, in not taking sufficient care to read, and if need be question (if it was not understood), the advice that Vincents gave, for its failure to pay due regard to the risks that Vincents clearly identified, and for its failure to obtain any of the additional professional advice that Vincents recommended. In closing, Mr Wilton KC submitted that, as a decision-maker, Mr Nickoll should also have read the Report on Title; and that there was contributory negligence if (as I have found) he failed to do so.

131. Mr Scher submits that there is no evidence whatsoever that Mrs Nickoll was careless in any way. Her misunderstanding of certain aspects of the Report on Title stems from a lack of clarity and emphasis in the Report, and other communications from Vincents, rather than any contributory negligence on Mrs Nickoll's part.

132. I would not have found any contributory negligence on the part of the claimant had it been necessary for me to determine this issue. Mrs Nickoll carefully read the Report on Title, and queried anything she did not understand. Mr Nickoll was perfectly entitled to leave this task to her, as she was the point of contact with Vincents. I have found that she also read the SRA Warning Notice. Had she not done so, I would have found that she was at fault, because it was clearly flagged up at the end of paragraph 3.6 of the Report on Title. Since Mrs Nickoll said (at page 184 of the transcript) that had she read it, her actions would probably have been "*very different*", I would have found that any failure to read the Warning Notice constituted contributory negligence on the part of the claimant. I would not have put the degree of contributory negligence as high as 75% (as Mr Wilton KC urged upon the court in closing). Rather, I would have found the contributory negligence to justify a reduction in the size of the award by one-third. But since I find that Mrs Nickoll did read the Warning Notice, no question of contributory negligence arises.

Loss

133. The claimant paid £40,000 in reservation fees. But this was before Vincents' retainer, and Mr Scher accepts that this sum is irrecoverable. The claimant paid a further £299,800 in '*deposits*' plus £3,796 in fees and disbursements to Vincents. The claimant seeks damages in the total sum of £303,596. The claimant also seeks interest. Mr Scher accepts that this can be addressed at the consequentials hearing, but he says that it is a significant sum. Running (for illustration purposes only) at 5% from the date of exchange (26 April 2018) to the date of the scheduled consequentials hearing (23 September 2026), this would total some £128,000.

134. Mr Scher submits that the claimant would not have entered into these transactions if Vincents had fulfilled its duties, either by advising the claimant not to proceed, taking reasonable steps to ensure its advice was understood, or giving non-negligent advice about the risks of how the 50% '*deposit*' was held. The claimant would not have lost its £303,596; and it seeks to recover that sum, together with interest and costs.

135. Mr Wilton KC accepts that, subject to liability, and any apportionment for contributory negligence, the loss comprises the '*deposits*' the claimant paid less any monies recovered. The total sum is £299,800 as paid on 26 April 2018. However, Mr Wilton KC submits that credit has to be given for the six '*cashbacks*', each of £2,000 (and totalling £16,000), which the claimant was paid by Certa Invest following exchange of contracts, such that the real net loss is only £283,800. Mr Wilton KC submits that there is no proper basis for recovering the £3,796 paid to Vincents in fees, which the claimant also seeks to recover.

136. Mr Scher's response is that the £16,000 '*cashback*' was received from Certa Invest, and not from the developer. It had been negotiated even before Vincents' retainer. It falls outside the ambit of the conveyancing transaction, and the lost deposits; and credit need not be given for it. It was a refund from the irrecoverable reservation fees. Effectively, Mr Scher says that it is '*res inter alios acta*', or causally separate from the claimant's lost deposits. No doubt, it was paid out of Certa Invest's own commission from the developer, to reflect the fact that eight separate commissions were received on the sale of one bundle of properties to a single purchaser. Mr Scher contends that the £3,796 paid to Vincents in fees was payable on exchange of contracts, and it would not have been paid had exchange not taken place.

137. Had I found liability on the part of Vincents, I would have assessed damages at £283,800. I would not have allowed the claimant to recover the £3,796 paid to Vincents in fees. These may only have been payable on exchange of contracts; but the claimant's fee liability was in no way conditional upon exchange of contracts taking place. Vincents earned its fee by carrying out work for the claimant, including its Report on Title. Had this led to the claimant withdrawing from the purchases (as, on this hypothesis, would have been the case), as events have transpired it would have been money well earned. As Mr Wilton KC expressed the matter in closing, the contractual arrangement for costs was not that Vincents would only be paid if there was an exchange of contracts. There was no conditional fee arrangement.

138. The £16,000 '*cashback*' may have come from Certa Invest; but it was entirely referable to this transaction, and would not have been received had the claimant not exchanged contracts for the purchase of the eight units, something that Mr Scher accepted during

his closing. I cannot regard it as '*res inter alios acta*'. The £16,000 '*cashback*' is properly deductible from any award of damages as a counter-credit. The claimant would not have received it had it declined to proceed to an exchange of contracts.

Conclusion

139. I can draw together the threads of this over-lengthy judgment thus:

140. To the limited extent that Vincents failed to advise the claimant about the true meaning and effect of the mechanism for the release of the deposits contained within Schedule 2 to the Agreement for Sale, and the limited protection that this afforded to contracting purchasers, such as the claimant, I find that Vincents is in breach of the duties it owed to the claimant in failing to advise that the deposits had no meaningful security or protection. Otherwise, I find that the claimant has not established any more extensive breach of any duty owed to the claimant.

141. I find that Mrs Nickoll did not appreciate the true limitations upon the protection afforded by Schedule 2. Had she done so, I find, on the balance of probabilities, that the claimant would have withdrawn from the transaction, and would have sought to recover the claimant's reservation fees from the developer, asserting misrepresentations contained within the marketing materials as to the level of protection afforded to the deposits. On this basis, factual causation is established.

142. However, there is no evidence to show that the loss of the claimant's deposits lies within the scope of the single duty that I have found that Vincents breached. The claimant has therefore failed to establish the necessary legal connection between anything Vincents got wrong and the loss of the claimant's deposits. The claimant has not established that the loss of its deposits represents the coming to fruition of any particular risk in respect of which inadequate advice was given. The duty nexus question therefore falls to be answered in Vincents' favour; and that is a bar to any recovery of damages by the claimant. This finding would not seem to me to depend upon any particular characteristics, attributes, or appetite for risk of this individual claimant.

143. I reach this conclusion with regret. Mrs Nickoll was an impressive, and patently honest, witness, and a thoroughly deserving individual, whose company has clearly suffered substantial loss as a result of the failure of this development, for which she is in no way responsible. She deserves to succeed on this claim. Had it been open to me to do so, I would have wished to compensate the claimant for its loss. Sadly, the law constrains me to dismiss this claim.

144. I thank counsel for their helpful submissions, and for their constructive approach to this claim and the trial.

145. I have listed a consequentials hearing to take place remotely on 23 September 2026. I would be grateful for a draft order, and for any written submissions, by 10.00 am on 21 September 2026.