

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 October 2024

Before :

MR JUSTICE LAVENDER

Between:

- (1) Domestic & General Group Limited
- (2) Domestic & General Insurance Plc
- (3) Domestic & General Services Limited

Claimants

- and -

- (1) Premier Protect Holdings Limited
(in liquidation)
- (2) Abdelhak Akayour
- (3) Apex Assure Limited (in liquidation)
- (4) Belal Ali
- (5) Home Protect 365 Limited
- (6) Premier Protect 365 SL
- (7) Hicham Alami
- (8) Rachid El Haddouchi
- (9) UK Service Plan Limited
- (10) Mohamed Anoir Dhimi
- (11) Mohammed Zakria Khan

Defendants

Nicholas Goodfellow and Bláthnaid Breslin (instructed by the **Claimants' in-house solicitors**) for the **Claimants**
Philip Currie (instructed by **JMW Solicitors LLP**) for the **Ninth and Tenth Defendants**
Barry Coulter (instructed by **Solicitors on Your Side**) for the **Eleventh Defendant**

Hearing dates: 30 & 31 January and 1, 2, 5 & 6 February 2024

JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. The claimants, who are providers of home appliance protection plans (“Plans”), accuse the defendants of the torts of causing loss by unlawful means and unlawful means conspiracy. The first, third, fifth and ninth defendants (“the defendant traders”) are, or were, providers of Plans and are, or were, controlled by the second, fourth and tenth defendants. I will refer to the first to fifth, ninth and tenth defendants as the “principal defendants”. The defendant traders obtain, or obtained, business through “cold” calls made on their behalf to potential customers, many of whom are, or were, existing customers of the claimants.
2. In summary, the claimants allege that: fraudulent misrepresentations were made in the course of those calls; many customers of the claimants were induced by those fraudulent misrepresentations to take out Plans with the defendant traders; as a result, many of those customers cancelled, or did not renew, their Plans with the claimants; the defendants encouraged the making of the fraudulent misrepresentations; and the defendants did so with the intention of taking customers’ business away from the claimants.
3. The trial was a trial of various issues relating to liability and injunctive relief.

(1)(a) The Alleged Roles of the Defendants

4. The claimants contend that the defendant traders include a series of “phoenix” companies, carrying on the same business in succession, as follows:
 - (1) The business was initially conducted from about mid-2019 by the first defendant, Premier Protect Holdings Limited (“Premier Protect”), and, to a much lesser extent, by the fifth defendant, Home Protect 365 Limited (“Home Protect”). Both of these companies were incorporated in April 2019 and are, or were, owned and controlled by the second defendant, Abdelhak Akayour. In addition, Mr Mohuddin Chhabu was briefly a director of Home Protect in 2019.
 - (2) The third defendant, Apex Assure Limited (“Apex Assure”), was incorporated on 16 July 2020. Apex Assure is and was owned and controlled by the fourth defendant, Belal Ali. The claimants allege that in about November 2020 Apex Assure began to take over the business formerly carried on by Premier Protect and Home Protect.
 - (3) The sixth defendant, Premier Protect 365 SL (“PP365”), is a company incorporated in Spain on 29 June 2016, when it was known as Payment Solutions SL. Its name was changed to Services Home Plan Protect SL on 17 May 2019 and to Premier Protect 365 SL on 2 October 2019. The seventh defendant, Hicham Alami, and the eighth defendant, Rachid El Haddouchi, were each the sole director of PP365 at different times.

- (4) On 25 February 2021 the ninth defendant, UK Service Plan Limited (“UKSP”), was incorporated by the tenth defendant, Mohamed Anoir Dhimi, who was and is its only shareholder. The claimants allege that UKSP was established to continue the business formerly conducted by Premier Protect, Home Protect and Apex Assure and that it started to do so from early March 2021.
- (5) The eleventh defendant, Mohammed Zakria Khan, was appointed as a director of UKSP on 15 June 2022, although there is a dispute as to how long he remained a director and as to what he did in his capacity as a director.

(1)(b) The Current Position of the Defendants

5. Only three of the eleven defendants were represented at trial. The position of the defendants was as follows:
 - (1) Premier Protect is in liquidation, pursuant to a winding-up order made on 22 February 2022 on public interest grounds on the application of the Secretary of State for Business, Enterprise and Industrial Strategy (“the Secretary of State”). The claim against Premier Protect was therefore stayed pursuant to section 130(2) of the Insolvency Act 1986 and the stay has not been lifted.
 - (2) Mr Akayour was debarred from defending the action by an order made on 12 January 2023. He did not attend the trial. Indeed, he said in an email sent shortly before trial that he was out of the jurisdiction and liable to be arrested pursuant a bench warrant issued in the insolvency proceedings against Premier Protect if he returned to this country.
 - (3) Apex Assure is in liquidation, pursuant to a winding-up order made on 12 July 2023 on the application of the Information Commissioner’s Office (“the ICO”), after Apex Assure failed to pay a £230,000 monetary penalty imposed by the ICO on Apex Assure. However, Apex Assure’s liquidator consented to an order, which I made on the eve of the trial, lifting the stay of the claim against Apex Assure. Apex Assure was debarred from defending the action by an order made on 3 November 2022.
 - (4) Mr Ali was also debarred from defending the action by the order of 3 November 2022. Nevertheless, Mr Ali attended parts of the trial.
 - (5) Home Protect has never participated in the litigation, save for putting in a defence together with the first to fourth defendants. Home Protect was struck off the register of companies on 1 August 2022, but it was restored on 25 January 2023 on the application of the claimants. It was not represented at trial.
 - (6) PP365, Mr Alami and Mr El Haddouchi have taken no part in these proceedings. Default judgment was entered against them on 27 July

2021 and on 19 May 2022 a final injunction order was made against them.

- (7) UKSP and Mr Dhimi were represented at trial by Mr Currie. UKSP remains in business offering Plans to its clients, although on 24 January 2023 a winding-up petition was presented against UKSP by the Secretary of State on public interest grounds. The UKSP winding-up proceedings are ongoing.
- (8) Mr Khan was represented at trial by Mr Coulter.

(2) Background

(2)(a) The Claimants

6. The first claimant is the parent company of the second claimant (“D&G Insurance”). The third claimant (“D&G Services”) is another company in the D&G group of companies. D&G Insurance and D&G Services are the group’s principal operating companies in the United Kingdom. They offer Plans which take two main forms: (a) an insurance product provided by D&G Insurance, which is regulated by the Prudential Regulation Authority and the Financial Conduct Authority (“the FCA”); or (b) a contract for services provided by D&G Services.
7. The claimants’ Plans typically provide a customer with: (a) extended warranty protection, i.e., protection in the same terms as the manufacturer’s warranty, which incepts upon the expiry of the manufacturer’s warranty; and (b) accidental damage protection, which runs alongside the manufacturer’s warranty and/or any extended warranty. Plans can be provided on a subscription basis, with the customer paying regular instalments, or a cash basis, with the customer making a single payment for a fixed period, after which the Plan can be renewed. Some Plans renew automatically, subject to the customer being informed of the right to cancel prior to renewal, while others require positive action on the part of the customer to renew.
8. Plans are provided on both a “white label” basis, i.e. in association with, and in the name of, the manufacturer of an appliance (e.g. Sky), and an “own name” basis.

(2)(b) Rogue Traders

9. The claimants and others have been concerned for some years about the activities of what they call “rogue traders”, i.e. companies who conduct their businesses in the manner in which the claimants contend that the defendant traders conducted their businesses. The claimants were alerted to these activities by complaints made to them by customers of theirs who had been called by alleged rogue traders. For some years the claimants have logged customer complaints on an internal system called “ChitChat”. It was as a result of customer complaints that the claimants identified the defendants as parties against whom they wished to bring a claim.

10. The present action is one of a series of actions brought by the claimants against alleged rogue traders. For instance, an article published in the Evening Standard on 27 November 2019 referred to four actions which the claimants had brought against various alleged rogue traders.
11. The activities of alleged rogue traders are also of interest to various regulators. For instance:
 - (1) On 18 December 2020 and 18 February 2021 the FCA issued warning notices in respect of Premier Protect and Apex Assure, stating that it was concerned that those companies may be conducting insurance business without being regulated by the FCA.
 - (2) As I have already mentioned, the Secretary of State petitioned for Premier Protect and, more recently, UKSP to be wound up on public interest grounds.
 - (3) I have also already mentioned the fact that the ICO imposed a substantial monetary penalty on Apex Assure.
 - (4) The Brighton and Hove Trading Standards authority (“Trading Standards”) was also concerned about alleged rogue traders. Mr John Peerless Mountford conducted a raid of the premises of Apex Assure on 18 May 2021. The documents seized and the information gathered on that occasion formed a significant part of the evidence relied on by the claimants.

(2)(c) The Defendant Traders

(2)(c)(i) Trading by the Defendant Traders

12. Although Mr Ali claimed at one stage that Apex Assure never had any live customers, it is clear that it did. It was also denied that Home Protect ever traded, but there was evidence of at least some trading by Home Protect. The defendant traders offered Plans to individuals, who included customers of the claimants:
 - (1) in the case of Premier Protect and Home Protect, from about July 2019 to at least early 2021;
 - (2) in the case of Apex Assure, from about October 2020 to about May 2021; and
 - (3) in the case of UKSP, from early 2021 to the present.
13. This can be seen, inter alia, from the claimants’ customer complaints records. Customers called the claimants to complain after they had received a cold call from a representative of a company who tried to sell them a Plan. I will consider these complaints in more detail later. It is relevant to note when the claimants first received a complaint about each of the defendant traders, which was:
 - (1) 19 July 2019 in relation to Premier Protect;

- (2) 12 September 2019 in relation to Home Protect;
 - (3) 14 October 2020 in relation to Apex Assure; and
 - (4) 3 May 2021 in relation to UKSP.
14. The first to fifth defendants admitted in their defence that Apex Assure was the successor business to Premier Protect. Mr Ali said in his statement that Apex Assure started its business with all the resources of Premier Protect and that Premier Protect managed Apex Assure for the time it was open.
15. There is, however, a dispute whether UKSP took over the business of Apex Assure. I will consider that issue later.

(2)(c)(ii) Call Centres

16. Each of the defendant traders engaged companies operating call centres, who called potential customers. The call centres who contracted with the defendant traders have been referred to as “direct agents”. The direct agents in turn retained other call centres as sub-agents, whose employees made many of the customer calls which produced business for the defendant traders. Thus:
- (1) Premier Protect retained C3 Marketing Ltd (“C3 Marketing”) as direct agent. Mr Akayour has said that the call centres retained by C3 Marketing to make customer calls on behalf of Premier Protect were Personal Recruitment Outsourcing (“PRO”) and Callforce Global Technology Private Ltd (“Callforce Global”).
 - (2) Apex Assure also retained C3 Marketing as direct agent. Mr Ali has said that the call centres retained by C3 Marketing to make customer calls on behalf of Apex Assure were PRO and Callforce Global.
17. The position in relation to UKSP was less clear.
- (1) According to the witness statement made by Mr Dhimi on 22 December 2023, UKSP retained the following direct agents:
 - (a) PRO (in April and May 2021);
 - (b) Callforce Global (from October to December 2021);
 - (c) Rumpaze Solutions (from July 2021 to September 2022); and
 - (d) UK Market Communications Ltd (“UKMC”) (from June 2021 to the present, and exclusively from some time in 2022).
 - (2) According to a letter from UKSP’s and Mr Dhimi’s solicitors dated 9 January 2023, UKSP also engaged the following direct agents:
 - (a) Domestic Guardian Limited (“Domestic Guardian”), a company to which UKSP paid significant sums between May and October 2021; and

- (b) an entity referred to as “Indian Call Center”.
- (3) In a statement made on 21 February 2023 in the insolvency proceedings against UKSP, Mr Dhimi said that UKSP retained a new third party marketing agency in or around March 2022. However, at trial Mr Dhimi was unable to identify this agency.
- (4) In an email sent on 26 October 2021 Mr Dhimi said that UKSP received its “warm leads” at that time from two companies, Callforce Global and Call 360.
- (5) UKMC retained sub-agents, but Mr Dhimi’s evidence was that he did not know the identity of these sub-agents.
- (6) In an email sent on 19 August 2022 an employee of UKSP named Hi5 Marketing Limited (“Hi5”) as a sub-agent of UKMC.
18. Mr Akayour has described himself as, and I find that he was, a director of PRO. Call 360 was a continuation of PRO. Mr Akayour was also the sole director and shareholder of Domestic Guardian, which was incorporated on 15 March 2019 and dissolved on 7 December 2021.
19. Joseph MacDonald, who worked for Premier Protect and then UKSP, was the sole shareholder and director of Hi5, which was incorporated on 5 July 2021. However, Mark Abadi, who had dealings with Mr Akayour and who was subsequently interviewed by Mr Peerless Mountford, identified Hi5 as a new name for Mr Akayour’s call centre business. Hi5 made substantial payments to Mr Akayour in 2023 and I find that it was his business.
- (2)(c)(iii) Customer Calls*
20. The number of customer calls made on behalf of the defendant traders were significant. According to the ICO’s Penalty Notice, over 2 million calls were made from Apex Assure’s telephone numbers in the 6 months from February to July 2021.
21. Customers would not be signed up to Plans with the defendant traders until they had received two telephone calls, which I will call an “initial customer call” and a “follow-up customer call”.
- (1) In the case of Premier Protect and Apex Assure:
- (a) the initial customer call has been referred to as a “lead generation call”; and
- (b) the follow-up customer call has been referred to as a “verification call”.
- (2) In the case of UKSP:
- (a) the initial customer call has been referred to as an “origination call”; and

- (b) the follow-up customer call has been referred to as a “warm leads call”.
22. Scripts were prepared for customer calls. I have seen a few such scripts and will consider them in more detail later. Customer calls were recorded. However:
- (1) Premier Protect and Home Protect disclosed no call recordings.
 - (2) Apex Assure disclosed no recordings of initial customer calls and only 17 recordings of follow-up customer calls made by C3 Marketing on 20 January 2021.
 - (3) UKSP disclosed only 7 recordings of initial customer calls and 50 recordings of follow-up customer calls.

(3) The Evidence at Trial

(3)(a) Witnesses at Trial

(3)(a)(i) The Claimants’ Witnesses

23. The claimants called only three witnesses at trial, namely Roberto Pagliarulo, the claimants’ solicitor, Mr Peerless Mountford and Caroline Kitson, who spoke of the way in which a UKSP Plan was sold to her mother. Their evidence did not add a great deal to the underlying documents, which consisted primarily, in Mr Pagliarulo’s case, of the documents disclosed by the claimants, including their records of complaints and of the Plans which customers took out and renewed and/or cancelled and, in Mr Peerless Mountford’s case, of the documents seized from Apex Assure’s premises.

(3)(a)(ii) Mr Akayour and Mr Ali

24. Mr Akayour and Mr Ali did not give evidence at trial, but I have considered the witness statements and other statements which they made before trial. I do not consider them to be reliable witnesses.
25. I accept that Mr Ali has made a number of false claims in the course of these proceedings, as follows:
- (1) In his witness statement dated 18 February 2021 Mr Ali said that Apex Assure never made outbound sales calls itself. However, the Trading Standards raid on 18 May 2021 showed this to be untrue, since Trading Standards officers found both Apex Assure employees and Apex Assure call scripts at Apex Assure’s premises. Apex Assure’s employees were asked if they had been given instructions regarding the calls they made and they said that they had been given call scripts.
 - (2) In the same witness statement, Mr Ali said that neither he, Apex Assure nor anyone on Apex Assure’s behalf had created any training materials or call scripts. This again was shown to be untrue by the Trading Standards raid.

- (3) In his witness statement dated 7 November 2023 Mr Ali said that Apex Assure was operational up to 1 March 2021. In fact, Apex Assure employees were still working at Apex Assure's premises at the time of the Trading Standards raid on 18 May 2021.
 - (4) In the same statement, Mr Ali said that Apex Assure never transacted any deals, because he was never successful in securing a payment portal for Apex Assure. This contradicted the statement in the defence of the first to fifth defendants that "PP365 provided a payment portal that was used to process payments for ... [Apex Assure]." Whatever arrangements may have been made in relation to payments, it is clear that Apex Assure did in fact provide Plans to customers who paid for those Plans.
26. I also accept that Mr Akayour made the false claim that Premier Protect never made any outbound calls itself (since Apex Assure took over Premier Protect's business and Apex Assure did make customer calls itself) and that he gave evidence about the management of PRO which was misleading, because he did not disclose that he was a director of PRO.
27. Moreover, as I will explain, both Mr Akayour and Mr Ali have been found to be in contempt of court in relation to their defence of this action, particularly in relation to complying with their disclosure obligations.

(3)(a)(iii) Mr Dhimi and Mr Khan

28. The only witnesses called by any of the defendants at trial were Mr Dhimi and Mr Khan. I will say more about their evidence later. In short:
- (1) I did not find Mr Dhimi to be a credible witness. As I will explain, I found his evidence to be false in a number of significant respects.
 - (2) There were significant questions about Mr Khan's evidence but, ultimately, I accepted the thrust of what he was saying.

(3)(b) Documentary Evidence

29. In addition to the documents which they had disclosed, the claimants relied on such documents as were disclosed by the defendants, while contending that the defendants' disclosure was seriously deficient.

(3)(c) Adverse Inferences

30. The claimants invited me to draw adverse inferences from the defendants' response to their disclosure obligations and from the false statements which I have found were made by Mr Akayour, Mr Ali and Mr Dhimi and what the claimants contended were false statements made by Mr Khan. The claimants relied in this respect on paragraph 52 of Andrew Popplewell QC's judgment in *Do-Buy 925 Limited v National Westminster Bank Plc* [2010] EWHC 2862 (QB) and paragraph 69 of HHJ Clarke's judgment in *PSN Recruitment Limited*

v Ludley [2023] EWHC 3153 (IPEC). In the former case, Andrew Popplewell QC said as follows:

“It is a commonplace in civil frauds that the party making the allegation can often do no more than point to the acts of the alleged conspirators and seek to demolish the innocent explanations put forward, not infrequently relying on their inherent improbability and internal inconsistencies rather than any directly contradictory evidence. If a Court rejects those explanations, it may legitimately conclude that the conspiracy is established both by reference to that being the most probable alternative explanation and by an inference to be drawn from the fact that an untrue explanation has been put forward. So far as the second of these is concerned the Court will always keep in mind that as Lewison J said in *Abbey Forwarding Ltd (in liquidation) v Hone* [2010] EWHC 2029 at paragraph 49 “even where a witness lies about a matter of importance, that does not necessarily mean that he is guilty of whatever it is that he is accused of doing. People tell lies for a number of reasons, including attempting misguidedly to bolster a genuine case.””

(4) The Course of the Action

31. It is relevant for a number of reasons to set out the course which this action has taken.

(4)(a) The Commencement of the Action

32. On 21 December 2020 the claimants sent a letter before action to the first to eighth defendants and to Mr Chhabu. The claim form was issued on 14 January 2021. At that stage, only the first to eighth defendants were named as defendants.

(4)(b) The Order of 21 January 2021

33. On 21 January 2021 Adam Vaitilingam QC, sitting as a deputy high court judge, granted an injunction:
- (1) (by paragraph 1(a)) prohibiting the first to fourth defendants from making misrepresentations to prospective customers;
 - (2) (by paragraph 1(b)) requiring the first to fifth defendants to preserve recordings or transcripts of customer calls and all training materials, including call scripts, provided to employees or agents of Premier Protect, Home Protect or Apex Assure; and
 - (3) (by paragraph 3) requiring the first to fourth defendants to give disclosure by 18 February 2021 of:
 - (a) recordings of all sales calls made to prospective customers on 1 September, 2 November and 1 December 2020; and

- (b) all written training materials, including scripts, used for the training of and/or provided to staff members.
34. One of the issues for me to decide, issue 6, is whether the first to fourth defendants have acted in breach of paragraph 1(a) of the order of 21 January 2021.
35. Mr Akayour did not comply with paragraph 3 of the order of 21 January 2021. Mr Ali purported to comply with that order by filing his first witness statement, dated 18 February 2021. In this statement, he explained why he contended that Apex Assure had no documents in the categories ordered to be disclosed and he made what I accept were false statements:
- (1) “At no time has [Apex Assure] made any outbound sales calls itself.”
- (2) “As set out above, at no time have either I or AAL employed any person to make any sales calls and, accordingly, there are no materials that have been provided to any of the staff for this purpose; all sales calls are made by the Third Party Companies.”

(4)(c) The Orders of 11 March 2021

36. On 11 March 2021 Clare Ambrose, sitting as a deputy high court judge, granted an injunction against the sixth to eighth defendants in the same terms as paragraph 1 of the order of 21 January 2021 and made an order by which, inter alia, she:
- (1) (by paragraph 3) extended the time for giving the disclosure ordered on 21 January 2021 to 18 March 2021;
- (2) (by paragraph 5(a)) amended the order of 21 January 2021 in the case of Apex Assure and Mr Ali so that they had to disclose recordings of all sales calls made to prospective customers on 19 November and 1 December 2020 and 20 January 2021;
- (3) (by paragraph 5(b)) amended the order of 21 January 2021 so that the first to fifth defendants were obliged to disclose all written training materials (including scripts) used for the training of and/or provided to agents conducting sales calls to prospective customers on behalf of Premier Protect and/or Apex Assure; and
- (4) (by paragraph 6) required Mr Akayour and Mr Ali each to file and serve an affidavit by 25 March 2021:
- (a) giving the name and address of each call centre which made customer calls on behalf of Apex Assure; and
- (b) explaining the steps (if any) taken by Apex Assure and/or Mr Ali:
- (i) to bring the terms of the order of 22 January 2021 to the attention of all or any of the call centres, together with their response;

- (ii) to request the call centres to transfer and provide access to all recordings of sales calls made by or behalf of Apex Assure; and
 - (iii) what was said or communicated to the call centres, together with the response made on behalf of the call centres.
- 37. Mr Akayour did not comply with the order of 11 March 2021. In purported compliance with paragraph 6 of the order of 11 March 2021, on 16 April 2021 Mr Ali swore and filed an affidavit in which he repeated his false claim that "... at no time has [Apex Assure] made any outbound sales calls itself." He also said that C3 Marketing only retained recordings of sales calls for 3 months and that PRO and Callforce Global only retained recordings for much shorter periods. Mr Ali said as follows in relation to PRO and Callforce Global in paragraph 25 of his statement:

"As for [PRO] and Callforce Global, my understanding is that the issue with call recording retention is even more acute. This is because the Morocco and India call centres were responsible primarily for lead generation calls. By their nature, the volumes of lead generation calls are much higher than those for verification calls. My understanding is that [PRO] and Callforce Global operate with large teams of agents, making hundreds of calls a day and where any of these calls are recorded, it is only likely to be for a very short period of time as to save them all indefinitely would require huge storage capacity."
- 38. On 20 April 2021 Mr Ali and Apex Assure disclosed 17 recordings of follow-up customer calls conducted by C3 Marketing. They have not disclosed any recordings of initial customer calls.
- 39. Mr Akayour made a witness statement on 7 June 2021 in which he said that Premier Protect's position in relation to call recordings was effectively the same as Apex Assure's, with the additional point that Premier Protect had ceased selling Plans in November 2020. In paragraph 26 of his statement, Mr Akayour said:

"As for [PRO] and Callforce Global, I have seen what [Mr Ali's] Affidavit says at paragraph 25. The explanation makes sense to me and I do not have any other information beyond that explanation, save as to note that my understanding is that searching for call recordings by telephone number is only likely to work for calls at the verification stage, rather than the (earlier) lead generation stage. ..."
- 40. Then in paragraph 30 he said as follows:

"As I have already stated, where Premier Protect is no longer trading, I fear that there is no particular commercial incentive for C3 Marketing to assist as quickly as possible in relation to ongoing searches for historic call recordings."

41. This witness statement was misleading because Mr Akayour did not disclose that he was a director of PRO.
42. The first to fifth defendants filed a defence dated 11 June 2021. The statement of truth was signed by Mr Ali. Paragraph 11 of that defence contained an untrue statement, at least insofar as it related to Apex Assure, namely:

“Neither Premier Protect nor Apex Assure contacted potential customers directly or made calls to potential customers.”

(4)(d) Default Judgment on 27 July 2021

43. On 27 July 2021 Master Cook made an order granting default judgment against the sixth to eighth defendants.

(4)(e) Final Injunction and Directions of 19 May 2022

44. On 19 May 2022 Master Cook granted a final injunction against the sixth to eighth defendants and made an order giving directions, which included the following:

(1) In respect of disclosure (by paragraph 6):

- (a) The second to fifth defendants were ordered to provide to the claimants the name, address and contact details of all customers who had taken out Plans with Premier Protect, Apex Assure, Home Protect or PP365.
- (b) The claimants were ordered to identify which of those customers had taken out Plans with the claimants.
- (c) The second to fifth defendants were ordered to give standard disclosure by 29 September 2022, which included certain categories of documents relating to the common customers identified by this process.

45. In August 2022 Mr Akayour provided a list of Premier Protect’s customers, which the claimants contend was incomplete. He did not purport to provide standard disclosure until November 2023, which was after he had been debarred from defending the claim by reason of his failure to give standard disclosure and after the claimants had issued a committal application. His failure to give disclosure was held to be a contempt of court.
46. Instead of providing a list of Apex Assure’s customers, Mr Ali made the false claim in an email dated 9 September 2022 that Apex Assure never had any live customers. Thereafter, Mr Ali and Apex Assure did not provide a list of Apex Assure’s customers until 7 November 2023, after the claimants had issued a committal application. The list was incomplete.

(4)(f) The Order of 3 November 2022

47. On 3 November 2022 Simon Tinkler, sitting as a deputy high court judge, granted an injunction against the ninth to eleventh defendants in the same terms as the injunction against the first to fourth defendants and made an order in which he:
- (1) granted (by paragraph 1) permission to the claimants to amend the claim form by adding the ninth to eleventh defendants;
 - (2) gave further directions, including:
 - (a) ordering (by paragraph 9(b)) the claimants and the second to eighth defendants to give standard disclosure by 6 January 2023; and
 - (b) ordering (by paragraph 8) that Apex Assure and Mr Ali would be debarred from defending the claims against them unless by 18 November 2022 they served a witness statement providing the following information:
 - (i) the name, address and contact details of all customers who had taken out Plans with Apex Assure, and whether such Plans remained live, or had been cancelled;
 - (ii) if it was asserted that Apex Assure never had any customers, the basis for that assertion, and an explanation as to its inconsistency with what was set out in paragraph 8.2 of their defence; and
 - (iii) if it was asserted that Apex Assure no longer retained any of the customer information sought:
 - (a) the location where such information was previously stored;
 - (b) the identity of any third-party provider used to store that information; and
 - (c) the steps (if any) that they had taken since 3 January 2021 to preserve that information.

48. Apex Assure and Mr Ali did not comply with paragraph 8 of this order and therefore were debarred from defending the claims against them and were subsequently found to be in contempt of court.

(4)(g) The Order of 11 January 2023

49. On 11 January 2023 Master Cook made an order:

- (1) requiring (by paragraph 2) Mr Ali and Apex Assure to provide the witness statement required by paragraph 8 of the order of 3 November 2022 by 9 February 2023;
 - (2) debarring (by paragraph 4) Mr Akayour from defending the claim against him unless he gave standard disclosure by 9 February 2023 (which he did not do);
 - (3) making similar provision (by paragraph 5) for the identification of UKSP's customers and common customers ("the UKSP Common Customers") as was made in the order of 20 May 2022, with standard disclosure to be given by 22 March 2023; and
 - (4) making provision (by paragraph 7) for the trial of the issue whether fraudulent misrepresentations were made to customers to be a trial by sample, with an expert participating in the selection of the samples.
50. Mr Dhimi and UKSP provided draft disclosure lists on 29 March 2023 and final lists on 24 July 2023. That disclosure was incomplete and they subsequently consented to an order for specific disclosure.
51. Mr Khan did not provide a disclosure list until shortly before trial. He has not disclosed any documents, contending that he has none to disclose, given what he says was his limited involvement with UKSP.
- (4)(h) The Order of 31 March 2023***
52. On 31 March 2023 Master Cook made an order by paragraph 4 of which he ordered Mr Akayour to provide standard disclosure by 14 April 2023. Mr Akayour failed to comply with this order.
- (4)(i) The Order of 11 December 2023***
53. On 20 June 2023 the claimants issued contempt applications against Mr Akayour, Mr Ali and Apex Assure, in respect of which Cotter J gave directions on 11, 13 and 17 October 2023. Then on 11 December 2023 Cotter J held that:
- (1) Mr Akayour had committed a contempt of court by failing to provide standard disclosure by 14 April 2023, in breach of paragraph 4 of the order of 31 March 2023; and
 - (2) Mr Ali had committed a contempt of court by failing to provide by 9 February 2023 the witness statement ordered by paragraph 2 of the order of 12 January 2023.
54. The balance of the contempt applications was adjourned until after the trial.
55. As I have already noted, in the context of the committal applications, Mr Ali provided a list of Apex Assure customers, but it was incomplete.

(4)(j) The Order of 14 December 2023

56. On 14 December 2023 Cotter J gave various directions, including orders:
- (1) (by paragraphs 2 to 6) for specific disclosure by Mr Dhimi and UKSP;
 - (2) (by paragraphs 12 and 13) for specific disclosure by Mr Akayour or, in the alternative, service of a witness statement; and
 - (3) (by paragraphs 14 and 15) for specific disclosure by Mr Ali and service of a witness statement explaining the inconsistencies in his evidence concerning the question whether Apex Assure had any customers.
57. None of the defendants fully complied with the order of 14 December 2023.

(4)(k) The Order of 15 January 2024

58. At a pre-trial review on 15 January 2024 I gave various directions, including directions:
- (1) (by paragraph 12) requiring Mr Dhimi to file a witness statement by 19 January 2024 dealing with various matters concerning disclosure;
 - (2) (by paragraph 13) requiring UKSP and Mr Dhimi to give specific disclosure by 19 January 2024;
 - (3) (by paragraph 14) requiring Mr Khan to give specific disclosure by 19 January 2024; and
 - (4) (by paragraphs 17 and 18) that there would not be a trial by sample as against Apex Assure and Mr Ali and that the claimants had permission to rely against Apex Assure and Mr Ali on evidence relating to customers who were not on the list of common customers.
59. Notwithstanding the repeated orders made for disclosure, Mr Dhimi continued to disclose documents during the trial, namely emails from two of his email accounts.

(5) The Issues

60. The issues for determination at trial were as follows:

Issue 1: Whether calls made by or on behalf of D1, D3, D5 and/or D9 to prospective customers have involved making all or any of the Fraudulent Misrepresentations described in paragraphs 19 and 19A of the Particulars of Claim (respectively)?

Issue 2.1: Whether any such misrepresentations were made without belief in the truth of the same, or recklessly?

Issue 2.2: Whether the conduct of sales calls carried by agents of D1, D3, D5 and/or D9 to prospective customers carried out by an

agent on their behalf fell within the scope of the agents' actual or apparent authority?

Issue 2.3: Whether Ds1-5 and/or Ds9-11 (or any of them) schooled, coached and/or encouraged their agents to make all or any of the Fraudulent Misrepresentations?

Issue 2.4: Whether the misrepresentations made by, or on behalf of, D1, D3, D5 and/or D9 were made with the intention of causing loss to the Claimants?

Issue 3: Whether Ds1-5 and/or Ds9-11 have engaged jointly or individually in the tort of causing loss by unlawful means to the Claimants?

Issue 4.1: Whether all or any of Ds1-5 and/or Ds9-11 were party to a combination to use unlawful means?

Issue 4.2: Whether any combination to use unlawful means was reached with the intention of causing loss to Cs?

Issue 4.3: Whether Cs have suffered financial loss and/or damage to their reputation as a result of the Ds' actions?

Issue 5: Whether D9 was established to continue the business and operations previously conducted by D1 and/or D3?

Issue 6: Whether Ds1-4 have acted in breach of paragraph 1(a) of the 22 January Order?

Issue 7.4: Should final injunctive relief be granted, and if so, in what form?

61. I propose to address these issues in this order, save that I will address issue 5 first.

(6) Issue 5

62. Issue 5 is:

Whether D9 was established to continue the business and operations previously conducted by D1 and/or D3?

63. As I have said, the first to fifth defendants have admitted that Apex Assure was the successor business to Premier Protect. Indeed, Mr Ali said as follows in his response to a letter dated 8 January 2024:

- (1) "... Apex Assure was overseen by Premier Protect."
- (2) "The limited time Apex Assure was open it was managed by Premier Protect and my dealings were limited."
- (3) "As Apex Assure was a new company it was managed and overseen by Premier Protect."
- (4) "Apex Assure was managed by Premier Protect."

- (5) Apex Assure “started its business with all resources of Premier Protect as I Mr Belal Ali did not fund the business in any way. Premier Protect managed Apex Assure for the time it was open.”
64. While there is an element here of Mr Ali seeking to minimise his role in Apex Assure, I accept that Mr Akayour continued to play a significant role in the management of Apex Assure as it took over the business of Premier Protect. I note, for instance, that, according to the ICO’s Penalty Notice, Apex Assure’s communication services provider said that its end client was not Apex Assure, but PRO, which was Mr Akayour’s company.
65. However, UKSP and Mr Dhimi denied the claimants’ contention that UKSP was established to continue the business and operations previously conducted by Premier Protect and Apex Assure.

(6)(a) Issue 5: The Parties’ Submissions

66. In support of their contention, the claimants relied on evidence that:
- (1) UKSP operated from the same premises as Apex Assure.
 - (2) UKSP took on some or all of Apex Assure’s staff.
 - (3) Apex Assure and Mr Ali had connections with UKSP
 - (4) Mr Akayour was involved in the setting up of UKSP’s business.
 - (5) UKSP employed the same sales practices as Apex Assure.
67. The claimants also relied on:
- (1) The absence of business plans or other documents one would expect to be generated when a new business was being established.
 - (2) The documents seized in the Trading Standards raid.
68. In response, UKSP and Mr Dhimi contended that:
- (1) UKSP did not operate from the same premises as Apex Assure.
 - (2) Mr Dhimi delegated the task of hiring employees and did not know where they were recruited from. Some former Apex Assure employees were paid different amounts by UKSP from what they had been paid by Apex Assure.
 - (3) Mr Dhimi did not have a business relationship with Mr Ali.
 - (4) Mr Akayour only gave Mr Dhimi “a few basic pointers”.
 - (5) As to sales practices:
 - (a) UKSP only engaged PRO and Callforce for brief periods, whereas Premier Protect and Apex Assure used them for some

time. UKSP then engaged UKMC, who had not been used by Premier Protect or Apex Assure.

- (b) UKSP used different call scripts to Apex Assure.
 - (c) In July 2022 UKSP retained a full time compliance officer, Ms Krystie Puglianini, who instituted a process for monitoring sample customer calls.
- (6) The reason for the apparent dearth of documentation was that Mr Dhimi did business orally and usually by telephone.

(6)(b) Issue 5: Evidence and Findings

69. The context for Issue 5 is the following timeline:

- (1) On 14 January 2021 the claim form was issued.
- (2) On 21 January 2021 Adam Vaitilingam QC granted an injunction against the first to fourth defendants.
- (3) On 25 January 2021 UKSP was incorporated.
- (4) From April 2021 UKSP engaged PRO.
- (5) On 3 May 2021 the claimants received the first complaint about UKSP.
- (6) On 18 May 2021 Trading Standards conducted a raid at The Grain Store, 127 Gloucester Road, Brighton BN1 4AF (“127 Gloucester Road”).
- (7) From 30 June 2021 UKSP started paying the wages of 30 employees, including former employees of Premier Protect and Apex Assure.

(6)(b)(i) UKSP's Premises

70. Premier Protect and then Apex Assure operated from 127 Gloucester Road, which was occupied pursuant to a 5-year lease granted to Premier Protect in July 2020.
71. On 10 June 2021 Mr Dhimi completed a form (“the Elavon form”) and sent it to Leon Hewitt of Elavon Financial Services DAC. In the Elavon form, Mr Dhimi gave UKSP’s “Business Trading Address” as 127 Gloucester Road.
72. UKSP’s registered address had been changed on 12 April 2021 to Mocatta House, Trafalgar House, Brighton BN1 4AF (“Mocatta House”), which appears to have been a business centre. Mr Dhimi correctly gave Mocatta House as UKSP’s registered address in the Elavon form. He also gave it as UKSP’s address in a template customer welcome letter which he sent to Mr Ali on 5 May 2021. However, the only lease for Mocatta House which has been disclosed is dated 17 January 2022 and is for one office. In his evidence, Mr Dhimi described Mocatta House as a virtual address and said that UKSP was not trading from it in May 2021.

73. When Trading Standards officers raided 127 Gloucester Road on 18 May 2021 they found Mr Ali on the premises together with five individuals, two of whom said that they were employees of Apex Assure and three of whom said that they were employees of Service Home Plan. (Service Home Plan Limited (“SHP”) was incorporated on 23 February 2021. Its sole shareholder and director was Hesham Alouat. Documents found in the Trading Standards raid indicate that SHP carried on business from 127 Gloucester Road alongside Apex Assure.) As will be seen, UKSP started to pay the salary of two of these individuals in June 2021.
74. The Trading Standards officers also found:
- (1) copies of 93 UKSP customer letters on the server; and
 - (2) correspondence addressed to UKSP at Mocatta House, namely a complaint from a customer and a letter from HMRC providing an activation code for PAYE.
75. Mr Dhimi’s evidence about UKSP’s business address was thoroughly unsatisfactory. When he was shown the Elavon form, it was suggested to him that he completed the form as he did because 127 Gloucester Road was UKSP’s trading address. He replied, “I don’t recollect writing this so I can’t answer that.” After some questions from me to seek clarification, he said that he was not trading from 127 Gloucester Road. Mr Goodfellow then asked him where the 30 employees UKSP started paying on 30 June 2021 were sitting. Again, his initial answer was non-responsive. When I sought to clarify the question, he replied, “I wouldn’t know because I wasn’t there.”
76. His evidence ended up being that he had asked Mr Nazman Samingan (a former employee of Premier Protect) to employ some people, but he was not in Brighton at the time they were employed and he did not know where they were working, because he had left that with Mr Samingan to arrange. I find that evidence to be incredible. Mr Dhimi was the sole shareholder and sole director of UKSP. He had only just set it up and he said in the Elavon form that the projected annual revenue was £4 million. It is not credible that someone in his position would cause his company to employ 30 people and not even know where those people were working. Moreover, according to the Elavon form, he did know at the time where UKSP was trading from. He was unable to explain why he said that this was 127 Gloucester Road if that information was incorrect. Mr Dhimi did not identify anywhere else where UKSP could have been trading from and he confirmed that it was not trading from Mocatta House.
77. I find that, when it started trading, UKSP did so from 127 Gloucester Road. It was unnecessary for the purposes of Issue 5 to explore how long UKSP remained at 127 Gloucester Road or where it subsequently went to and so I do not address those issues. I should also record that I do not find that all 30 of the employees operated from 127 Gloucester Road, as there were only 10 work stations in the property.

(6)(b)(ii) UKSP's employees

78. The claimants contend that UKSP simply took over Apex Assure's workforce. UKSP and Mr Dhimi deny that. However, they do not deny that at least some of the individuals who started working for UKSP were former employees of Apex Assure.
79. UKSP's bank statements show that on 30 June 2021 it paid sums to 28 individuals (excluding Mr Dhimi himself) and on 1 July it paid sums to 2 more individuals, all with the reference "June wages", "June commission" or "June". UKSP continued to make monthly payments to them (or most of them) thereafter. The amounts paid to each individual in the months after June 2021 did not always remain constant, but they were all consistent with being monthly wages and/or commission.
80. Of the 30 individuals who became employees of UKSP, there is evidence that:
- (1) Mr Samingan had been an employee of Premier Protect. Premier Protect paid him £2,080 in June 2020 and UKSP paid him £2,080 on 30 June 2021. I also find that Mr Samingan was the "Nazman" identified by one of Apex Assure's employees as her manager in the Trading Standards raid on 18 May 2021.
 - (2) Joseph MacDonald had also been an employee of Premier Protect. Mr MacDonald was paid £4,000 by Premier Protect in June 2020 and the same amount by UKSP in June 2021. Mr Dhimi claimed that he did not remember what Mr MacDonald was doing to earn that much money.
 - (3) Max Prince and Rachel Sharpe were also employees of Premier Protect in June 2020.
 - (4) Nicole Bursig-Solway was in 127 Gloucester Road at the time of the Trading Standards raid on 18 May 2021, when she said that her employer was Apex Assure.
 - (5) Rob Pattinson was also in 127 Gloucester Road at the time of the Trading Standards raid, when he said that his employer was SHP.
 - (6) Ryan Flood was the man Rob Pattinson named on that occasion as his supervisor.
81. No documents have been disclosed by UKSP or Mr Dhimi which show how these employees were recruited or how their wages were calculated. In those circumstances, I do not regard any differences in what they were paid from one month to the other as being of any significance.
82. This pattern of taking on 30 employees in one go, rather than building up a workforce, is more consistent with taking over an existing business than with building up a new business from scratch. Mr Dhimi's evidence that he simply delegated to Mr Samingan the task of recruiting staff for UKSP was not credible. It was simply a device to enable him to say that he did not know where

UKSP's employees came from. Moreover, when he was first asked about this matter, he denied that this was a large recruitment exercise and said that Mr Samingan only recruited three or four people. I find that that was untruthful evidence.

83. I find that these 30 individuals were treated by UKSP as employees of UKSP with effect from 1 June 2021. Moreover, I find that the arrangements for paying their wages were simply continued from their previous employment by Premier Protect, Apex Assure or SHP, at least to begin with.
84. Between May and July 2021 UKSP paid a total of £38,274 to Easy4Everyone, which was a company owned and controlled by Mr Ali and which had paid Apex Assure's employees. Mr Dhimi said in his statement dated 19 January 2024 that he did not recall what the payments to Easy4Everyone related to and that he may have been directed to make these payments by Mr Akayour. At trial, he said that the largest payment, of £25,000, was for some consulting work, which he described as "basic pointers". I do not accept that evidence. I find that the payments to Easy4Everone were, at least in part, for payroll services which continued from Apex Assure and SHP to UKSP.

(6)(b)(iii) Mr Ali

85. The claimants allege that Mr Dhimi had had some contact with Mr Ali before he set up UKSP. Mr Dhimi acknowledged that he met Mr Ali through Mr Akayour. He said that this was during the time when he was setting up UKSP.
86. The claimants also alleged, and UKSP and Mr Dhimi denied, that Mr Ali had some involvement in UKSP's business. I find that he did:
- (1) When Mr Dhimi prepared a standard form customer welcome letter and terms and conditions for UKSP, he sent them on 6 May 2021 to Mr Ali to be finalised and uploaded to Webpost. Webpost was the company which sent customer letters on behalf of Apex Assure (and later UKSP) to customers who had agreed to take out Plans with them.
 - (2) On 15 June 2021 Webpost was asked to change its customer details from Apex Assure to UKSP. The name given in connection with this request was Mr Ali's, with Mr Samingan also identified as a contact.
 - (3) As I have said, UKSP's lease for the office at Mocatta House was dated 17 January 2022. The landlord told Mr Peerless Mountford on 17 June 2022 that Mr Ali was listed as the primary contact for UKSP. Mr Dhimi said that this was a mistake and that he would be able to provide an email in which he had told the landlord that it was a mistake, but no such email was disclosed.
87. Given the dearth of disclosure, I make no finding as to the precise extent of Mr Ali's involvement in UKSP's business.

(6)(b)(iv) Mr Akayour

88. As I have said, UKSP and Mr Dhimi admit that Mr Akayour had some involvement in setting up UKSP's business, but Mr Dhimi said that his involvement was limited to providing consulting services, which Mr Dhimi described as "a few basic pointers". There is no documentary evidence of the alleged provision of consulting services. One instance of Mr Akayour's involvement in the establishment of UKSP is that on 25 February 2021 he paid UKSP's data protection fee from his personal credit card.
89. The context for considering the issue of Mr Akayour's involvement with UKSP is that, when the business was first set up in 2019, both Premier Protect and PRO were his companies and, as I have found, Mr Akayour continued to play a significant role in the management of Apex Assure as it took over the business of Premier Protect. Moreover, the relationship between Premier Protect and Apex Assure on the one hand and PRO on the other hand was not simply an arm's length relationship:
- (1) I have already mentioned the fact that PRO was the end client for Apex Assure's communications services provider.
 - (2) Mr Ali and Mr Samingan had PRO email accounts, as did Serena Serafimov and Nicole Bursig-Solway, the two employees of Apex Assure who were in 127 Gloucester Road at the time of the Trading Standards raid and the latter of whom was paid by UKSP from June 2021.
90. Moreover:
- (1) Hi5, which was a continuation of PRO, was incorporated in July 2021 with Mr MacDonald as its sole shareholder and director, at a time when Mr MacDonald was employed by UKSP.
 - (2) Ryan Flood, who was also paid by UKSP from June 2021, identified himself on his Linked In page as the business development manager for "Hi5 Group" for 5½ years since August 2018.
 - (3) Mr Dhimi himself had a Hi5 email account, as did another employee of UKSP, James Scott.
91. Mr Dhimi said that Mr Akayour was a friend whom he had known since 2017 and that in 2021 they were speaking quite regularly. A photograph on Mr Akayour's Instagram account dated 15 April 2020 shows Mr Dhimi and others in football kit. Mr Dhimi said that this photograph was taken in Morocco, which was where PRO had a call centre.
92. Mr Dhimi acknowledged in his witness statement that PRO was recommended to him by Mr Akayour. It is also acknowledged that UKSP retained PRO in April and May 2021. PRO was a company of which Mr Akayour was a director. After PRO, UKSP retained Domestic Guardian, which was another company

controlled by Mr Akayour. Another of Mr Akayour's businesses, Hi5, was making calls on UKSP's behalf later in 2021.

93. However, Mr Dhimi denied knowing of Mr Akayour's relationship with PRO, although he did not say who he thought controlled PRO if it was not Mr Akayour. A number of documents were put to Mr Dhimi which it was suggested showed that he knew of Mr Akayour's relationship with PRO:
- (1) Mr Dhimi "liked" a photograph posted on Mr Akayour's Instagram account on 3 November 2019 which read "#ProCasablanca". The claimants suggested that this was a reference to PRO's Casablanca call centre and that the photograph was of that centre being fitted out.
 - (2) A photograph posted on Mr Akayour's Instagram account on 16 October 2019 showed an office plan and read "#PROCASABLANCA – LAUNCH 4TH NOVEMBER". These photographs certainly show that Mr Akayour was not reticent about his involvement with PRO.
 - (3) In July 2021 Mr Akayour sent an email to Mr Dhimi to which was attached a schedule of invoices relating to what was called the Tetouan office, which the claimants submitted was PRO's call centre in Tetouan. Mr Dhimi denied that this email related to PRO's business, because the email address ended in ".uk", but the same email address was used by some of UKSP's employees. Mr Dhimi said that he could not recall why Mr Akayour sent this email to him, but that at the time they were speaking quite regularly.
94. Retaining a call centre or call centres was a vital part of the business which Mr Dhimi set up in 2021. One measure of the importance of call centres is to be found in UKSP's accounts for the year ending 28 February 2023, when its total turnover was £2,128,480 and the amount spent on advertising, which was accepted to be largely, if not exclusively, the amount paid to call centres, was £1,318,978, or 62% of the total. It is inherently improbable that a businessman such as Mr Dhimi would not find out who controlled a business which was so important to his business and it is equally improbable that Mr Akayour would conceal his involvement in PRO from Mr Dhimi. No reason for him to do so was suggested. The documents relied on by the claimants are by no means conclusive in themselves, but they provide some support for the claimants' case.
95. Against that background, and having regard to my findings about Mr Dhimi's credibility, I do not accept Mr Dhimi's assertion that he did not know of Mr Akayour's involvement with PRO. I find that he was aware that PRO, Domestic Guardian and Hi5 were Mr Akayour's companies.
- (6)(b)(v) Sales Practices*
96. For some time, UKSP made use of call centres which had been used by Premier Protect and Apex Assure and/or which were controlled by Mr Akayour. The call centres used by UKSP in 2021 included:

- (1) PRO, of which Mr Akayour was a director and which had been a call centre for Premier Protect and Apex Assure.
 - (2) Domestic Guardian, of which Mr Akayour was a director.
 - (3) Callforce Global, which had been a call centre for Premier Protect and Apex Assure.
 - (4) Hi5, which was Mr Akayour's company, although Mr MacDonald was the sole director and shareholder.
97. The other call centres used by UKSP in 2021 were UKMC, which did not contact Mr Dhimi until 20 May 2021, and Rumpaze Solutions, which was not engaged until July 2021. UKSP called no evidence as to why it changed the call centres which it used. UKSP and Mr Dhimi placed particular stress on the role played by UKMC, but it was not alleged that UKMC became UKSP's only direct agent until some time in 2022.
98. I will deal in more detail with the call scripts later, but the call scripts which UKSP relied on as different from those used by Premier Protect and Apex Assure were not produced until November 2021 or later.
99. Likewise, I will deal later with the evidence of what was actually said in customer calls, but I accept the claimants' submission that there was no marked change between what was said in Premier Protect or Apex Assure calls and what was said in UKSP calls.
100. The UKSP customer welcome letter was identical to the Apex Assure letter and I accept the claimants' submission that UKSP's welcome letter was simply copied from Apex Assure's welcome letter and that assertions and evidence to the contrary from UKSP and Mr Dhimi were false. Likewise, UKSP's terms and conditions were based on Apex Assure's terms and conditions. UKSP retained Webpost to send out its customer welcome letters, just as Premier Protect and Apex Assure had done.

(6)(c) Issue 5: Decision

101. In my judgment, in the light of all of this evidence and of my findings, the answer to issue 5 is clearly that UKSP was established to continue the business and operations previously conducted by Premier Protect and Apex Assure.

(7) Issue 1

102. Issue 1 is:

Whether calls made by or on behalf of D1, D3, D5 and/or D9 to prospective customers have involved making all or any of the Fraudulent Misrepresentations described in paragraphs 19 and 19A of the Particulars of Claim (respectively)?

103. The evidence relevant to this issue comes from the small number of call recordings disclosed by the defendants, the call scripts found on the Trading

Standards raid or disclosed by UKSP and the recordings of the calls made by customers to the claimants.

104. The court directed that, as against Premier Protect and UKSP, this issue be tried by reference to sample groups of customers. There were three sample groups selected by a jointly instructed expert:
- (1) 344 out of a total of 3,208 customers who were common to the claimants and Premier Protect.
 - (2) 345 out of a total of 3,304 UKSP Common Customers.
 - (3) 344 out of a total of 3,171 customers who called the claimants to complain about Premier Protect, Apex Assure or UKSP, but who were not included in the lists of common customers.

(7)(a) The Alleged Misrepresentations

105. The claimants alleged in the Amended Particulars of Claim that during a typical sales call some or all of the following misrepresentations were made:
- 19.1 The caller represents, either expressly, or impliedly, that the organisation the person is calling from is either (a) the existing provider of the call recipient's home appliance or consumer electronics cover ("the Provider"), or (b) is otherwise in some way associated with the Provider ("the Association Misrepresentation"). In some of the calls, the caller makes express reference to D&G, Sky or Sky Protect by name;
 - 19.2 The caller represents that the customer's home appliance (or Sky Protect) cover has expired or is about to expire ("the Expiry Misrepresentation");
 - 19.3 The caller offers to renew or reinstate the customer's existing home appliance (or Sky Protect) cover, thereby impliedly representing that the caller is in a position to extend the customer's cover with the Provider ("the Renewal Misrepresentation");
 - 19.4 The caller represents impliedly that he has access to the customer's payment details by implying an existing relationship with the customer ("the Payment Misrepresentation");
 - 19.5 The caller informs the customer that the customer's home appliance cover has been cancelled or that the caller is able to effect the cancellation of said plan ("the Cancellation Misrepresentation"); and/or
 - 19.6 The caller informs the customer that he is able to adjust the customer's current premiums or provide some form of discount on the customer's plan ("the Price Misrepresentation")."
106. The principal alleged misrepresentation was the Association Misrepresentation. The other alleged Fraudulent Misrepresentations were relied on as supporting

the Association Misrepresentation. Indeed, not all of them were pleaded as against UKSP. As will be seen, I consider that the other alleged Fraudulent Misrepresentations are best seen as means of bolstering the Association Misrepresentation.

(7)(b) The Call Recordings

107. The call recordings which have been disclosed are of limited assistance. They do not include any recordings of the initial customer call made to customers in the sample groups. They are very few in number and no evidence was adduced as to how they were selected. Having said that:

- (1) In each of the 17 recordings disclosed by Apex Assure of follow-up customer calls, the caller identified himself as being from Apex Assure.
- (2) As for the 7 recordings disclosed by UKSP of initial customer calls, in none of them did the caller identify himself as calling on behalf of UKSP, nor did he refer to the claimants by name. In two calls the caller said that he was from “Kitchen Appliance Cover”, in one he said that he was from “Connection Direct” and in the remaining four he did not name his firm.

(7)(c) Call Scripts

108. Before considering the call scripts which were available at trial, I note that, based on his experience of investigating several rogue traders and speaking to their employees, Mr Peerless Mountford said that callers who were given a script would not simply read it out, but would embellish it in order to entice the customer to stay on the telephone, in a practice known as “objection marketing”. In the light of that evidence, I have not assumed that any of the call scripts which I was shown captured all of what was said on any individual telephone call.

(7)(c)(i) Call Script Disclosed by Mr Akayour

109. Mr Akayour attached a very brief call script to his statement dated 3 June 2021. It did not provide for the caller to state where he was calling from. It did provide for the caller to state that the manufacturer’s warranty on the customer’s appliance was showing up as expired. It concluded with the caller saying that “one of our partners, Premier Protect, will be in contact with you shortly to run through the payment.” It was misleading for a person calling on behalf of Premier Protect to describe Premier Protect as “one of our partners”.

(7)(c)(ii) Call Scripts found by Trading Standards

110. The call scripts found during the Trading Standards raid included call scripts which were headed “Apex Assure script” and others which were headed “Service Home Plan script”, although some of the scripts headed “Apex Assure script” had the caller saying that they were at Service Home Plan. None of these scripts referred expressly to the claimants. Several of the scripts for the initial customer call say that the cover on the customer’s appliance has expired and/or ask whether the payment will be coming from the customer’s usual visa account.

111. One script for a follow-up customer call contains a statement that, “This is a new plan and we are not associated with any other companies such as Domestic and General, Home Sheild and Curry's.” However, this statement was to be made after payment had been taken from the customer.
112. Several of these scripts were amended by hand, which suggests that their contents may have changed over time and/or that individuals may have adapted them for themselves.
113. Several of these scripts assume that the caller has information about the customer, namely: the customer’s name and address; details of the customer’s appliances; and the customer’s credit or debit card number.

(7)(c)(iii) UKSP Call Scripts

114. The call scripts initially disclosed by UKSP are of little assistance, since the metadata shows that they had been created in September and October 2022, long after UKSP started its business and after UKSP and Mr Dhimi received the letter before action. On the one hand, they do not contain any reference to the claimants, but on the other hand they do not contain any reference to UKSP either. If he followed one script, the caller would say that he was from Kitchen Appliance Cover. If he followed the other script, the caller would not say where he was from.
115. Another UKSP call script is dated 24 November 2021. Further versions of this script date from 2022 and 2023. It is for a follow-up customer call. It does not contain any misrepresentations, it gives UKSP’s name and it contains the following statements:

“UK Service Plan is its own entity and is not affiliated with any other company.

This will be set up as a brand new policy and not a renewal.”
116. These statements, however, were to be made after payment had been taken from the customer.
117. Premier Protect, Apex Assure and Home Protect did not disclose any communication with call centres about scripts, nor was any evidence served by them on the subject of what, if anything, was said to call centres about which scripts to follow and how to ensure that they would be followed.
118. Despite being ordered on 15 December 2023 to disclose all “communications with third party agents in respect of the use of call scripts by such agents and/or the conduct of sales calls on behalf of [UKSP]”, UKSP and Mr Dhimi disclosed no such communications.
119. Mr Dhimi relied on the fact that UKSP appointed Ms Puglianini as a full-time compliance officer. That, however, was in July 2022, over a year after UKSP took over the business previously carried on by Premier Protect and Apex Assure. Moreover, she was not called to give evidence and the documents

disclosed in relation to her call monitoring activities solely related to follow-up customer calls and not to initial customer calls.

(7)(d) Calls by Customers to the Claimants

120. The claimants disclosed 344 transcripts of recordings of calls to the claimants made by customers in the three sample lists and 42 more transcripts of recordings of calls from other customers complaining about Apex Assure. The Claimants' counsel prepared a misrepresentation schedule setting out the alleged misrepresentations reported in these calls. As detailed in that schedule, the claimants contend that misrepresentations were made to a total of 205 customers, made up of 79 in respect of Premier Protect (who called between July 2019 and August 2023), 45 in respect of Apex Assure (who called between December 2020 and January 2022) and 81 in respect of UKSP (who called between June 2021 and October 2022). There are three annexes to the misrepresentation schedule, one for Premier Protect, one for Apex Assure and one for UKSP. I will refer to the customers in each schedule by their customer number, as "PP1", "AA1" or "UKSP1" etc.
121. The claimants also relied on extracts from two calls relating to Home Protect, one dated 12 September 2019 and one dated 12 January 2021.
122. I have read all of the transcripts of the calls referred to in the misrepresentation schedule. In addition to providing evidence of what was said to the claimants' customers, they also provide some evidence of the manner in which the customer calls were conducted. For instance:
- (1) "And these people came out of the blue, a cold call. Unfortunately they caught my husband really, and myself, on the hop, because he hasn't been terribly well over the past week. And we were bulldozed. And I can't say anything more than that, into believing that these people were connected to you."
- "... they were such fast talking, hard hitting people, that we were both totally and utterly worn out by the time they'd finished." (UKSP14)
- (2) "Well yesterday I gets a phone call and they says, "It's Domestic and General to renew a policy." Well I'm old. I'm in my nineties and anyway, it kept on and on and on and I said, "Right I'll renew it." (UKSP22)
- (3) "But as I say, they're very hard hitting, and they could very, very easily talk somebody into something they didn't want to do." (UKSP34)

(7)(d)(i) The Association Misrepresentation

123. A common theme of many of the recordings relied on by the claimants is that their customers had received unsolicited calls from someone who either said that they were from Domestic & General or said that they were from a company associated with Domestic and General or created the impression, including by means of one or more of the other alleged Fraudulent Misrepresentations, that

they were from Domestic & General or a company associated with Domestic and General.

124. As for examples of representations that the caller was from the claimants:
- (1) “Now I asked them if they were Sky Protect and they said yes.” (PP3)
 - (2) “... we had a company who maintained they were D and G, ...” (PP8)
 - (3) “... they said they were Domestic and General ...” (PP30)
 - (4) “... he said he’s from Sky, ...” (PP36)
 - (5) “... I had a call from a company who said they were Domestic & General, ...” (AA1)
 - (6) “I was contacted by phone some 4 days ago by a lady purporting to be from D & G ...” (AA3)
 - (7) “Well, I got a phone call saying it was from Domestic and General ...” (AA21)
 - (8) “... I got a phone call about a fortnight ago from a company who said they were Sky Protect.” (AA34)
 - (9) “Somebody rang me up a few weeks ago, saying they were Domestic and General, ...” (UKSP11)
 - (10) “Well I had a phone call the other day ... saying they were part of Domestic and General.” (UKSP15)
 - (11) “I had a phone call from what I thought was yourselves. You know, it was announced as coming from Domestic and General.” (UKSP29)
 - (12) “Now they told me they were calling on behalf of Domestic and General appliances.” (UKSP33)
 - (13) “... we’ve been told that they’re a subsidiary of you.” (UKSP43)
 - (14) “When asking if they were calling on behalf of Domestic & General, they said yes.” (Home Protect, 12 September 2019 call.)
 - (15) “... my wife got a phone call about two weeks ago off a company called Home Protect 365, and they said they were Sky.” (Home Protect, 12 January 2021 call.)
125. As for examples of representations that the caller was from an organisation associated with the claimants:
- (1) “... I had been called by a company who claimed to have taken over Domestic and General.” (PP2)
 - (2) “... I had a phone call from somebody that told me that Domestic and General had gone bust and they’d taken them over, ...” (PP6)
 - (3) “I’ve received two calls from a company called Premier Protect to say you can no longer cover this and that they’ve been told to take over the insurance on it, ...” (PP27)

- (4) "... I've just had a telephone call from Premium Protect who said that you are in liaison with Domestic and General ..." (PP29)
 - (5) "They said they were acting on your behalf with respect to a policy." (PP33)
 - (6) "They said they were from you and that they were ... Apex Assure, who were affiliated to you ..." (AA4)
 - (7) "I have been contacted by Premier Protect/Apex Insurance and told that you have transferred my plan to them." (AA9)
 - (8) "Somebody rung me up from Apex Assure ... to say they were taking over from you." (AA2)
 - (9) "It's called Apex Assure which they said was part of your lot." (AA27)
 - (10) "... they told me they now collect the payments for Domestic and General." (AA30)
 - (11) "... they rung and said that they were acting on your behalf." (UKSP10)
 - (12) "It was somebody who said they had taken over from you and it was UK Service Plan ..." (UKSP13)
 - (13) "We were contacted last week by what – a company which said they were your service providers." (UKSP14)
 - (14) "Well I just had a phone call from a company called UK Service Plan and they said that they've taken over form Domestic and General?" (UKSP35)
 - (15) "... someone called me form this company UK Service Plan and told me that they had taken over Domestic and General." (UKSP59)
126. Other customers said that the caller implied that they were from Domestic and General or were working for Domestic and General or were associated with Domestic and General.
127. The effect of the Association Misrepresentation was to make the customers significantly more receptive to the sales pitch being made on behalf of the defendant traders. For instance, customers said to the claimants:
- (1) "Well, this is it, that's why I wanted to stick with you, because whenever I've had a problem, you've always been excellent and I didn't want to go down any other line, just because - Well, it may be cheaper but it might - I wouldn't think it was as good, but" (AA35)
 - (2) "And if I'd realised at the time that they were not you I would have just told them to sling their hook, ..." (UKSP39)
128. Notwithstanding Ms Puglianini's appointment in July 2022, the UKSP annex to the misrepresentation schedule included a number of complaints about the Association Misrepresentation in the period from August to October 2022.

(7)(d)(ii) The Other Alleged Fraudulent Misrepresentations

129. It appears from the transcripts, taken as a whole, that the other alleged misrepresentations are best seen as means of bolstering the Association Misrepresentation. It is clear that the callers were assisted in creating the impression that they were from the claimants, or from an organisation associated with the claimants, by the amount of information which they had about the customers, which included: the customer's name and address; details of the customer's appliances; the amount which the customer was paying by monthly direct debit to the claimants; and/or at least part of the customer's credit or debit card number. There was no evidence before me as to how the call centres had acquired this information, but the use of it gave the impression that they had obtained it from the claimants. For instance:

“When I asked how I could be sure that the call and the offer were genuine she, not unreasonably, asked how, otherwise, would she know the details of the goods covered, the DD figures and the renewal dates.”
(AA7 & AA26)

130. In that context, the significance of the alleged Expiry and Renewal Misrepresentations was that they gave the impression that the caller had information from the claimants about the customer's Plan. As for examples of the alleged Expiry Misrepresentation:

- (1) “... I had a phone call from them saying that my washing machine contract had expired with you which I didn't think it had and I just managed to find the policy.” (PP50)
- (2) “I was contacted by phone ... regarding the impending end of my protection plans with you in 2021 ...” (AA3)

131. As for examples of the alleged Renewal Misrepresentation:

- (1) “... first of all she said that the washing machine cover was due for renewal.” (PP1)
- (2) “They said they were calling about my Domestic and General policy which was just about due for renewal.” (UKSP24)
- (3) “I've received a call from somebody that said my plan is up for renewal.” (UKSP57)

132. I accept Mr Currie's submission that the word “renewal” is ambiguous. In the strict sense, a contract such as a Plan can only be renewed with the original contractor, but common usage is not so strict: for example, many people would say that they had renewed their car insurance, whether they had remained with the same insurer or moved to a new one.

133. As for the alleged Payment Misrepresentation, it appears that the caller often did have at least part of the customer's credit or debit card number. The fact that the caller had that information lent support to the Association Misrepresentation, since it implied that the caller had acquired that information legitimately from the claimants.

134. There were very few examples of the alleged Cancellation Misrepresentation. For instance, “Now he said he will cancel this policy.” (UKSP15)
135. As for the alleged Price Misrepresentation, the principal significance of this was that the caller again gave the impression that he had legitimate access to information about the customer and his Plan, as a result of which the caller was offering a discount. For instance:
- (1) “... I was contacted by a company on Saturday saying that I was entitled to a discount on my plans because I’ve had very limited call outs ...” (AA11)
 - (2) “... he was offering me a deal that because we hadn’t had any claims for so long that we could only have to pay for one plan and everything else would be covered.” (UKSP44)
136. The mere fact that a caller offered a discount to a customer was again potentially ambiguous, since it could be interpreted as meaning that the customer was being offered a discount from what the customer was already paying or from what the defendant trader would otherwise have offered to charge the customer.

(7)(d)(iii) Customers’ Direct Debits in Favour of the Claimants

137. Some customers said that they were told that their direct debit in favour of the claimants had been, or would be, cancelled or that they would be contacted by their bank about cancelling their direct debit. For instance:
- (1) “And I sort of said but I’ve already got a direct debit going for the Bosch and she said yes but you will get a call from the bank saying that they would cancel confirming to cancel the direct debit and to give a one off payment of £190.” (AA5)
 - (2) “And by the way, Mark Miles, he said that they’re going to cancel my direct debit, as from yesterday.” (AA17)
 - (3) “They told me they had cancelled the direct debits at the bank .” (AA29)
 - (4) “So, I agreed to that and they said that they would cancel our direct debit payments to D and G.” (UKSP25)
 - (5) “Well, I said that, well, what about my direct debits now? And she said, oh, we will cancel all those. She said, but if you want to feel safe, you can get on to your bank and cancel them yourself, you know.” (UKSP26)
 - (6) “Well they said to me that they’d cancel your direct debit - ... - and install their own at a lower price.” (UKSP54)
138. More often, however, customers reported that the caller told them to cancel their direct debit or their Plan themselves. For example:

- (1) "...I said what have I got to do because I'm already paying monthly for this washing machine. And he said you'll have to go to your bank and cancel it." (PP34)
- (2) "... what they said to me was that you will have to go and cancel your current DDR because you're now taking this now policy with us." (PP39)
- (3) "... I said, "Oh, I can't get up to the Halifax now." And she said, "Well go tomorrow." (PP69)
- (4) "So they said I would need to cancel my direct debits, which I did." (AA10)
- (5) "... he told us to ring the bank this morning as well to cancel our direct debits." (AA19)
- (6) "Well, I got a phone call saying it was from Domestic and General to say that I had to pay my policies in, like, yearly instead of monthly, and to cancel my Direct Debits." (AA21)
- (7) "... I had a conversation with somebody called Sam Colton or Harry Campbell transferring the payment, saying that because I was a low call customer that three of my machines would-- And I was to cancel the direct debit with you." (AA33)
- (8) "... one of the things they said on Friday was you know, "Go round to your bank or get in touch with your bank and cancel your standing orders, all of your direct debits." (AA33)
- (9) "... she said oh you need to cancel your direct debit." (AA35)
- (10) "... they told me to cancel my direct debit, which I did, you know with you." (UKSP8)
- (11) "And she has been told to cancel her policy with yourselves, because she's now going to be running with them." (UKSP51)

(7)(e) UKSP Origination Calls

139. Paragraph 12.2 of UKSP's and Mr Dhimi's defence, which is dated 7 December 2022, was in the following terms:

"The Ninth Defendant engages marketing agents for the purposes of:

- 12.2.1 identifying potential new customers ("Origination Calls"); and
- 12.2.2 re-contacting the potential new customers with a view to entering into the necessary arrangements, including payment, for the purchase of a service plan ("Warm Leads")."

140. That was a positive assertion that the relevant call centres were retained by UKSP both to make initial customer calls and to make follow-up customer calls, i.e. that the call centres were acting as UKSP's agents when making both types

of call. The same was true of what Mr Dhimi said in paragraph 18 of his first witness statement, dated 23 December 2023:

“In order to secure new customers, UKSP engages third party agencies to obtain new business. The agencies do this by contacting individuals (“Origination Call”) to identify potential customers (“Warm Lead”) and then following up on Warm Leads to attempt to secure the customers’ business. UKSP outsources its marketing activities, including Origination Calls, to an external marketing company, UK Market Communications Ltd (“UKMC”), which outsources the Origination Calls to various external call centres engaged directly by UKMC. ...”

141. However, Mr Dhimi changed his position in his second witness statement, dated 19 January 2024, in which he said that UKMC generated warm leads itself, thereby suggesting that UKMC or its agents were not making the “origination calls” as agent for UKSP. He claimed in his evidence at trial that in UKSP’s case the call centre making the initial customer calls was not acting on behalf of UKSP, but was merely seeking to obtain a lead which could then be sold to UKSP or to another company. In support of this claim, he said that no price was quoted to the customer until the follow-up customer call.
142. I do not accept this evidence. It is contradicted by UKSP’s own scripts for the initial customer call (in which prices are quoted), by UKSP’s scripts for follow-up customer calls (which proceed on the basis that the price had already been agreed in the initial customer call) and by the recordings of UKSP’s customers’ calls to the claimant: many of those customers referred to prices being quoted in the initial customer call and many referred to UKSP being named, albeit in conjunction with the Association Misrepresentation. I find that the call centres were acting as UKSP’s agents when they made both initial and follow-up customer calls.

(7)(f) Issue 1: Decision

143. I accept the claimants’ submission that the recordings of customers’ calls to the claimants provide the best evidence of what was actually said to those customers. I acknowledge that they are by no means a perfect record of what was said to the customers, but I do not consider that they can simply be dismissed as the product of confusion on the part of the customers.
144. I find that that the calls made by or on behalf of Premier Protect, Apex Assure and UKSP to prospective customers regularly involved making the Association Misrepresentation, which was often bolstered by one or more of the other alleged Fraudulent Misrepresentations. As to the other alleged Fraudulent Misrepresentations:
- (1) The alleged Expiry Misrepresentation was a misrepresentation which was regularly made, with the exception that it will, no doubt coincidentally, have been true that some customers’ Plans had expired or were about to expire.
 - (2) The alleged Cancellation Misrepresentation was a misrepresentation, but it was not regularly made.

- (3) The alleged Renewal and Price Misrepresentations were not misrepresentations.
- (4) Overall, the other alleged Fraudulent Misrepresentations are best viewed as ways of bolstering the Association Misrepresentation.

145. I also make the same finding in relation to Home Protect. The amount of business done by Home Protect was considerably less than that done by the other defendant traders, but it was controlled by Mr Akayour and there was nothing to suggest that it operated any differently from Premier Protect or Apex Assure. Moreover, the two calls relied on by the claimants in relation to Home Protect included complaints about the Association Misrepresentation.

(8) Issue 2.1

146. Issue 2.1 is:

Whether any such misrepresentations were made without belief in the truth of the same, or recklessly?

147. No caller who made the Association Representation, nor anyone who authorised it, can have believed that it was true. No basis for contending otherwise was identified.

(9) Issue 2.2

148. Issue 2.2 is:

Whether the conduct of sales calls carried by agents of D1, D3, D5 and/or D9 to prospective customers carried out by an agent on their behalf fell within the scope of the agents' actual or apparent authority?

(9)(a) Issue 2.2: The Claimants' Case

149. The claimants contended that:

- (1) I should find that the sales agents were specifically instructed to adopt deceptive scripts.
- (2) In any event, any Fraudulent Misrepresentations were made within the ostensible authority of the defendant traders, in accordance with the principles set out in:
 - (a) paragraph 428 of Henshaw J's judgment in *Ivy Technology Limited v Martin* [2022] EWHC 1218 (Comm):

“Accordingly, I do not consider that any of these authorities supports Mr Bell's proposition that a principal cannot be liable for his agent's fraudulent misrepresentation unless the principal has authorised it specifically or has given specific authority to make fraudulent misrepresentations in general. It is sufficient

for the fraudulent misrepresentation to have been made in the course of a negotiation which the agent had the principal's actual or ostensible authority to carry out.”

- (b) paragraph 61 of HHJ Cawson KC's judgment in *Clearcourse Partnership Acquireco Limited v Jethwa* [2023] EWHC 1218 (Comm):

“Nevertheless, I consider that I can extract from *Ivy*, and the cases referred to therein, the following principles:

- i) A principal may be liable for fraudulent misrepresentations if made by its agent if those misrepresentations are made within the scope of the agent's actual or ostensible authority or, as Henshaw J put it at [428] “in the course of a negotiation which the agent had the principal's actual or ostensible authority to carry out.”; and
- ii) It is not necessary that the agent has actual or ostensible authority either to make the specific fraudulent misrepresentations on which the claimant relies or to commit fraud. It suffices that the agent is authorised (actually or ostensibly) to act in a way that would involve making representations of the kind that it did.”

(9)(b) Issue 2.2: The Defendants' Case

150. In their defences, the defendant traders denied that any misrepresentations made were within the actual authority of the relevant call centres. Premier Protect relied on an outsourcing agreement with C3 Marketing dated 19 July 2019. Apex Assure relied on an outsourcing agreement with C3 Marketing dated 12 November 2020.
151. UKSP relied on two versions of an “Introducer Agreement – Compliance” (“the compliance agreement”) with UKMC, dated 1 May 2021 and 14 October 2022. UKSP also contended that UKMC or its agents were not acting as agents for UKSP when they made initial customer calls, but I have already rejected that claim.
152. Paragraph 3 of the compliance agreement provided that UKMC must maintain processes for identifying and managing mis-selling and misleading statements and that misleading statements should be identified and corrected. Paragraph 4 of the compliance agreement provided that UKMC was responsible for the compliance of third party contractors as if they were employees of UKMC.
153. Mr Khan's evidence was that he was only a director of UKSP for a brief period and that he never played any active role in relation to UKSP.

(9)(c) Issue 2.2: Decision

(9)(c)(i) Issue 2.2: Decision: Ostensible Authority

154. It is clear that the Association Misrepresentations made to customers on behalf of the defendant traders were within the scope of the ostensible authority of the callers. The agreements relied on by the defendants do not displace the principles set out in the authorities relied on by the claimants.

(9)(c)(ii) Issue 2.2: Decision: Actual Authority

155. As to actual authority, if the defendants, or any of them, had expressly given actual authority to any of the call centres to use fraudulent misrepresentations to sell Plans, it is not to be expected that any such authority would be set out in writing. Moreover, it is entirely possible that the parties would in such circumstances create documents, such as the compliance agreement between UKSP and UKMC, which served to conceal the true position.
156. It follows that it is unsurprising that the claimants' case is based on inviting me to draw inferences from the facts of the case as a whole, including the evidence as to the Association Misrepresentation itself, the relationships between the defendants and others, the defendants' conduct of this litigation, especially in relation to disclosure, and the false evidence given by Mr Akayour, Mr Ali and Mr Dhimi. Having said that, I recognise that inferences of the kind which the claimants invite me to draw are not to be drawn lightly.
157. I will address the issue of actual authority in relation to Mr Akayour and his companies, Mr Ali and his company and Mr Dhimi and his company.

(9)(c)(iii) Mr Akayour, Premier Protect and Home Protect

158. Mr Akayour has been debarred from defending himself, but it remains the case that the claimants have to prove their case against him.
159. Mr Akayour set up the Premier Protect business in Brighton in 2019 and was also a director of the PRO call centre business in Morocco which made some of the customer calls on behalf of Premier Protect. Consequently, he was particularly well-placed to know and to influence what was being said on Premier Protect's behalf in customer calls made by PRO. I note that in his evidence he has given no account of what, if any, steps he took in his capacity as director of PRO to direct or monitor what PRO's employees were saying in customer calls on Premier Protect's behalf. Instead, he sought to mislead by distancing himself from PRO.
160. I note that Mr Macdonald sent an email to Mr Akayour on 25 June 2020 with the subject heading "UK PAY" in which he said "Below is UK pay" and then listed what I find are the amounts paid to Premier Protect's employees for the month of June 2020. What is significant about the use of the phrase "UK Pay" is that it is an indication that Mr Akayour's business was regarded as a single, multinational business, in which there were UK employees and also employees in other jurisdictions. There is no evidence that Premier Protect had employees

outside the United Kingdom, but PRO had employees in Morocco. I find that Mr Akayour regarded these different companies as part of the same enterprise.

161. I have found that the Association Misrepresentation was regularly made in customer calls on behalf of Premier Protect. Those calls were made by employees of C3, PRO and Callforce Global. There is no evidence that any of these call centres was saying anything different from any other, save that Mr Ali said in his statement dated 16 April 2023 that it was PRO and Callforce Global, rather than C3 Marketing, who made initial customer calls. The Association Misrepresentation was likely to be made, if at all, in the initial customer calls. I find, therefore, that employees of PRO were regularly making the Association Misrepresentation on behalf of Premier Protect.
162. In my judgment, there are four possibilities:
- (1) The first possibility is that Mr Akayour did not know what PRO staff were saying in customer calls on behalf of Premier Protect. That is inherently unlikely, given that Mr Akayour was a director of PRO, and Mr Akayour has given no evidence as to how he could have been unaware of what his staff were saying.
 - (2) The second possibility is that Mr Akayour came to learn what his staff were saying on behalf of Premier Protect and did something to prevent them making the Association Misrepresentation on behalf of Premier Protect and to ensure that C3 and Callforce Global were not doing the same. However, Mr Akayour has given no evidence to this effect. Had he done so, he would have had to explain why he could not prevent his staff from making the Association Misrepresentation. He has made no attempt to do so.
 - (3) The third possibility is that Mr Akayour came to learn what his staff were saying on behalf of Premier Protect and did nothing about it, thereby endorsing it, at least tacitly.
 - (4) The fourth possibility is that Mr Akayour knew what his staff were saying on behalf of Premier Protect because he had told them, or encouraged them, to say it. As a director of PRO and as the sole shareholder and director of Premier Protect, Mr Akayour had an incentive to tell, or encourage, PRO staff to use sales techniques which would increase their prospects of winning business for Premier Protect.
163. The fourth of these possibilities is, in my judgment, inherently the most likely in the circumstances of this case. Moreover, it is supported by Mr Akayour's conduct in relation to this litigation, including his considerable reluctance to give disclosure, to the extent of committing contempt of court, and his false and misleading evidence, all of which give rise to the inference that giving full and proper disclosure and accurate evidence would have assisted the claimants' case.
164. The outsourcing agreement relied on by Premier Protect does not assist Mr Akayour or his companies. It is generic in nature. It makes reference to a

number of other documents, such as “Statements of Work”, “Designated Service Levels”, “Key Measurements” and “Critical Service Levels”, which, if they ever existed, have not been disclosed. It assumes a dialogue between Premier Protect and C3 Marketing, both in relation to those other documents and, for instance, in relation to C3 Marketing’s obligation under the outsourcing agreement to notify Premier Protect of training programmes and sessions for C3 Marketing’s staff. Premier Protect has not disclosed any documents evidencing any such dialogue.

165. I find that Mr Akayour, on behalf of Premier Protect, expressly authorised PRO and its staff to make the Association Misrepresentation in customer calls made on behalf of Premier Protect. I make the same finding in respect of C3 Marketing and Callforce Global, since there was no evidence to suggest that Premier Protect treated those call centres differently from PRO. I also find that the authority given by Premier Protect was given by Home Protect, since there is no evidence that Mr Akayour treated his two companies any differently.

(9)(c)(iv) Mr Ali and Apex Assure

166. Before Apex Assure took over the business, Mr Ali was involved with Premier Protect’s business. This appears from the following:

- (1) According to paragraph 27 of the winding-up petition issued by the Secretary of State, Claritel, a business telecoms service provider, advised investigators that Premier Protect had taken out a services agreement with them on 9 May 2019 and that Mr Ali was Claritel’s primary point of contact at Premier Protect.
- (2) According to paragraphs 23 and 25 of that winding-up petition, Premier Protect made and received payments using the HSBC account of Riverdale Business Solutions Limited, trading as Riverdale Insurance, and in the period from 1 October 2019 to 3 December 2020 payments from that account totalling £81,407 were made with the references “Belal Fee/Brighton Rent Belal/Belal Riverdale/Belal Comms”. I find that the Belal referred to here was Mr Ali. That is not to say that these payments were for Mr Ali’s personal benefit, since they may have concerned matters such as rent or communications with which Mr Ali was involved on behalf of Premier Protect.
- (3) I find that Mr Ali was the “Belal” referred to in the email dated 25 June 2020 from Mr Macdonald to Mr Akayour which listed the “UK Pay”. It appears from that email that Mr Ali was paid £4,000 by Premier Protect in respect of the month of June 2020, which leads me to find that Mr Ali played a significant role in Premier Protect’s operations.

167. It was acknowledged in the defence of the first to fifth defendants that Apex Assure was the successor business to Premier Protect. I have already noted what Mr Ali said in his response to a letter dated 8 January 2024 about Premier Protect managing Apex Assure. I take this to be an allegation that Mr Ali continued to act under the direction of Mr Akayour during the period when Apex Assure was doing business with customers. Since Mr Akayour was the

individual who had set up the Premier Protect business and who had, no doubt, whether directly or indirectly, invited and encouraged Mr Ali to carry it on through Apex Assure, it is entirely credible, and I find, that Premier Protect, through the person of Mr Akayour and/or others acting on his behalf, directed the management of Apex Assure when it was trading.

168. In those circumstances, I find that Apex Assure authorised the making of the Association Misrepresentation, since Apex Assure was managed by Mr Akayour, who had authorised the making of the Association Misrepresentation on behalf of Premier Protect and continued to authorise it on behalf of Apex Assure. I will deal later with the issue as to the extent of Mr Ali's knowledge of and involvement in this way of doing business.

(9)(c)(v) Mr Dhimi and UKSP

169. Having regard to all of the evidence which I considered in relation to issue 5, I have no doubt that Mr Dhimi was fully aware of the nature of the business which he was taking over in 2021, including the fact that call centres made use of the Association Misrepresentation to win business. Although he was later to make changes, such as the appointment of a compliance officer, Mr Dhimi initially took over the business and conducted it as it had been conducted by Premier Protect, Home Protect and Apex Assure. Accordingly, I find that Mr Dhimi and UKSP authorised the making of the Association Misrepresentation on behalf of UKSP.

(9)(c)(vi) Mr Khan

170. By the end of the trial, the claimants' case against Mr Khan was a limited one. It was that, once he became a director of UKSP, he became privy to the deceptive sales practices employed by UKSP and, while remaining a director, he failed to use his position as a director to take any steps to stop that practice.
171. Mr Khan was appointed as a director of UKSP on 15 June 2022. In his defence he said that he resigned on 16 June 2022. In his witness statement he said that he worked as a delivery driver and that a friend of his (whom he identified at trial as Mr Chhabu) had suggested that he could earn about £500 per month for acting as a director of UKSP, but that it soon became apparent that the level of work which was expected of him was greater than he expected and he asked Mr Dhimi to remove him. He said that he only signed a few documents and that he only spoke to Mr Dhimi a few times.
172. Documents filed with Companies House record Mr Khan's appointment as a director of UKSP on 15 June 2022 and that he ceased to be a director with effect from 16 June 2022, but this latter document was not filed until 21 October 2022, after the letter before action was sent to Mr Khan on 8 September 2022.
173. The claimants contend that I can infer that Mr Khan was actively involved in UKSP's business from 15 June 2022 until after he received the letter of claim and that he learnt of and did nothing to stop the practice of using the Association Misrepresentation to obtain business. The claimants rely, in particular, on:

- (1) Emails dated 17 and 21 June 2022 from Mr Dhimi to Mr Khan, asking Mr Khan to sign a directors' resolution authorising Mr Khan to represent UKSP in its dealings with Transact Europe EAD.
 - (2) An email dated 23 June 2022 from Mr Khan, sent from his UKSP email address, to Transact Europe EAD attaching the signed resolution.
 - (3) Mr Khan's evidence at trial that:
 - (a) he remained a director for one or two weeks, rather than 2 days; and
 - (b) he did not send the email dated 23 June 2023, since he had no access to the UKSP email address.
 - (4) The alleged implausibility of Mr Khan's evidence that he expected to be paid £500 a month for doing very little.
 - (5) The absence of any documents, coupled with Mr Khan's admission that he may have thrown some documents away and his evidence at trial that he had damaged and replaced his mobile telephone about a year before the trial.
 - (6) The contrast between Mr Khan's evidence at trial that he only had one telephone call with Mr Dhimi and the statement in his witness statement that he had a couple of conversations with Mr Dhimi over WhatsApp.
174. Mr Khan was a delivery driver living in Preston in Lancashire. Mr Dhimi had operated UKSP as a sole director for a year before Mr Khan was appointed as a director. It is unclear why Mr Khan was appointed as a director of UKSP. There are no documents to indicate that he did anything as director except to sign and send a single resolution. That may be a result of disclosure failings, but it is also consistent with the fact that Mr Dhimi did not need Mr Khan in order to run UKSP.
175. I accept that there were some discrepancies in Mr Khan's evidence and a number of unanswered questions, especially given the scarcity of documents. I was particularly sceptical of his claim that he did not send the email dated 23 June 2022. However, having considered his evidence as a whole, and the manner in which he gave evidence, I have concluded that I would not be justified in drawing the inferences which the claimants invited me to draw.
- (9)(d) Mr Khan's Strike-Out Application***
176. Having reached that conclusion in relation to Mr Khan, I need not say much about the application which Mr Coulter made at the start of the trial for an order striking out the claim against Mr Khan on the basis that the claim against him was inadequately pleaded and unsupported by evidence. I declined to strike out the claim and said that I would give my reasons later.
177. I accepted Mr Coulter's submission that the mere fact of Mr Khan's being a director of UKSP did not make him liable to the claimants. As for the lack of

particulars in the claimants' pleaded case and the absence of documentary evidence, that had to be seen in the context of the paucity of disclosure by the defendants generally in this case. I have already noted that it is common in cases of this nature that the claimants' case involves inviting the court to draw inferences and that, at the end of the day, is what the claimants did in relation to Mr Khan. Moreover, there was evidence, as I have noted, which suggested that Mr Khan himself had given an inaccurate account of his time as director of UKSP, which was itself an indication that the issue of what he actually did merited consideration at trial.

(10) Issue 2.3

178. Issue 2.3 is:

Whether Ds1-5 and/or Ds9-11 (or any of them) schooled, coached and/or encouraged their agents to make all or any of the Fraudulent Misrepresentations?

(10)(a) Mr Akayour, Premier Protect and Home Protect

179. In the light of the evidence and my findings on issue 2.2, I find that Mr Akayour, acting on behalf of Premier Protect and Home Protect, encouraged their agents to make the Association Misrepresentation.

(10)(b) Mr Ali and Apex Assure

180. Similarly, in the light of the evidence and my findings on issue 2.2, I find that Mr Akayour, acting on behalf of Apex Assure, encouraged Apex Assure's agents to make the Association Misrepresentation.

181. I have considered carefully the position of Mr Ali. In correspondence, he has sought to minimise his role in relation to Premier Protect and Apex Assure. For instance, he has claimed that Apex Assure never received any money and that he never received any money from Apex Assure. However, he was being paid £4,000 per month by Premier Protect in June 2021 and was clearly playing an important role in Premier Protect's operations, which continued when Apex Assure succeeded to Premier Protect's business.

182. Given his directorship of PRO, it may be that Mr Akayour had closer contact with the call centres than Mr Ali. On the other hand, it was Mr Ali who signed Apex Assure's outsourcing agreement with C3 Marketing on 12 November 2020. Moreover, Mr Ali appears to have been in closer contact with Apex Assure's employees in Brighton than Mr Akayour. Mr Ali was present at 127 Gloucester Road when the Trading Standards raid took place. I have already found that customer calls were being made from 127 Gloucester Road. Mr Ali was involved in managing that operation.

183. In those circumstances, and having regard to Mr Ali's conduct of this action, which included failing to comply with orders and being found to be in contempt of court, I have concluded that I should draw the inference that Mr Ali encouraged the use of the Association Misrepresentation.

(10)(c) Mr Dhimi and UKSP

184. For substantially the same reasons as I gave in relation to issue 2.2, I find that Mr Dhimi, on behalf of UKSP, encouraged the call centres used by UKSP to make the Association Misrepresentation.

(11) Issue 2.4

185. Issue 2.4 is:

Whether the misrepresentations made by, or on behalf of, D1, D3, D5 and/or D9 were made with the intention of causing loss to the Claimants?

(11)(a) The Law on Intention to Harm the Claimant

(11)(a)(i) The Nature of the Intention Required

186. Lord Nicholls said as follows in paragraphs 164 to 166 of his judgment in *OBG Limited v Allan* [2008] 1 AC 1 (“*OBG v Allan*”):

“164. I turn next, and more shortly, to the other key ingredient of this tort: the defendant’s intention to harm the claimant. A defendant may intend to harm the claimant’s business either as an end in itself or as a means to an end. A defendant may intend to harm the claimant as an end in itself where, for instance, he has a grudge against the claimant. More usually a defendant intentionally inflicts harm on a claimant’s business as a means to an end. He inflicts damage as the means whereby to protect or promote his own economic interests.

165. Intentional harm inflicted against a claimant in either of these circumstances satisfies the mental ingredient of this tort. This is so even if the defendant does not wish to harm the claimant, in the sense that he would prefer that the claimant were not standing in his way.

166. Lesser states of mind do not suffice. A high degree of blameworthiness is called for, because intention serves as the factor which justifies imposing liability on the defendant for loss caused by a wrong otherwise not actionable by the claimant against the defendant. The defendant’s conduct in relation to the loss must be deliberate. In particular, a defendant’s foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention for this purpose. The defendant must intend to injure the claimant. This intent must be a cause of the defendant’s conduct, in the words of Cooke J in *Van Camp Chocolates Ltd v Aulsebrooks Ltd* [1984] 1 NZLR 354, 360. The majority of the Court of Appeal fell into error on this point in the interlocutory case of *Miller v Basse*y [1994] EMLR 44. Miss Bassey did not breach her recording contract with the intention of thereby injuring any of the plaintiffs.

187. Lord Nicholls added the following in paragraph 167 of his judgment in *OBG v Allan*:

“I add one explanatory gloss to the above. Take a case where a defendant seeks to advance his own business by pursuing a course of conduct which he knows will, in the very nature of things, necessarily be injurious to the claimant. In other words, a case where loss to the claimant is the obverse side of the coin from gain to the defendant. The defendant’s gain and the claimant’s loss are, to the defendant’s knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort. This accords with the approach adopted by Lord Sumner in *Sorrell v Smith* [1925] AC 700, 742:

“When the whole object of the defendants’ action is to capture the plaintiff’s business, their gain must be his loss. How stands the matter then? The difference disappears. The defendants’ success is the plaintiff’s extinction, and they cannot seek the one without ensuing the other.””

(11)(a)(ii) The Identity of the Claimant

188. In paragraphs 479 to 522 of his judgment in *E D & F Man Capital Markets Limited v Come Harvest Holdings Limited* [2022] EWHC 229 (Comm) (“*E D & F Man*”), Calver J considered and rejected the submission that it was a requirement of the tort that the defendants must have directed their actions towards the specific claimant, rather than intending to benefit themselves at the expense of a class of persons of which the claimant was one. (That case concerned a conspiracy to use unlawful means, but the intention required in such a case is the same as in a case of causing loss by unlawful means: see paragraph 161 of Bryan J’s judgment in *Lakatamia Shipping Co Limited v Su* [2023] EWHC 1874 (Comm).)

(11)(b) Whose Intention is Relevant?

189. The claimants put their case on the basis that when Mr Akayour, Mr Ali and Mr Dhimi encouraged the strategy of using of the Association Misrepresentation by or on behalf of the defendant traders, they intended to cause loss to the claimants. By contrast, Mr Currie submitted that it was also necessary to consider the intention of the individual callers, including whether their intentions could be attributed to the defendant traders.
190. I do not consider that it is necessary for the claimants to prove the intention of each individual caller in relation to each individual call. Having said that, it is clear from the transcripts of the customer calls listed in the misrepresentation schedule that the caller’s intention in making the Association Misrepresentation was to induce the customer to take out a Plan with the relevant defendant trader and, if necessary to achieve that objective, to induce the customer to cancel his

Plan with the claimants. This appears most clearly from those cases in which the caller told the customer to cancel his direct debit with the claimants.

(11)(c) Gain to the Defendants v. Loss to the Claimants

191. There is no doubt that the relevant defendants' intention was to win business from the claimants' customers. The principal issue in relation to Issue 2.4 is whether, adopting the words of Lord Nicholls in paragraph 164 of *OBG v Allan*, the defendants intentionally inflicted harm on the claimants' business as a means of promoting their own economic interests. In considering that issue, it is relevant to consider both what was said to the claimants' customers, as appears from the transcripts of the calls listed in the misrepresentation schedule, and what those customers subsequently did. A source of information about the outcome of calls made to customers is to be found in the UKSP cancellation schedule.

(11)(d) The UKSP Cancellation Schedule

192. This was prepared by the claimants' counsel after looking at the evidence relating to the members of the sample group of 345 UKSP Common Customers and seeking to identify those cases in which one of the claimants' customers cancelled (or did not renew) a Plan with the claimants after taking out a Plan with UKSP in respect of the same appliance or appliances. For various reasons to do with the quality of the data available, the claimants' counsel have identified three categories of case:
- (1) Those cases, 42 in number, in which it is submitted that the claimants' customer definitely cancelled a Plan with the claimants after the customer had taken out a Plan with UKSP in respect of that appliance.
 - (2) Those cases, 56 in number, in which it is submitted that the claimants' customer probably cancelled a Plan with the claimants after the customer had taken out a Plan with UKSP in respect of that appliance.
 - (3) Those cases, 32 in number, in which it is submitted that the claimants' customer possibly cancelled a Plan with the claimants after the customer had taken out a Plan with UKSP in respect of that appliance.
193. Thus, out of 345 customers in the UKSP sample group, the claimants contend that the available evidence shows that 130 appliances were subject to Plans with the claimants which were cancelled after the relevant customer took out a Plan with UKSP.
194. The UKSP cancellation schedule shows that:
- (1) In a significant number of cases, the customers' Plans with the claimants were cancelled (or not renewed) shortly after the customers took out Plans with UKSP.

(2) However, in a significant number of other cases, the Plan with the claimants was only cancelled (or not renewed) a long time (perhaps a year or more) after the customers took out a Plan with UKSP.

195. The data disclosed by Premier Protect and Apex Assure does not permit a similar analysis in their cases. However, I infer that the pattern was the same with calls made on behalf of Premier Protect, Home Protect and Apex Assure, since there is no evidence that there was any material difference between their manner of doing business and that of UKSP.

(11)(e) Different Types of Customer Call

(11)(e)(i) Unsuccessful Calls

196. By no means every call made on behalf of a defendant trader resulted in the customer taking out a Plan with the relevant defendant. However, the fact that some calls failed to achieve their objective does not shed light on the question of what the intention behind the calls was. The same can be said of those calls which resulted in the customer taking out a Plan with the relevant defendant trader, only for the customer to cancel the Plan and/or his payment thereafter when he realised that the defendant trader was not associated with the claimants.

(11)(e)(ii) Calls in which D & G was or was not Named

197. I have already explained that calls were made to the claimants' customers by representatives of the defendant traders who:

- (1) said that they were calling on behalf of the claimants;
- (2) said that they were calling from an organisation associated with the claimants; or
- (3) implied that they were calling on behalf of, or from an organisation associated with, the customer's existing Plan provider.

198. Given the decision in *E D & F Man*, there is no relevant distinction for present purposes between these different types of call.

(11)(e)(iii) Calls to Former Customers of the Claimants

199. A different distinction can be drawn between calls which were made:

- (1) as was no doubt the case for the overwhelming majority of calls, to a customer who still had a Plan with the claimants; and
- (2) as was presumably the case for a small proportion of calls, to a customer whose Plan with the claimants had already expired.

200. This latter category of calls cannot have resulted in loss to the claimants, but I have no reason to believe that it was a large category. The distinction between these two types of call is not significant for the purposes of the issue of intention.

(11)(e)(iv) Customers Cancelling Plans

201. Another distinction, which is potentially more significant, concerns those calls in which the defendant trader was successful in selling a Plan to an existing customer of the claimants:
- (1) In some cases, as I have already noted, the transcripts referred to in the misrepresentation schedule show that the caller told the customer to cancel his direct debit in favour of the claimants.
 - (2) In other cases, the UKSP cancellation schedule shows that the customer cancelled his Plan with the claimants at the same time as, or shortly after, taking out a Plan with UKSP. In those cases, I infer that the customer cancelled his Plan with the claimants because he had taken out a Plan with UKSP.
 - (3) In other cases, the UKSP cancellation schedule shows that the customer cancelled his Plan with the claimants a long time after taking out a Plan with UKSP. In many of those cases, it may be that, as Mr Goodfellow submitted, the customer only cancelled his Plan with the claimants after he realised that he had two Plans for the same appliance. In some cases, it may be that a fixed-term Plan expired and was not renewed.
202. It is inherently unlikely that a customer who realised the true position would choose to have two Plans in place for the same appliance at the same time. On the other hand, a customer who had been deceived by the Association Misrepresentation may well not have appreciated the true position and, as a result, may not have cancelled their Plan with the claimants, either at all or until long after they had taken out a Plan with one of the defendant traders. Nevertheless, having regard to the contents of the UKSP cancellation schedule, it would be an exaggeration to say that every customer who took out a Plan with one of the defendant traders cancelled his Plan with the claimants as a result.

(11)(f) Issue 2.4: Decision

203. This latter consideration gives rise to the question whether, adapting the words used by Lord Nicholls in paragraph 166 of his judgment in *OBG v Allan*, the state of mind of the relevant defendants was that they foresaw that their unlawful conduct might, or would probably, damage the claimants, a state of mind which cannot be equated with intention for this purpose. I have given careful consideration to that possibility, but I have concluded that the appropriate inference to draw, having regard to all of the evidence, including taking account of their conduct of this litigation and the false evidence which they have given, is that Mr Akayour, Mr Ali and Mr Dhimi each intended to cause harm to the claimants as a means of winning business for their companies.
204. This intention can be seen in one or both of two ways. Looking at each defendant trader's conduct as a whole, Mr Akayour, Mr Ali and Mr Dhimi must have appreciated that it was inevitable that the claimants would lose a substantial amount of business as a result of that conduct, even if some

customers retained their Plans with the claimants after they took out Plans with one of the defendant traders.

205. Alternatively, looking at the calls made to individual customers, and having regard, in particular, to those cases in which the caller told the customer to cancel his direct debit with the claimants, which are clear instances of the defendant traders seeking to cause loss to the claimants, I have already found that that the caller's intention in making the Association Misrepresentation was to induce the customer to take out a Plan with the relevant defendant trader and, if necessary to achieve that objective, to induce the customer to cancel his Plan with the claimants. I see no reason to doubt that that intention was shared by Mr Akayour, Mr Ali and Mr Dhimi when they encouraged the use of the Association Misrepresentation in order to win business from the claimants' customers.

(12) Issue 3

206. Issue 3 is:

Whether Ds1-5 and/or Ds9-11 have engaged jointly or individually in the tort of causing loss by unlawful means to the Claimants?

207. The elements of the tort of causing loss by unlawful means are set out as follows in *Clerk & Lindsell on Torts*, 23rd ed (2020) at para 23.78:

“(i) an intention to cause loss to the claimant; (ii) use of “unlawful means” against a third party; and (iii) interference with that third party's freedom to deal with the claimant.”

208. I will consider each of these elements in turn

(12)(a) Intention to Cause Loss to the Claimants

209. I have already found, in the context of Issue 2.4, that there was an intention to cause loss to the claimants, or, at least, to the customer's existing Plan provider, which in many cases, as was to be expected given their market share, was one of the claimants.

(12)(b) Unlawful Means

210. In paragraph 49 of his judgment in *OBG v Allan*, Lord Hoffmann said as follows:

“In my opinion, and subject to one qualification, acts against a third party count as unlawful means only if they are actionable by that third party. The qualification is that they will also be unlawful means if the only reason why they are not actionable is because the third party has suffered no loss. ...”

211. The alleged unlawful means in the present case was the tort of deceit. As to that, Lord Clarke said as follows in paragraph 18 of his judgment in *Hayward v Zurich Insurance Company* [2017] A.C. 142:

“Subject to one point, the ingredients of a claim for deceit based upon an alleged fraudulent misrepresentation are not in dispute. It must be shown that the defendant made a materially false representation which was intended to, and did, induce the representee to act to its detriment. ...”

212. In the present case, I have already found that, in the course of customer calls, the defendant traders’ agents regularly made a false representation which was intended to induce customers to act by taking out Plans with the defendant traders.
213. I find that, in many cases, the false representation had the intended effect, in that customers of the claimants took out Plans with the defendant traders. This can be seen in many of the transcripts referred to in the misrepresentation schedule. Given what Lord Hoffmann said in paragraph 49 of his judgment in *OBG v Allan*, it is unnecessary for present purposes to consider whether this caused loss to the customers. It follows that the defendants used “unlawful means” against the customers.

(12)(c) Interference with the Third Party’s Freedom to Deal

214. The third element of the tort of causing loss by unlawful means was stated by Lord Hoffmann in paragraph 51 of his judgment in *OBG v Allan*, when he said as follows:

“Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant.”

215. The second sentence of this paragraph sets out the third element of the tort of causing loss by unlawful means. In *Secretary of State for Health v Servier Laboratories Ltd* [2022] AC 959 the Supreme Court rejected a submission that this third element was not an element of the tort of causing loss by unlawful means.

(12)(c)(i) Submissions

216. There was considerable argument in closing submissions whether the Association Misrepresentation affected customers’ freedom to deal with the claimants. Mr Goodfellow submitted that the customers’ freedom to deal with the claimants was affected at the time when they decided to cancel their Plan with the claimants. Mr Currie submitted that, once they discovered that they had two Plans covering the same appliance, the customers were free to chose which Plan to cancel.

(12)(c)(ii) Authorities

217. In paragraphs 52 to 54 of his judgment in *OBG v Allan*, Lord Hoffmann referred to two authorities which illustrate the application of this third requirement, namely *RCA Corpn v Pollard* [1983] Ch 135 and *Isaac Oren v Red Box Toy Factory Ltd* [1999] FSR 785. However, it was not suggested that either of those authorities was particularly helpful in relation to the application of this third requirement to the facts of the present case.
218. Mr Goodfellow referred to two other authorities, the first of which was *Costa v Dissociadid Ltd* [2022] EWHC 1934 (IPEC). In that case, Mr Costa knowingly made a false representation to YouTube, which led YouTube to take down some of Dissociadid Limited's videos from Dissociadid Limited's channel on YouTube's website. HHJ Hacon said as follows in paragraph 136 of his judgment:

“Before 13 March 2021 YouTube's relationship with the defendants was as host to the Dissociadid channel and to the videos on that channel. Mr Costa's continuing representation after that date that the defendants were using the Disclaimer affected YouTube's freedom to host some of those videos because of its belief that they infringed Mr Costa's rights. In part this was because of Mr Costa's representations that he was joint author of the Disclaimer. It must also have been in part because YouTube believed that the Disclaimer was on the videos themselves, a belief which was probably generated by the manner in which Mr Costa made his takedown requests, discussed below. In any event, Mr Costa's representation as to the continuing use of the Disclaimer without his permission influenced YouTube's belief that Mr Costa's rights were being infringed. Therefore the representation affected YouTube's freedom to host the relevant videos.”

219. This is therefore authority for the proposition that a third party's freedom to contract with the claimant can be interfered with by a misrepresentation made by the defendant to the third party.
220. The second authority relied on by Mr Goodfellow was *Future Investments SA v Federation Internationale de Football Association* [2010] EWHC 1019 (Ch), but that case concerned intellectual property rights and is not helpful in the present case.

(12)(c)(iii) Decision

221. The third element of the tort of causing loss by unlawful means is that the unlawful means used by the defendant interfered with the third party's freedom to deal with the claimant. It is not a requirement that the third party's freedom was completely overborne, merely that it was interfered with.
222. In many cases, customers cancelled their direct debits in favour of the claimants and/or otherwise cancelled their Plans with the claimants while they were acting in the mistaken belief induced by the Association Misrepresentation. In those cases, I consider that the customers' freedom to deal with the claimants was

interfered with, just as YouTube's freedom to deal with Dissociadid Limited was interfered with by Mr Costa's misrepresentation to YouTube. Customers had a choice whether or not to cancel their direct debits or Plans, but their exercise of that choice was impaired by the deception practised on them.

223. The position is different in the case of customers who cancelled their Plans with the claimants after they had found out that they had been deceived, since the deception was, ex hypothesi, no longer operating on them. They had a choice whether or not to cancel their Plans with the claimants, but that choice was affected by what they had done under the influence of the misrepresentation, i.e. by the fact that they had taken out a Plan with the claimant. Moreover, it can be seen from the transcripts of the calls referred to in the misrepresentation schedule that the overwhelming majority of the Plans offered by the defendant traders were for one, two or three years' cover in return for a single, up-front payment. By contrast, many of the customers' Plans with the claimants provided cover in return for monthly payments by direct debit. In many cases, the existence of a Plan with one of the defendant traders for which they had already paid in full will have been seen by the customers as a reason to cancel their Plan with the claimants, when they would not have cancelled that Plan but for the defendants' deceit.

224. For example:

(1) "Well I can't really stop theirs because it's a once a year payment and it's already being paid whereas yours is a nice, simple, every month payment which is fairly straightforward. So you now have the reason why I cancelled your direct debit." (PP73)

(2) "I'd like to cancel it please?"

"Well, to be honest what happened was a few weeks ago I got a letter from a company, which I assumed was, like, related to you, like all your companies for what have you. Anyway, I knew my insurance on the washer was due, so I signed up for them. It was a bit complicated because there was a problem with the washer but it was still under warranty and things like that, so anyway, so then I realised when I got your letter that it wasn't the same one. But I'd already signed up to the other one." (AA24)

(3) "On 11/2/21 I cancelled the above plan because I was scammed on 3/2/21 by Apex Assure (Premier Protect 365) who purported to be Domestic and General offering me a favourable update on my premium and policy. I really thought they were D&G as they had all my details which were held by you and I expected to receive paperwork from you in due course. I thought no more about it until my bank phoned me and said that there had been an unusual transaction of £99 to a bank in Malaga!

I contacted you at the time and unable to recover my money I took the chance of staying with Apex Assure who had sent me reasonably convincing documents, so cancelled with you." (AA43)

225. There were, of course, other options available to customers who discovered that they had been deceived:

(1) They could ask the relevant defendant trader for a refund. However, both Apex Assure's and UKSP's terms and conditions stated that refunds would only be paid within the first 28 days. Mr Dhimi said that UKSP's practice was to pay refunds whenever they were sought, but this policy, if it existed, was not published. In any event, he provided no evidence to corroborate the existence of this policy and I can place no reliance on his mere assertion. In any event, some customers had trouble even contacting the relevant defendant trader. For instance:

“Yes, I have got a telephone number. I tried to get them and it just rings and rings and rings and rings and rings.” (AA2)

(2) They could have sued the relevant defendant trader for the return of their money, but it is understandable that customers would be reluctant to take this course.

226. Overall, I consider that customers' freedom to deal with the claimants was interfered with even after they discovered that they had been deceived.

(12)(d) Issue 3: Conclusion

227. It follows that, for the reasons which I have given, I find that each of the principal defendants committed the tort of causing loss by unlawful means. Moreover, they did so jointly with one another, since they acted pursuant to a common design, as I will explain in relation to Issue 4.1.

(13) Issue 4.1

228. Issue 4.1 is:

Whether all or any of Ds1-5 and/or Ds9-11 were party to a combination to use unlawful means?

229. According to paragraph 23.108 of Clerk and Lindsell on Torts:

“This form of the tort is committed where two or more persons combine and take action which is unlawful in itself with the intention of causing damage to a claimant who does incur the intended damage.”

230. I have already found that the principal defendants used unlawful means and that they did so with the intention of causing harm to the claimants. I will explain in the context of Issue 4.3 why I have concluded that they caused loss to the claimants. I deal here with the question whether they entered into a combination, agreement or understanding and took concerted action.

231. I find that in 2019 Mr Akayour combined with Premier Protect for the purpose of using unlawful means to cause damage to the claimants. It is clear that Mr Akayour was the driving force behind the business which was started in 2019 and encouraged its deceptive manner of doing business. He needed to use a

company to carry on the business and that company was initially Premier Protect. Home Protect also joined the combination at some stage, when it started to be used to carry on the business.

232. Apex Assure and Mr Ali joined the combination when Apex Assure started to be used to continue the business initially conducted by Premier Protect. At that stage, a new company was wanted to carry on the business and Mr Ali, as sole director and shareholder, provided Apex Assure for that purpose. Mr Akayour continued to be involved in the management of Apex Assure's business. Likewise, UKSP and Mr Dhimi joined the combination when UKSP was first used to continue the business. Mr Akayour was involved in setting up UKSP's business, Mr Ali continued to be involved in UKSP's business and Mr Akayour's companies, PRO and Domestic Guardian, were among the call centres used by UKSP in 2021. Pursuant to this combination, the principal defendants engaged together in the concerted activity of seeking to win business from the claimants' customers by means of the Association Misrepresentation.

(14) Issue 4.2

233. Issue 4.2 is:

Whether any combination to use unlawful means was reached with the intention of causing loss to Cs?

234. I have already found in the context of Issue 2.4 that the principal defendants intended to cause loss to the claimants. I find that they had that intention when the combined with one another.

(15) Issue 4.3

235. Issue 4.3 is:

Whether the Cs have suffered financial loss and/or damage to their reputation as a result of the Ds' actions?

236. It is clear that the principal defendants have caused loss to the claimants. The clearest evidence of this comes from the UKSP cancellation schedule, which shows that many customers cancelled their Plans with the claimants shortly after taking out Plans with the defendant traders and from the transcripts of calls in which customers said that the defendant traders had told them to cancel their direct debits with the claimants.

237. I accept also that the conduct of the principal defendants has caused the claimants to expend management time on responding to customer complaints and investigating the conduct of the principal defendants.

238. Quantification of the claimants' loss will be a matter for another occasion and so I do not say any more at this stage about the claimants' loss.

(16) Issue 6

239. Issue 6 is:

Whether Ds1-4 have acted in breach of paragraph 1(a) of the 22 January Order?

240. It may be that the claimants will pursue a committal application in respect of the first four defendants and their alleged breach of paragraph 1(a) of the order of 22 January 2021. If so, the standard of proof on such an application will be the criminal standard. For the purposes of Issue 6, I have been asked to consider to the civil standard whether the first to fourth defendants have acted in breach of the order. Nothing which I say on that subject in this judgment is intended to prejudice the first to fourth defendants' response to a committal application. However, I accept that it is relevant for me to consider Issue 6 as part of the claimants' case that I can draw inferences from the defendants' conduct in relation to this litigation.

(16)(a) The Order of 22 January 2021

241. Paragraph 1(a) of the order of 22 January 2021 provided that, until judgment after trial or further order:

“The First, Second, Third and Fourth Defendants, or any of them, will not, when any of them or any business in which the Defendants have an interest (whether direct or indirect) are seeking to sell cover on home appliances and/or consumer electronics to any prospective customer (“Prospective Customer”):

- (i) represent to the Prospective Customer that they are responsible for the provision of the Prospective Customer's existing cover or in some way associated with the provider of that cover;
- (ii) do or say anything to suggest or imply any connection or relationship with the Claimants;
- (iii) represent to the Prospective Customer that the Prospective Customer has existing home appliance cover (a “Plan” - as defined hereunder) which has expired or is about to expire, unless such information has first been communicated by the Prospective Customer to the relevant Defendant or via third party;
- (iv) represent to any Prospective Customer that the Prospective Customer is eligible to renew their Plan, or to reinstate previous cover under a Plan, in respect of any existing Plan that the Prospective Customer might have. For the avoidance of doubt, this paragraph 1(a)(iv) does not prevent the relevant Defendant from stating to a Prospective Customer that he/it is proposing a new home appliance cover plan which provides the same or substantially the same level of cover as the warranty or guarantee originally provided by any other person;
- (v) represent to any Prospective Customer that they are in possession of the Prospective Customer's bank details and/or that they need to confirm or update their records of those details

(save that the Defendants are permitted to request bank details from the Prospective Customer during any such call);

- (vi) represent to any Prospective Customer that they have cancelled the Prospective Customer's Plan;
- (vii) represent to any Prospective Customer that they have changed, are changing, or are capable of changing the customer's premiums on an existing Plan, whether through the offer of a discount or otherwise howsoever;"

242. This was subject to paragraph 2, which provided as follows:

"Nothing in paragraph 1(a) above shall prevent the First, Second, Third, and/or Fourth Defendants from stating to Prospective Customers that: 'The manufacturer's "warranty"/"guarantee" that you received on purchase "has now"/"may have"/"should have" expired, unless you have purchased an extended warranty'. For the avoidance of doubt, the words in quotations may be used in the alternative."

243. The order also contained the following guidance notes:

- "b) A Defendant which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way; and
- c) The word "Plan" shall mean a service and maintenance plan structured as a contract for services or insurance contract pursuant to which household appliances and/or consumer goods are maintained, repaired or replaced, such plans to include an extended manufacturer's guarantee or manufacturer's warranty."

244. Given the approach which I have adopted in this judgment to the alleged Fraudulent Misrepresentations, I do not propose to make any findings at this stage in relation to the alleged breaches of sub-paragraphs 1(a)(iii) to (vii) of the order of 22 January 2021. If necessary, these issues can be revisited on a future occasion.

245. The order of 22 January 2021 was served on the first to fourth defendants on 25 January 2021.

(16)(b) Issue 6: Premier Protect

246. Having regard to the transcript of the customer calls referred to in the misrepresentation schedule, I find that that there are some instances where Premier Protect continued to make the Association Misrepresentation after 22 January 2021 and thereby acted in breach of sub-paragraphs 1(a)(i) and (ii) of the order of 22 January 2021. The following is an example of this conduct:

"I have been conned basically by a company called Premium Direct who claimed to be acting for Domestic & General and took a fee of £195 from me."

“... and what is the name of the company?”

“Premier Protect.” (PP76, call to the claimants dated 24 February 2021)

247. There are, however, comparatively few such cases, which no doubt reflects the transfer of the business from Premier Protect to Apex Assure.

(16)(c) Issue 6: Apex Assure

248. I find that there were rather more instances of Apex Assure continuing to make the Association Misrepresentation and therefore acting in breach of the order of 21 January 2021. For instance:

(1) “... they said they were Domestic and General.” (AA25, call to the claimants dated 3 February 2021)

(2) “I had a telephone call from a company calling themselves Apex Assure. They said that they had taken over from you, the insurance plan on my dishwasher and that they were able to give me a price for that and that you has passed this over to them.” (AA26, call to the claimants dated 10 February 2021)

(16)(d) Issue 6: Mr Akayour and Ali

249. Mr Akayour and Mr Ali did not themselves make the Association Representation, nor did anyone make it on their behalf, rather than on behalf of Premier Protect and Apex Assure. However, I have found that they encouraged the making of the Association Misrepresentation and there is no evidence that they did anything to stop its continuing to be made after service the order of 22 January 2021, save that they appear to have completed the transfer of Premier Protect’s business to Apex Assure,

(17) Issue 7.4

250. Issue 7.4 is:

Should final injunctive relief be granted, and if so, in what form?

251. I accept Mr Currie’s submission that the question of what relief should be granted is best considered after the parties have had the opportunity to consider this judgment.

(18) Conclusion

252. For the reasons set out in this judgment, I find that the principal defendants have committed the torts of causing loss by unlawful means and conspiring to use unlawful means, but that Mr Khan has not committed either tort. I invite the parties to agree the terms of an order to give effect to this judgment and to give directions for the further conduct of these proceedings.

253. Given the nature of the claimants’ claims, the trial bundle was enormous. I express my gratitude to all solicitors and counsel for their assistance in helping me to navigate through the vast amount of material before me.