

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
CLAIM NO. HC-2016-001745  
BETWEEN:

LONDON BOROUGH OF SOUTHWARK  
Claimant

and

- (1) LONDON DISTRICT HOUSING ASSOCIATION LIMITED
- (2) MORTGAGE & EQUITY FINANCE PARTNERS NO.16 LP
- (3) PROTECTED GROWTH PLAN LIMITED
- (4) TRADEMARK PROPERTY AND INVESTMENTS LIMITED
- (5) KRISHNA PRASAD INAMPUDI
- (6) VINNY KUMAR DAGGOLU
- (7) RAVINDER REDDY
- (8) MILAN BABIC
- (9) MOHAMMAD SHAIM KHAN
- (10) FARKHANDA SHAMIN KHAN
- (11) KAUSAR RAJA
- (12) KISHOR KUMAR CHAWLA
- (13) RANPREET SINGH GREWAL
- (14) AJMAL RIAZ BHATTI
- (15) FAHIM UL HASSAN
- (16) MAMTA SETHI
- (17) MUNIR AHMAD
- (18) HARJINDER SINGH GILL
- (19) CHARANJEEV SINGH GILL
- (20) CREDIT CAPITAL CORPORATION LIMITED
- (21) CREDIT CAPITAL CORPORATION II LIMITED
- (22) VIRGIN MONEY PLC
- (23) ALDERMORE BANK PLC
- (24) THE MORTGAGE WORKS (UK) PLC

Defendants

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AMENDED PARTICULARS OF CLAIM

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The London Borough of Southwark, 160 Tooley Street, London, SE1 2QH

**AMENDED PARTICULARS OF CLAIM**

**Defendants**

- (1) LONDON DISTRICT HOUSING ASSOCIATION LIMITED  
 (2) MORTGAGE & EQUITY FINANCIAL PARTNERS NO.16 LP  
 (3) PROTEC LTD GROWTH PLAN LIMITED  
 (4) TRADEMARK PROPERTY AND INVESTMENTS LIMITED  
 (5) KRISHNA PRASAD INAMPUDI  
 (6) VINNY KUMAR DAGGOOR  
 (7) RAVINDER REDDY  
 (8) MILAN BABIC  
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 (20) CREDIT CAPITAL CORPORATION LIMITED  
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 (22) VIRGIN MONEY PLC  
 (23) ALDERMORE BANK PLC  
 (24) THE MORTGAGE WORKS (UK) PLC

and

**Claimant**

LONDON BOROUGH OF SOUTHWARK

**BETWEEN:**

CLAIM NO. HC-2016-001745

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

Ref: RR080/1(BS)

## Glossary

1. The following definitions will be used:

"Affordable Housing"	as defined in the S106
"the AHUs"	Flats 1-11, 89-93 Newington Causeway, London SE1 6BN
<u>"CCC"</u>	<u>Credit Capital Corporation Limited, the Twentieth Defendant</u>
<u>"CCCII"</u>	<u>Credit Capital Corporation II Limited, the Twenty-First Defendant</u>
"the Developer"	the freehold owner and developer of the Site, Neobrand Limited
"Flat"	is a reference to an AHU
"the Head Leases"	separate head leases of each AHU granted by the Developer to LDHA
"Intermediate Rented Terms"	as defined in the S106 (prior to amendments)
"LDHA"	the First Defendant (formerly known as Faithland Housing Association Limited)
"M&E"	the Second Defendant
<u>"Mortgage Works"</u>	<u>The Mortgage Works (UK) Plc, the Twenty-Fourth Defendant</u>
"Nominees"	the nominee sub-lessees under the Sub-leases of the AHUs as follows:  Flat 1           Katie Taylor Flat 2           Darren Locksley Flat 3           Andrew Joseph Flat 4           Filomena Fusco Flat 5           Craig Cooper Attard Flat 6           Hayley Lawton

2. For the sake of brevity the following acronyms will be used:

And a reference to a numbered "Appendix" in bold is a reference to an appendix  
A reference to a document such as a lease includes where applicable a reference to  
its counterpart.

A reference to a lease includes where applicable a reference to

Virgin Money Plc, the Twenty-Second Defendant

LDHA purportedly to the Nominees  
for a term of 125 years or thereabouts granted by  
separate sub-leases of each of the AHUs except Flat 8  
89-93 Newington Causeway, London SE1 6BN  
as defined in the S106  
"Shared Ownership Terms"  
schedules 1, 3 and 4 of the Sub-leases  
emption contained within and in particular at  
terms for stamping, nominated purchasers and pre-  
specified rent and premium and shared ownership  
lease", particulars recording an initial percentage,  
"Shared Ownership Clauses" a description of the Sub-leases as "shared ownership  
below

S106 referred to, and amended as set out, at para 12  
the Third Defendant  
"PGPL"  
Flat 11 Louis Taylor  
Flat 10 Luke Wilkes  
Flat 9 Karen McMillan  
Flat 7 Martin Allsopp

herein.

"HCA"	the Homes and Communities Agency established under Part 1, Housing and Regeneration Act 2008, a successor body to the Housing Corporation with effect from 1 December 2008
"MVP"	a market value purchaser of an AHU
"RP"	registered provider of social housing within the meaning of section 80(2), Housing and Regeneration Act 2008
"S106"	agreement containing planning obligations under section 106(1), TCPA made between the Developer and the Claimant as local planning authority and executed by them as a deed
"SOLE"	shared ownership lease exception to AHO
"TCPA"	the Town and Country Planning Act 1990

### Background and parties

3. This claim concerns a housing development at the Site, in respect of which:
  - a. the Claimant granted planning permission;
  - b. the Claimant, the Developer and its mortgagees made a S106;
  - c. the S106 imposed an AHO; and
  - d. LDHA is and was at all material times head lessee of the AHUs.
4. The AHOs were imposed in accordance with:
  - (i) the development plan at the time of the grant of each planning permission, namely the London Plan (2011) and the Southwark Core Strategy (2011) and saved policies from the Southwark Plan, which identify that the provision of affordable housing is a key strategic and local planning objective;
  - (ii) national planning policy as set out in the National Planning Policy Framework (NPPF March 2012) in particular at paragraph 47, which requires local planning authorities to boost significantly the supply of housing in their areas to meet the full objectively assessed needs for both market and affordable housing, where possible, and at paragraph 50 which advises that policies should

- in the first place seek for affordable housing to be provided on site to contribute to the objective of creating mixed and balanced communities; and (iii) the Claimants adopted Affordable Housing Supplementary Planning Document (2008) which assesses the Claimant in the application of government guidance and the determination of planning applications and which states both that there is a shortage of affordable homes in Southwark, London and across the country and that all housing including affordable housing should be located on the development site save in exceptional circumstances.
5. At all material times LDHA (the First Defendant) has been a RP, Phillip Butt was its Chairman and Fraser Allen was its Estates Manager.
6. At all material times since its registration on 14 January 2015 M&E (the Second Defendant) has carried on the business of property holding and/or investment for profit.
7. At all material times since their registration on 10 September 2012 and 14 January 2015 respectively, PGP (the Third Defendant) has been the sole general partner of GPF Finance No. 8 LP and M&E have acted under the control of PGP.
8. At all material times M&E, PGP and TPII (the Fourth Defendant) acted under the ultimate control of Terry Godric McMillan. In particular:
- a. Terry McMillan owns a 90% shareholding in and Sheron McMillan his wife owns a 10% shareholding in The Trademark Group Limited, of which among other companies the following are wholly owned subsidiaries:
  - ii. David Edward Property & Development Limited (a wholly owned subsidiary of TPII);

- iii. PGPL (a wholly owned subsidiary of David Edward Property & Development Limited);
  - b. at all material times Terry McMillan has been the sole director of TPIL, David Edward Property & Development Limited and PGPL; and
  - c. in respect of each of the above directorships of Terry McMillan his stated address at Companies House was Studio One, 197 Long Lane, London SE1 4PD.
9. In addition, at all material times since its incorporation on 4 September 2012 Terry McMillan has been the sole director of and shareholder in PGP Securities No. 8 Limited.
10. At all material times Phillip Butt and Terry McMillan have been friends and business associates. In addition, Graham de Roy has been a non-executive director of LDHA and, together with Terry McMillan and Sheron McMillan, director of Trademark Insurance Limited, another company owned by Terry McMillan.

#### The S106

11. On 16 November 2011 the Claimant granted planning permission for a development at the Site. On 30 March 2012 the Claimant granted a revised planning permission for the development at the Site.
12. The original S106 was dated 16 November 2011 and made between the Claimant, the Developer and Dunbar Assets plc. It was amended by the following deeds of variation:
- a. dated 30 March 2012 made between the Claimant, the Developer and Dunbar Assets plc; and
  - b. dated 27 October 2014 made between the Claimant, the Developer and Close Brothers Limited.

households who cannot afford to buy or rent anywhere in the Borough at market value, "affordable housing that is attainable for purchase and/or rent by those households who cannot afford to buy or rent anywhere in the Borough at market value" follows:

para (2) contained a definition of "Affordable Housing", the essence of which was as follows:

16. Clause 1.1 as substituted by the deed dated 27 October 2014 at schedule 1,

regarded tenure in respect of each of the AHBs was "Shared Ownership".  
regulations set out at Schedule 5 to the SI06. As varied, these provided that the requirements set out at Schedule 5 to the SI06. As varied, these provided that the "Affordable Housing Mix". The latter phrase referred to the tenure and size referred to 11 dwellings to be constructed on the Site pursuant to "the Approved Further, the definition of "Affordable Housing Units" at clause 1.1 of the SI06 of Affordable Housing in the London Borough of Southwark area in perpetuity."  
a Registered Provider providing housing accommodation to households in need "...the Affordable Housing Units shall not be used for any purpose other than by of Affordable Housing in the London Borough of Southwark area in perpetuity."

schedule 1, para (13) provided materially as follows:

15. Schedule 2, para 1.3 as substituted by the deed dated 27 October 2014 at

deed dated 27 October 2014 at schedule 1, paras (first and second) (9)-(12)).  
completion to hand over the AHBs to a RP (schedule 2, para 1.2, as varied by the 14. The SI06 provided that the Developer was to construct the AHBs and on

AHO

SOLB.

centrally relevant provisions consist in an AHO and, as an exception thereto, a pursuant to section 106, TCPA and were enforceable against successors in title. The 13. The SI06 provided at clause 2.1 that the obligations within it were entered into

Claimant will refer to the SI06 at trial for its full terms and effects.  
Copies of the above documents comprising the SI06 are at Appendix 1. The

housing prices and in the case of Shared Ownership units shall refer to accommodation which will be given to households where the average total gross household annual income does not exceed £32,901 in respect of all 1 bed dwellings, £38,875 in respect of all 2 bed dwellings, £45,128 in respect of all 3 bed dwellings or £51,179 in respect of all 4 bed dwellings. In all cases a household's total annual expenditure upon rent, mortgage, and service charges shall not exceed 40% of net household income. All income thresholds are to rise annually from the date of this Deed in accordance with such annual reviews of the corresponding figures as are published by the Mayor of London or any successor public authority to reflect changes in local income/house-price ratios ... Net household income is defined as 70% of gross household income"

*Shared Ownership Terms*

17. In clause 1.1 as substituted by the deed dated dated 27 October 2014 at schedule 1, para (7) "Shared Ownership Units" was defined as follows:

"the 11 Affordable Housing Units shown for the purpose of identification only as edged in red on plan annexed [to the deed dated 27 October 2014] to be made available on Shared Ownership Terms".

18. In clause 1.1 as substituted by the deed dated dated 27 October 2014 at schedule 1, para (8) "Shared Ownership Terms" was defined as follows:

"a lease of an Affordable Housing Unit in the form of the Homes and Communities Agency standard lease of a type described in paragraph (a) of the definition of 'disposal on shared ownership terms' in Section 2(6) of the Housing Act 1996".

*SOLE*

19. Clause 9.1.6 contained the SOLE, which provided that the AHO was not binding on:

proper construction of the S106 as a whole and as a matter of substance it otherwise than as Affordable Housing let on Shared Ownership Terms, on a. although the AHO is expressed in negative terms, i.e. not to use the AHUs

22. The Claimant further contends that:

- person deriving title under it.
- planning obligation enforceable against materially the Developer and any
- e. the AHO, including the above restriction as to the terms of disposition, is a restriction of use to Affordable Housing; and
- requirement to use the Land in a specified way and/or ancillary to the
- d. such restriction as to the terms on which the Land was to be disposed was a Borough at market housing prices (and not otherwise);
- Terms to persons who could not afford to buy or rent anywhere in the
- c. the S106 imposed an obligation to dispose of the AHUs on Shared Ownership of imposing requirements as to the circumstances of the occupiers of the Land;
- b. it is immaterial that the definition of such use may include or have the effect

106(1), TCA.

a. use as Affordable Housing is a "use" of Land within the meaning of section

21. The Claimant contends that:

Construction and effect

the Shared Ownership Unit."

"the purchase by the owner of a Shared Ownership Unit of additional equity in (second) para (8) "Staircasing" was defined as follows:

20. In clause 1,1 as substituted by the deed dated 27 October 2014 at schedule 1,

their successors in title and mortgagees]"

"any tenant Staircasing to 100% pursuant to a shared ownership lease [and

requires use of the AHUs as Affordable Housing let on Shared Ownership Terms;

- b. in the alternative, the above is a term to be implied into the S106 in order to give it business efficacy; in particular, the contrary construction would permit the Developer to make arrangements to leave the AHUs vacant and in consequence to sell the remaining units at the Site at a higher price or let them at a higher rental, defeating the overall object of the AHO.
23. On a proper construction of each S106 "Shared Ownership Terms" referred to:
- a. the HCA standard Shared Ownership Flat Lease current at the date of the S106 (edition date September 2011); and
  - b. a lease in accordance with the definition of "disposed of on shared ownership terms" in section 2(6)(a), Housing Act 1996, namely granted on a payment of a premium calculated by reference to a percentage of the value of the house or of the cost of providing it.
24. On a proper construction of the S106 read as a whole they were conditions of triggering the SOLE that:
- a. the shared ownership lease in question should have been granted in compliance with the AHO; and
  - b. therefore, the shared ownership lease should have been granted on Shared Ownership Terms providing accommodation for a household in need of Affordable Housing in the London Borough of Southwark.
25. Further, the Claimant contends that:
- a. a lease granted on payment of a premium calculated by reference to 100% of the value of the flat is not a shared ownership lease that triggers the SOLE;

variation dated 4 March 2015.

terms were further amended by a side letter dated 18 January 2015 and a deed of terms were further agreed to grant the Head Leases to LDHA on revised terms. Such revised Developer agreed to grant the Head Leases to LDHA on revised terms. Such revised dated 28 July 2014 made between the Developer, LDHA and guarantors the dated 28 July 2014 made between the Developer, LDHA and guarantors the Claimant the Developer terminated the above agreement. By a further agreement the Developer agreed to grant the Head Leases to LDHA. On a date unknown to the 26. By an agreement dated 19 September 2012 made between the Developer and LDHA

### The Head Leases

than triggering the exception.

composite transaction without any business or commercial purpose other commercial purpose and as not being triggered by elements inserted into a g. the SOLE should be construed as limited to provisions having a business or prior to occupation of the AHU as a residence; and further

ii. which was staticated to 100% on or before the grant of the lease or commercial organisation; and/or

i. to an individual who could afford to purchase at full market value or a grant of a shared ownership lease;

f. it would make a nonsense of the AHO if it could be brought to an end by the give them business efficacy; in particular:

e. in the alternative, the above are terms to be implied into the S106s in order to by the lessee prior to the lessee staticating to 100%; and

d. further, it follows from one or more of the above propositions, that in order to trigger the SOLE there must have been a period of use as Affordable Housing

c. a lease, even a lease on Shared Ownership Terms, granted to a commercial organisation is not a shared ownership lease that triggers the SOLE;

b. a lease, even a lease on Shared Ownership Terms, granted to an individual who could afford to purchase it at full market value is not a shared ownership lease that triggers the SOLE;

27. On 4 March 2015 the Developer granted LDHA a separate Head Lease in respect of each AHU for a term of 125 years or thereabouts. The Developer and LDHA completed the agreement dated 28 July 2014 on terms that LDHA would pay the outstanding sum of £1,040,000 plus interest thereon by 20 August 2015. Such sum was paid on or before the deadline.

*Covenants to comply with S106*

28. The Head Leases contained covenants by LDHA not to use the Flat other than as an Affordable Housing Unit in accordance with the S106 and to comply with the provisions of the S106 (schedule 2, paras 26 and 29).

**Deed of covenant**

29. By a deed of covenant dated 4 March 2015 made between LDHA and the Claimant, at clause 2.1 LDHA covenanted with the Claimant as follows:

"Subject to the provisions of clause 9 of [the S106] LDHA hereby covenants with the Council that the Affordable Housing Units shall not be used for any purpose other than by a Registered Provider providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark area in perpetuity."

In other words, by the above deed of covenant LDHA covenanted with the Claimant to comply with the AHO.

**Beneficial ownership of the Head Leases**

30. To the best of the Claimant's knowledge and belief the beneficial ownership of the Head Leases was as follows:

- a. PGP Finance No. 8 LP provided the premiums payable to the Developer for the grant of the Head Leases in the total sum of £3.1m;

## The Conspiracy

·dn pumom

using the AHUs otherwise than as Affordable Housing, in particular letting the AHUs at market rents and selling sub-leases of the AHUs to MVPs at full market price, or from selling sub-leases of the AHUs at a profit to third parties for use otherwise than as Affordable Housing, conspired and combined together and/or with another person or persons unknown to the Claimant in order to:

- a. procure the grant by LDHA of ordinary 125 year sub-leases of the AHUs to PGP Finance No. 8 LP or another body under the control of Terry McMillan, which it acting together with LDHA and TPIL would let at market rents and thereafter market and sell the sub-leases to MVPs at full market price or sell at a profit to third parties for use otherwise than as Affordable Housing, in breach of the AHO;
- b. recruit individual grantees of the sub-leases of the AHUs but who would purport to take the sub-leases on trust for PGP Finance No. 8 LP or another body under the control of Terry McMillan; whereas to LDHA's and PGPL's knowledge such nominees had no intention to occupy the AHUs or to perform any of the obligations under the sub-leases and nor were they in need of Affordable Housing in the London Borough of Southwark;
- c. execute sham documentation, namely agreements for sub-leases and sub-leases containing Shared Ownership Clauses and memoranda of stai'reasing, which in the absence of disclosure of further details of the transactions would give the appearance to third parties and the court that the sub-leases were granted as shared ownership leases to individuals in need of Affordable Housing and had been stai'reased by them to 100% triggering the SOLE;
- d. thereby fraudulently to represent to MVPs of the sub-leases, and/or with the intent that such representations would be passed on to them and also to the Claimant and the Developer and acted on by them, that it was lawful to use the AHUs otherwise than as Affordable Housing, because the sub-leases were granted as shared ownership leases to individuals in need of Affordable

the Conspiracy.

32. From about 14 January 2015 M&E joined the Conspiracy and conspired and  
stated above, save that M&E was to perform PGP Finance No.8 LP's former role in  
combining together with the other parties directly with the same intention and aims

("the Conspiracy").

Although LDHA had not provided the purchase price for the Head Leases  
the unenumbered beneficial interest in the Head Leases vested in LDHA  
PGP Securities No.8 Limited and causing themselves to be wound up, so that  
nothing but notes limited to those bodies repaying part or all of their debts to  
providing consideration to LDHA in ways unknown to the Claimants  
LP or another body under the control of Terry McMillan making payments or  
e-split the profits made thereby illustrated at Appendix 2 by PGP Finance No.8

for use as Affordable Housing, and

they would or might have taken steps to prevent the loss of the AHUs  
iii. had the Claimant and/or the Head Landlords known the true position  
the sub-leases and

ii. had the M&Ps known the true position they would not have bought

harm the Claimant in the manner stated above,

of the parties therefore and/or had no other commercial purpose than to  
participated at para 35 below did not agree with the true intentions  
i. to their knowledge those aspects of or steps in the transactions  
whereas:

Housing and had been statuted by them to 100% triggering the SOLB,

with the predominant intention of harming the Claimants

unlawful and deliberately failing to inquire into whether they were unlawful and

unlawful means knowing that they were unlawful or suspecting that they were

33. LDHA, PGP Finance No.8 LP, M&E, PGP and TPL intended to use the following

- a. inducing breaches of the AHO by LDHA, PGP Finance No. 8 LP, M&E, PGPL and MVPs of the Sub-leases, intending to cause the AHO to be breached; and
  - b. deceiving the MVPs, the Claimant and the Developer by executing sham documentation as stated at paras 35 and 36 below.
34. In respect of each of the matters described above LDHA acted by and under the direction of Phillip Butt and/or Fraser Allen and PGP Finance No. 8 LP, M&E, PGPL and TPIL acted by and/or under the direction of Terry McMillan. Further, for these purposes the Claimant contends that the knowledge and intentions of Phillip Butt and Fraser Allen should be attributed to LDHA and the knowledge and intentions of Terry McMillan should be attributed to PGP Finance No. 8 LP, M&E, PGPL, TPIL and any other relevant body under the control of Terry McMillan.

#### Sham transactions

35. In any event, in respect of the relevant transactions set out in more detail below the true intention of the parties to the transactional documents was for LDHA to grant ordinary 125 year sub-leases of the AHUs to M&E but they intended to give to third parties or the court the appearance of shared ownership leases granted to the Nominees and staircased by them to 100%, triggering the SOLE. In particular, (as applicable) the following features of the transactional documents did not accord with the true intentions of the parties thereto:

- a. naming the Nominees as grantees of the Sub-leases, grantors of charges over the Sub-leases and trustees in declarations of trust in respect of the Sub-leases;
- b. the Shared Ownership Clauses of the Sub-leases including any form of Sub-lease annexed to the agreements for sub-lease;
- c. the payment of a purchase price for the grant of the Sub-leases, alternatively the division of the purchase price for the grant of the Sub-leases into an initial premium and one or more purported staircasing payments; and

38. Independent London Limited marketed the AHUs on behalf of LDHA, M&E, PGF, and/or TPP as private flats available on the open market. In particular, when asked by tenants about references to "affordable housing" in the tenant's pack placed in the AHUs, negotiators employed by Independent London Limited, including Abbott Developments, told tenants that "everyting is above board, don't worry" or words to

37. Pursuant to the Consistency on a precise date or dates unknown to the Claimant but prospective MVEs for use other wise than as Affordable Housing.

36. Further, LDHA, M&E and PGF, by executing the documents recording the transaction which had no business or commercial purpose other than to harm the Claimant and had no other commercial purpose than to harm the Claimant proceeded partly were not in accordance with the true intentions of the parties therefore when to their knowledge those aspects of or steps in the transactions specified in the ownership leases to the Nominees and/or had been staticeased by them to 100% Development and acted on by them, that the Sub-leases were granted as shared representations would be passed on to them and also to the Claimant and the fraudulently to represent to MVEs of the AHUs, and/or with the intent that such apparent features of the transactions set out in the Preceding Part, intended

37. Pursuant to the Consistency on a precise date or dates unknown to the Claimant but prospective MVEs for use other wise than as Affordable Housing in or before March 2015 Independent London Limited, estate agents commencing in or before March 2015 Independent London Limited, estate agents adding from Studio One, 197 Long Lane, London SE1 4PD, on behalf of LDHA, M&E, PGF and/or TPP marketed and arranged for the AHUs at each of the Sites to be let at market rents and marketed the AHUs at each of the Sites to be sold to prospective buyers for use other wise than as Affordable Housing.

d. The memorandum of staticeasing;

AHO by triggering the SOLE.

and, further or alternatively, the interpretation of the Nominees and the other features of the transactions set out above were elements inserted into a composite transaction which had no business or commercial purpose other than to evade the features of the transactions set out above were elements inserted into a composite transaction which had no business or commercial purpose other than to evade the

~~that effect. Further particulars will be given on disclosure. Further, by letting out the AHUs at market rents, LDHA, M&E, PGPL and TPIL contributed towards an impression, which they intended to create and to influence MVPs, that it was lawful to use the AHUs otherwise than as Affordable Housing.~~

### **The Nominees**

39. At all material times the Nominees:

- a. were not in need of Affordable Housing within the London Borough of Southwark;
- b. had no intention of occupying the AHUs or performing any of the obligations under the Sub-leases or agreements for sub-lease; and
- c. had no intention of entering into a shared ownership lease or of exercising any of the Shared Ownership Clauses.

### **The transactions in detail**

40. LDHA granted 125 year Sub-leases of Flats 1-7 and 9-11 purportedly to the Nominees on the following dates:

- a. 4 March 2015 - Flat 2
- b. 17 March 2015 - Flat 10
- c. 6 August 2015 - Flats 1, 4, 6 and 11
- d. 7 August 2015 - Flats 3, 5 and 7
- e. 23 December 2015 - Flat 9

41. In respect of each of the Sub-leases:

- a. LDHA and the Nominee entered into a purported agreement for sub-lease annexing a form of Sub-lease containing Shared Ownership Clauses, which agreement at clause 15 required the Nominee to execute the documentation stated in the next sub-paragraph;

Nominees had no real involvement in the relevant transactions.

The Nominees had no need for Affordable Housing, had homes elsewhere, never occupied or intended to occupy the Flats or to perform any of the obligations under the Sub-leases or agreements for sub-lease and LDHA, M&B, PGP and TPL knew and intended the same. Save for the execution of the agreement for sub-lease, the declaration of trust and power of attorney, Sub-lease and above charge, the

On about the date of each Sub-lease the respective Nominees executed a purported charge over their legal interest in the Sub-lease in favour of PGP Securities No. 8 Limited.

Darlingtons Solicitors appended hereto at Appendix 3.

d. if, contrary to the above, any purchase price for the Sub-Llease was paid, M&E paid the full purchase price of the Sub-Llease calculated by reference to 100% of the value of the flat to LDHA, (which held it on trust for M&E), on or before completion. In particular, the full purchase price in respect of each Sub-Llease was transferred from the relevant Notiinnee client account of Darlington Solicitors LLP to Pitmans LLP purportedly for LDHA by two bank transfers, the first dated 21, 22 or 23 October 2014 and the second dated 27 February 2015. Details of these bank transfers are set out in the ledgers of

c. as stated above, MSE was the beneficial owner of the Head Lease and had assumed responsibility for repayment of a loan provided by PGP Securities No. 8 Limited for the purpose of the purchase of the Head Lease;

granted to M&E a power of attorney (clauses 5.1 and 5.3);

b. the Nominee executed a Power of Attorney in favour of M&E by which the Nominee irrevocably granted to M&E the right to deal with the flat in such a manner as M&E should in its absolute discretion require and

44. On or about the dates of executing the above documents the Nominees received payments from one or more of LDHA, M&E, PGPL, TPIL and/or another person or persons unknown to the Claimant in return for doing so. ~~Further or in the alternative, in relation to Flat 9, the Nominee Karen McMillan was a family relation of Terry McMillan and willing to assist him by signing sham documents.~~
45. Further or in the alternative, the Nominees, LDHA, M&E and PGPL had no intention of entering into a shared ownership lease or of exercising any of the Shared Ownership Clauses. No payment was made for the grant of the Sub-leases. Alternatively, such payment was not divided into an initial premium and one or more staircasing payments but was fully paid by 27 February 2015 as stated at para 41.d above, that is, full payment was made prior to the grant of each of the Sub-leases. Upon the grant of each Sub-lease, the tenant owned 100% of the equity in the Sub-lease and accordingly it was not a "shared ownership lease" within the meaning of the S106 or at all.
46. Further or in the alternative, the interposition of the Nominees and the following features of the transactions set out above were elements inserted into a composite transaction which had no business or commercial purpose other than to evade the AHO by triggering the SOLE:
- a. naming the Nominees as grantees of the Sub-leases, grantors of charges over the Sub-leases and trustees in declarations of trust in respect of the Sub-leases;
  - b. the Shared Ownership Clauses of the Sub-leases including any form of Sub-lease annexed to the agreements for sub-lease;
  - c. the payment of a purchase price for the grant of the Sub-leases, alternatively the division of the purchase price for the grant of the Sub-leases into an initial premium and one or more purported staircasing payments; and
  - d. the memoranda of staircasing.

Further details of the payments shown by the memorandum of staticasing disclosed by LDHA are set out at Appendix 2.

Flat	Nominee	ASL date	Date of 100%	Sub-lease staticasing date
1	Katie Taylor	04/08/2015	06/08/2015	06/08/2015
2	Darren Lockley	04/08/2014 or 04/08/2015	22/09/2014 or 04/03/2015	04/03/2015
3	Andrew Joseph	04/08/2015	07/08/2015	07/08/2015
4	Hilomena Fusco	31/07/2015	06/08/2015	06/08/2015
5	Craig Cooper Attard	31/07/2015	07/08/2015	07/08/2015
6	Hayley Lawton	04/08/2015	06/08/2015	06/08/2015
7	Mariam Allsopp	04/08/2015	07/08/2015	07/08/2015
9	Karen McMillan	26/11/2015	30/11/2015	23/12/2015
10	Luke Willkes	14/08/2015	10/03/2015 or <del>16/12/2015</del>	17/03/2015
11	Louisa Taylor	04/08/2015	06/08/2015	06/08/2015

47. Further or in the alternative, the Shared Ownership Clauses contained in the Sub-leases were not in the form of the applicable HCA Standard Shared Ownership Flat Lease, in that they omitted the 21 year pre-emption period following 100% staticasing (see the definition of "Pre-emption Period" at p.29 HCA Lease cf. p.12 of the Sub-leases).
48. The agreements for sub-lease (referred to in the table below as "ASL"), memorandum of staticasing and Sub-leases disclosed by LDHA purport to record the following:

49. Further or alternatively, even if (contrary to the above) the payments for the grant of the Sub-leases ~~was divided into an initial premium and one or more staircasing payments were as recorded in the above memoranda of staircasing~~, the Claimant will rely on the above and contend, first, that the full purchase price of ~~the each~~ Sub-lease was paid on or before completion. Therefore, upon grant the tenant owned 100% of the equity in the Sub-lease and thus any staircasing was not pursuant to at no time was it "a shared ownership lease" within the meaning of the S106 or at all; and. Ssecondly, in any event there was no purchase of additional equity pursuant to any lease and the staircasing provisions at schedule 1, para 1(a)-(f) of the Sub-leases were not implemented.

50. For the above reasons, the SOLE has not been triggered in relation to any of the AHUs.

#### Lettings at market rents until Transfers and of Flat 8 to date

51. As stated above, in about March 2015 Independent London Limited on behalf of LDHA, M&E, PGPL and/or TPIL marketed and arranged for the AHUs to be let at market rents.

52. The AHUs with the exception of Flat 8 were let at market rents from about March or April 2015 until about December 2015. Throughout this period Independent London Limited continued to let the AHUs on behalf of LDHA, M&E, PGPL and/or TPIL, notwithstanding the grant of the Sub-leases. Flat 8, in respect of which no sub-lease has been granted, has since about June 2015 been let at a market rent to one Terry Asiamah and remains so let.

53. TPIL joined in the above lettings of the AHUs by acting as the landlord, signing tenancy agreements and collecting the rents, which the tenants paid to TPIL. LDHA joined in the above lettings by acting as managing agents.

amend the above claim to add similar claims in respect of two further sites, at South 58. By letter dated 23 November 2015 the Claimant informed LDHA that it intended to

#### Pre-claim correspondence with LDHA

“The Council is investigating a potential breach of the Section 106 agreement on the register of local land charges in respect of the Site as follows:

57. With effect from no later than 9 October 2015 the Claimant caused a note to be made affecting flats 1-11. Please contact Emily Springford on 020 7525 5778 or at emily.springford@southwark.gov.uk if you require further information.”

Note on register of local land charges

number of sub-leases of flats at the Jam Factory.

On 3 August 2015 Norris J granted an interim injunction restraining the disposal of a PGP Finance No. 5 LP, another body under the control of PGP, and Terry McMillan, Factory, 27 Green Walk, London SE1 4BF. The other parties to that claim included obligations to those alleged herein in respect of a development site at the Jam under claim no. HC-2015-00233 in respect of similar breaches of planning 56. On 3 June 2015 the Claimant brought proceedings against LDHA and other parties

#### The Jam Factory claim

2014.

no. SCL508969 relating to the S106 and in particular to the deed dated 27 October 55. At all material times since 26 November 2014 there have been entries in the charges register of the Developer's freehold title registered at HM Land Registry under title 54. Further details of the above market value letters will be supplied on disclosure.

#### Entries in the charges register of freehold title

City Court, 52 Peckham Grove, London SE15 6AB and 44 Wanley Road, now known as 67 Green Dale, London SE5 8JZ.

59. By letter dated 30 November 2015 the Claimant informed LDHA that it was investigating a further similar claim concerning the Site, in respect of which none of the relevant leases or sub-leases had been registered at HM Land Registry. The letter requested pre-action disclosure. LDHA initially refused such disclosure by letter dated 16 December 2015 written and signed by Phillip Butt.

**Pre-claim correspondence with PGP Finance No. 8 LP and PGP Securities No. 8 Limited**

60. By letters dated 9 February 2016 the Claimant informed PGP Finance No.8 LP and PGP Securities No. 8 Limited that it was investigating a claim concerning breach of planning obligations at the Site and requested pre-action disclosure. They did not respond to the letters.

**Pre-action disclosure**

61. On 25 February 2016 the Claimant made an application for pre-action disclosure against LDHA, PGP Finance No. 8 LP and PGP Securities No. 8 Limited in respect of its proposed claim concerning the Site.

62. By orders dated 17 March 2016 Chief Master Marsh ordered the respondents to the application to give pre-action disclosure. Disclosure was provided pursuant to those orders:

- a. by LDHA on 31 March 2016 and 18 April 2016; and
- b. by PGP Finance No. 8 LP and PGP Securities No. 8 Limited on 15 April 2016 and 6 May 2016.

**The Transfers**

Flat	Date	Transferor	Transferee	Stated Price	OMV
2	08/04/2016	Darren	Defendants	£557,050	£725,000
3	27/04/2016	Andrew Carr	Defendant 8	£686,875	£975,000
4	16/03/2016	Filomena	Defendants	£515,000	£750,000
5	28/04/2016	Chrysos	Defendant 11	£714,350	£750,000
6	24/03/2016	Hayley	Defendants	£515,000	£775,000
7	24/03/2016	Martin	Defendant 14	£325,000	£465,000
9	24/03/2016	Karen	Defendant 15	£400,000	£625,000
10	16/03/2016	Luke Willkes	Defendants	£325,000	£475,000
11	24/03/2016	Louisa Taylor	Defendants	£525,000	£850,000

64. Particulars of the above Transfers are set out below.

#### Transferees (Defendants 5-19).

63. In March and April 2016 the Nominees of Flats 2, 4, 6, 7 and 9-11, and in respect of Flat 3 Andrew Carr and in respect of Flat 5 Chrysos Josephides, acting by or under the direction of MWE and PGPL transferred the Sub-Leases of Flats 2-7 and 9-11 to the transferees (Defendants 5-19).

For the avoidance of doubt each Transferee is required to prove that they paid the stated price in respect of the respective Transfer. In respect of the Transfers of Flats 2, 3, 5, 6, 7, 9 and 11 ("the Mortgaged Flats"), the respective Transferee obtained a loan either from CCC or from CCCII as stated in the table at para 67B below, secured by a legal charge in favour of CCC or CCCII (as the case may be) dated the same day as the Transfer. Save as is stated above, each Transferee is required and to prove the source of their funds for making such payment.

65. In respect of each of the Transfers the transferor's solicitors were Darlingtons Solicitors LLP of Darlingtons House, Spring Villa Park, Edgware, Middlesex HA8 7EB and the Transferee's solicitors were Ravi Sethi Solicitors of 1<sup>st</sup> Floor, 26 High Street, Hounslow TW3 1NW.
66. None of the Transferees by their solicitors or themselves made any local land charges search nor any other inquiry of the Claimant in respect of the S106 prior to the Transfers.

#### Subsequent dispositions

67. Defendants 5, 6 and 7 have let Flat 2 at a market rent to a household which is not in need of Affordable Housing in the London Borough of Southwark. Defendants 9 & 10 have let Flat 4 at a market rent to a household which is not in need of Affordable Housing in the London Borough of Southwark. To the best of the Claimant's information and belief Defendant 15 moved into Flat 9 and occupies it as his residence. The remaining Flats 3, 5, 6, 7, 10 and 11 have since the date of the Transfers remained unoccupied let at market rents to households who are not in need of Affordable Housing in the London Borough of Southwark.

- 67A. The following re-mortgage transactions have taken place:

Owner	Flat no.	Date of Original	Original Mortgagor	Current Mortgagor	Defendant 5-7	Defendant 8	Defendant 9 & 10	Mohammed Shaiim Khan	Harkhandha Shaiim Khan

are as follows:

67B. Accordingly, the current owners of the Sub-Leases and their current mortgagees

date in favour of Aldermore Bank Plc, Defendant 23.

Flat 11 in favour of CCC using a loan secured by a first charge of the same

d. On or about 5 April 2017 Defendants 18 and 19 discharged the charge over

date in favour of Aldermore Bank Plc, Defendant 23.

Flat 6 in favour of CCC using a loan secured by a first charge of the same

c. On or about 5 April 2017 Defendants 12 and 13 discharged the charge over

date in favour of The Mortgage Works (UK) Plc, Defendant 24.

7 in favour of CCCI using a loan secured by a first charge of the same

b. On or about 10 March 2017 Defendant 14 discharged the charge over Flat

date in favour of Virgin Money Plc, Defendant 22.

favour of CCC using a loan secured by a first charge of the same date in

a. On 21 January 2017 Defendant 8 discharged the charge over Flat 3 in

<u>Defendant 11</u> <u>Kausar Raja</u>	<u>5</u>	<u>28/04/2016</u>	<u>CCC</u>	<u>CCC</u>
<u>Defendants 12 &amp; 13</u> <u>Kishor Kumar Chawla</u> <u>Ranpreet Singh Grewal</u>	<u>6</u>	<u>24/03/2016</u>	<u>CCC</u>	<u>Aldermore</u>
<u>Defendant 14</u> <u>Ajmal Riaz Bhatti</u>	<u>7</u>	<u>24/03/2016</u>	<u>CCCII</u>	<u>Mortgage Works</u>
<u>Defendant 15</u> <u>Fahim Ul Hassan</u>	<u>9</u>	<u>24/03/2016</u>	<u>CCCII</u>	<u>CCCII</u>
<u>Defendants 16 &amp; 17</u> <u>Mamta Sethi</u> <u>Munir Ahmad</u>	<u>10</u>	<u>16/03/2016</u>	<u>N/A</u>	<u>N/A</u>
<u>Defendants 18 &amp; 19</u> <u>Harjinder Singh Gill</u> <u>Charanjeev Singh Gill</u>	<u>11</u>	<u>24/03/2016</u>	<u>CCC</u>	<u>Aldermore</u>

#### Pre-claim correspondence

68. By pre-claim letters dated 29 April 2016 and 3 May 2016 from the Claimant to LDHA, M&E and PGPL the Claimant requested LDHA, M&E and PGPL to provide undertakings to the court inter alia not to dispose of any lease or sub-lease of the Flats, nor to use the Flats otherwise than for the purpose of providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark, until trial or further order.
69. By letter dated 6 June 2016 Gordon Dadds LLP on behalf of LDHA offered to provide such an undertaking in respect of Flat 8. By letter dated 17 May 2016 Cavendish Legal Group on behalf of M&E and PGPL offered to provide such an undertaking and under cover of a letter dated 25 May 2016 provided a signed draft undertaking.

CCII agreed to provide the contractual undertakings requested in respect of Flats between the Claimant and the Transferees. By letters dated 6 April 2017 CC and not CCC and CCII would agree to be bound by the outcome of this claim as trial, without first giving 14 days' notice to the Claimant, and to confirm whether or dispose of or contract to dispose of those Flats over which they had charges pending the Claimant asked CCC and CCII to provide contractual undertakings not to ZIA. By a pre-claim letter dated 3 March 2017 to CCC and CCII, Defendants 20-21,

#### Pre-claim correspondence with mortgagees

respectively.

offered to provide similar contractual undertakings in respect of Flats 6 and 11 dated 6 June 2016 Solomons Legal LLP on behalf of Defendants 12 & 13 and 18 & 19 contractual undertakings in respect of Flats 2, 3, 5, 7 and 10 respectively. By email dated 6 June 2016 Solomons Legal LLP on behalf of Defendants 12 & 13 and 18 & 19 solicitors on behalf of Defendants 5-8, 11, 14, 16 & 17 offered to provide similar giving 14 days prior notice to the Claimant. By letter dated 6 June 2016 Ravi Sethi respectively other than by way of re-mortgage or as Affordable Housing without and 15 offered to provide contractual undertakings not to dispose of Flats 4 and 9 and 15 offered to provide contractual undertakings not to dispose of Flats 4 and 9 71. By letter dated 23 May 2016 Penman Sedgwick LLP on behalf of Defendants 9 & 10 Borough of Southwark, until trial or further order.

accommodation to households in need of Affordable Housing in the London Flats, nor to use the Flats otherwise than for the purpose of providing housing undertakings to the court inter alia not to dispose of any lease or sub-lease of the of Ravi Sethi Solicitors) the Claimant requested the Transferees to provide 2016 to Solomons Legal LLP (representing Defendants 12 & 13 and 18 & 19 in place Sedgwick LLP (representing Defendants 9 & 10 and 15) and by email dated 24 May Defendants 5-8, 11-14 and 16-19) and dated 11, 19 and 20 May 2016 to Penman Defendants 5-8, 11-14 and 16-19) and dated 11, 19 and 20 May 2016 to Penman 70. By pre-claim letters dated 19 May 2016 to Ravi Sethi Solicitors (on behalf of

2, 5, and 9. By letters dated 7 April 2016 CCC and CCCII stated an intention to defend the claim.

71B. By pre-claim letters dated 12 and 20 April 2017 to Virgin, Aldermore and Mortgage Works, Defendants 22-24, the Claimant asked them to provide contractual undertakings not to dispose or contract to dispose of those Flats over which they had charges pending trial, without first giving 14 days' notice to the Claimant, and to confirm whether or not they would agree to be bound by the outcome of this claim as between the Claimant and the Transferees. To date Virgin has provided the requested undertaking under cover of an email dated 3 May 2017 but has not otherwise responded substantively, and Aldermore and Mortgage Works have not responded substantively.

### Breaches of the AHO

#### *Market lettings*

72. In the premises, LDHA, M&E acting under the direction or control of PGPL, PGPL and TPIL, acting together or individually, let the AHUs at market rents in breach of the AHO.

73. Further particulars of the breaches of the AHO by LDHA, M&E, PGPL and TPIL in respect of lettings of the AHUs at market rents will be given on disclosure.

#### *Grant of Sub-leases*

74. In the premises, LDHA, M&E acting under the direction or control of PGPL and PGPL have breached the AHO by the grant of the Sub-leases of Flats 1-7 and 9-11 otherwise than for the purpose of a RP providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark and otherwise than on Shared Ownership Terms; and by the subsequent use of the

## Specific performance

78. It would be just to grant specific performance of the AHO ~~alternatively an injunction~~ ~~restaining breach of the AHO~~ against LDHA, M&E, PGP, and the Transferees in respect of the above continuing breaches, as stated above.

Only specific performance would provide an effective remedy. The injury is not small, nor is it capable of being properly estimated or adequately compensated in interest and in accordance with local and national planning policies, as stated above.

Because compensation would not enable the Claimant to replicate what the money because compensation would not enable the Claimant to replicate what the

77. The Transferees, Defendants 5-19, are in breach of the AHO in that Flats 2-7 and 9-11 continue to be let at market rents and/or otherwise used for purposes other than a RP providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. M&E and PGP threaten and intend to continue such breach unless restrained by order of the court.

RP providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. The Transferees threaten and intend to continue such breach unless restrained by order of the court.

76. M&E acting under the direction and control of PGP and PGP are in breach of the AHO in that Flat 1 continues to be used for purposes other than a RP providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. M&E and PGP threaten and intend to continue such breach unless restrained by order of the court.

RP providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. M&E and PGP threaten and intend to continue such breach unless restrained by order of the court.

75. LDHA, M&E acting under the direction and control of PGP and PGP are in breach of the AHO by acting together or individually to let Flat 8 at a market rent as householders other than for the purpose of a RP providing housing accommodation to AHOs otherwise than for the purpose of a RP providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark.

AHUs should otherwise provide: namely, affordable housing in a mixed community within a high quality residential development. The Claimant is willing to agree with the Transferees to vary the S106 so that the AHO requires that the AHUs shall not be used for any purpose other than by a Registered Provider providing housing accommodation on Intermediate Rent Terms (within the meaning of the original S106) to households in need of Affordable Housing in the London Borough of Southwark or alternatively to purchase the Sub-leases from the Transferees at their market values, assessed on the basis that the AHO (as so varied) applies.

79. Nor would an order of specific performance alternatively an injunction be oppressive as against the Transferees as, if (which is not admitted) they prove that the purchase prices for the Sub-leases stated above were paid and paid from their own funds, they:

- a. save that to the best of the Claimant's information and belief Defendant 15 acquired Flat 9 intending to occupy it as a residence, contrary to the terms on which CCCII advanced the loan to Defendant 15, are commercial buyers who acquired the AHUs as investment and/or buy-to-let properties;
- b. knowingly bought the Sub-leases at substantially below open market value;
- c. suspected that the AHO applied to the AHUs but deliberately failed to inquire into whether the the AHO applied to the AHUs, in particular:
  - i. they knew of the existence and terms of the S106 and/or of the unusual features of the Sub-leases and associated transactions and the purported staircasing thereof, in particular because Ravi Sethi solicitors advised them of the same inter alia in a report on title or similar advice;
  - ii. they made no local land charges search or other inquiry of the Claimant in relation to the S106;

**Sethi knew:**

Prior to their respective Transfers, the Transferees themselves and/or through Ravi Particulars of Knowledge

Further particulars will be given on disclosure.

Parties arising out of the misrepresentations made to them.

e. Further, alternatively, insofar as any of the Transferees was misled into entering into a Transfer by misrepresentations made by or on behalf of LDHA, M&E or PGPI, or another party, they have a remedy against such

loss caused thereby;

d. Alternatively, insofar as Ravi Sethi solicitors failed to advise them of the above commercial buyer would have made into the above matters on their behalf, matters or failed to make all the inquiries that a reasonably careful

the AHS;

iii. they thereby deliberately closed their eyes to the above risk and took the Transfers with constructive knowledge that the AHO applied to

favour of M&E were disclosed to them by Darlingtons;

(1) that they were buying their respective Sub-Leases at substantially below market value, because they were so informed by Mr. McMillan or one or more selling agents, namely Vidyas or Vijay Sharma, Varinder Singh and/or Mohammed Raja and/or because their mortgage obtained professional advice as to the market value of the Sub-Leases (disclosed to them prior to the Transfer), which was to this effect that the original lessor had acquired a 100% share in the Sub-Lease on the date it was granted, because memorandum of statiscing containing this information were disclosed to them by Darlingtons, and Ravi Sethi received a letter from Pitman LLP on behalf of LDHA confirming the date of 100% statiscing, which in each case was on or before the date of the Sub-Lease;

(2) that the original lessor had acquired a 100% share in the Sub-Lease on the date it was granted, because memorandum of statiscing containing this information were disclosed to them by Darlingtons, and Ravi Sethi received a letter from Pitman LLP on behalf of LDHA confirming the date of 100% statiscing, which in each case was on or before the date of the Sub-Lease;

(3) that their respective Sub-Leases had been from the date they were granted owned beneficially by M&E, because the declarations of trust in respect of the Sub-Leases in

- (4) that they were buying their respective Sub-leases from Mr McMillan or a commercial entity controlled by him because they were so informed by Mr McMillan or one or more selling agents, namely Vidja or Vijay Sharma, Varinder Singh and/or Mohammed Raja;
- (5) that the material transactions that had taken place were not typical of shared ownership schemes, because they knew that their mortgagee or the mortgagees of other Transferees had considered it necessary to obtain counsel's opinion in relation to the affordable housing obligations in the S106 before releasing the loans in respect of the purchases; and
- (6) that the transactions that had taken place were not in the ordinary course of shared ownership schemes, because it is common knowledge that shared ownership leases are a form of affordable housing intended to assist persons, who cannot afford to buy on the open market, to own their homes.

#### **Loss and damage**

80. As a result of the matters stated above the Claimant has suffered loss and damage:
- The Claimant has been temporarily deprived of the benefit of the AHO in respect of the AHUs that have been let at market rents or otherwise used for purposes other than by a RP providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark; and
  - ~~if the defendants are not restrained from selling the Sub leases to MVPs who are deceived as stated at para 36 above, the Claimant will have permanently lost the benefit of the AHUs so sold.~~
81. Such losses are and/or will be the direct result of the actions of LDHA, M&E, PGPL and TPIL in furtherance of the Conspiracy and/or they knowingly induced the said breaches.

83. In the alternative to an injunction and/or specific performance, the Claimant seeks damages under section 50, Senior Courts Act 1981 and/or at common law in respect of the loss of the AHUs as Affordable Housing. The Claimant quantifies this damage using the method used to assess damages in the case of *Woolfitt v Park*, namely the sum the Claimant would reasonably require to allow the AHUs to be sold into the open market, as follows:
- a. ~~Given the current deficit of affordable housing within the borough, the Claimant would measure a sum that was sufficient to enable it to provide more Affordable Housing than otherwise already provided Furthermore, such accommodation would need to be of an equivalent size and quality and within the same development or very near to it. The agreement units would need to be provided within the same development~~
- (2) Damages for permanent loss of AHUs in the alternative to specific performance

- c. Further particulars will be given on disclosure.
- b. The amount the Claimant claims under this head is £TBA.
- a. The difference between An appropriate percentage, namely 50%, of the open market rental values of the AHUs and the rate in accordance with Intermediate Rented Terms at the material times. The difference between the two indicates the likely subsidy the Claimant would have had to pay, and therefore would have reasonably required, in order to have provided alternative units, provided from the open market, on Intermediate Rented terms.
- (1) Damages for temporary loss of AHUs
82. The Claimant is entitled to damages to cover the period of time during which the AHUs were let at market rents or otherwise used as market housing. The Claimant seeks an award of *Woolfitt v Park* damages, namely the sum the Claimant would reasonably have required to allow the AHUs to be rented on the open market rather than let on Shared Ownership Terms, by the Defendants as follows:

~~or nearby in order to guarantee mixed communities. An appropriate percentage of the difference between: (i) the open market value of each of the Sub-leases, on the assumption that the AHO had ceased to apply to them, and (ii) the market value of the Sub-leases, on the basis that the Transferees were still bound by the AHO, in the case as at the date of the respective Transfer.~~

- b. The Claimant would have required a figure that equated to the open market value of the AHUs, plus an uplift of 25% in order to increase the number of units provided and cover operational costs.
- c. The ~~current~~ open market values of the AHUs ~~are set out at para 64 above~~, is as follows: Flat 1 £950,000, Flat 2 £725,000, Flat 3 £975,000, Flat 4 £750,000, Flat 5 £1m, Flat 6 £775,000, Flat 7 £465,000, Flat 8 £825,000, Flat 9 £625,000, Flat 10 £475,000 and Flat 11 £850,000, thus the total current open market value of the AHUs is £8,415,000. The affordable housing market values of the AHUs are as follows: Flat 2 £190,825, Flat 3 £211,099, Flat 4 £190,825, Flat 5 £211,099, Flat 6 £190,825, Flat 7 £165,734, Flat 9 £197,720, Flat 10 £165,734 and Flat 11 £190,420.
- d. The appropriate percentage in each case is 50%.
- e. Accordingly, ~~T~~the amount the Claimant claims in relation to the permanent loss of the AHUs is as follows: Flat 1 £1,187,500, Flat 2 £906,250, Flat 3 £1,218,750, Flat 4 £937,500, Flat 5 £1,250,000, Flat 6 £968,750, Flat 7 £581,250, Flat 8 £1,031,250, Flat 9 £593,750, Flat 10 £1,062,500, Flat 11 £1,062,500, thus the total claimed for the loss of the AHUs is £10,518,750.

<u>Defendant</u>	<u>Flat no.</u>	<u>Valuation (i)</u>	<u>Valuation (ii)</u>	<u>Difference</u>	<u>50%</u>
<u>5-7</u>	<u>2</u>	<u>£650,000</u>	<u>£190,825</u>	<u>£459,175</u>	<u>£229,588</u>
<u>8</u>	<u>3</u>	<u>£795,000</u>	<u>£211,099</u>	<u>£583,901</u>	<u>£291,951</u>
<u>9 &amp; 10</u>	<u>4</u>	<u>£650,000</u>	<u>£190,825</u>	<u>£459,175</u>	<u>£229,588</u>
<u>11</u>	<u>5</u>	<u>£795,000</u>	<u>£211,099</u>	<u>£583,901</u>	<u>£291,951</u>

para 83;

- Nineteenth Defendants pursuant to para 77, alternatively damages pursuant to
- (4) Specific performance of the AHO ~~alternatively an injunction~~ against the Fifth to  
pursuant to para 76, alternatively damages pursuant to para 83;
- (3) Specific performance of the AHO against the Second and Third Defendants and  
pursuant to para 75, alternatively damages pursuant to para 83;
- (2) Specific performance of the AHO against the First, Second and Third Defendants  
London Borough of Southwark
- on Shared Ownership Terms to households in need of Affordable Housing in the  
purpose other than by a Registered Provider providing housing accommodation  
are bound by a planning obligation ~~that the AHO shall not be used for any~~
- (1) As against the Fifth to Twenty-Fourth Defendants, a declaration that they AHOs

#### AND THE CLAIMANT CLAIMS:

85. Pursuant to a Toulmin order dated 31 March 2017 the claim herein against the First to  
Fourteenth Defendants was stayed on the terms of that order. The parties of the player set  
out below which are not subject to the stay are: (1), (4), (6), (9) and (10).

84. The Claimant claims interest on such damages as shall be found to be due at such  
rate and over such periods as the Court shall think just, pursuant to section 35A,  
Senior Courts Act 1981.

12 & 13	6	£650,000	£190,825	£459,175	£229,588	Total
14	7	£445,000	£165,734	£279,266	£139,633	
15	9	£525,000	£197,720	£327,280	£163,640	
16 & 17	10	£455,000	£165,734	£289,266	£144,633	
18 & 19	11	£700,000	£190,420	£509,580	£254,790	

- (5) Damages against the First, Second, Third and Fourth Defendants pursuant to paras 72 and 82;
- (6) Damages against the Fifth to Nineteenth Defendants pursuant to paras 77 and 82;
- (7) Damages against the First, Second and Third Defendants pursuant to paras 74 and 83;
- (8) Damages against the First, Second, Third and Fourth Defendants pursuant to paras 81, 82 and 83;
- (9) Interest as stated above; and
- (10) Further or other relief.

MATT HUTCHINGS

JENNIFER OSCROFT

7 June 2016

MATT HUTCHINGS QC

15 May 2017

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Amended Particulars of Claim are true.

I am duly authorised by the Claimant to sign this statement

Full name Doreen Forrester Brown Office held Director of Law & Democracy

Signature

D Forrester-B

## APPENDIX

Defendants

- (1) LONDON DISTRICT HOUSING ASSOCIATION LIMITED  
(2) MORTGAGE & EQUITY FINANCE PARTNERS NO. 16 LP  
(3) PROTECIED GROWTH PLAN LIMITED  
(4) TRADEMARK PROPERTY AND INVESTMENTS LIMITED  
(5) KRISHNA PRASAD INAMPUDI  
(6) VINNY KUMAR DAGGOLU  
(7) RAVINDER REDDY  
(8) MILAN BABIC  
(9) MOHAMMAD SHAHID KHAN  
(10) FARKHANDA SHAMIN KHAN  
(11) KAUSAR RAJA  
(12) KISHOR KUMAR CHAWLA  
(13) RANPREET SINGH GREWAL  
(14) AJMAL RIAZ BHATTI  
(15) FAHIM UL HASAN  
(16) MAMTA SEHTI  
(17) MUNIR AHMAD  
(18) HARJINDER SINGH GUJ  
(19) CHARANJEET SINGH GUJ  
(20) CREDIT CAPITAL CORPORATION LIMITED  
(21) CREDIT CAPITAL CORPORATION II LIMITED  
(22) VIRGIN MONEY PLC  
(23) ALDERMORE BANK PLC  
(24) THE MORTGAGE WORKS (UK) PLC

and

Claimant

LONDON BOROUGH OF SOUTHWARK

BETWEEN:

CLAIM NO. HC-2016-001745

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION