Claim No L10CL205

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 30 June 2025

Before :

HIS HONOUR JUDGE MONTY KC

- -

Between :

PRINCIPAL BRIDGING LIMITED
(formerly UK BRIDGING LOANS LIMITED)

Claimant

- and -
MR PETER ERNEST LEWIS

Defendant

- -

Mr Gavin Bennison (instructed by **Sydney Mitchell Solicitors**) for the **Claimant**
Mr Rhys Johns (instructed by **North Star Law**) for the **Defendant**

Hearing dates: 16-17 June 2025

- -

Approved Judgment

HHJ Monty KC:

Introduction

1. By this claim, UK Bridging Loans Limited ("UKBL"), now known as Principal Bridging Limited, seeks possession of a property over which it has a second charge to secure payment of money due under a loan it made to the Defendant, Mr Lewis, the owner of the property. UKBL also seeks a money judgment for the sum said to be due under the loan.

2. On 3 November 2022, UKBL lent Mr Lewis £170,062.11 for a 4-month period at the rate of 2% per month during the term, with a default rate of 5% per month compounded in the event the loan was not repaid at the end of the term. The net loan, after deduction of interest for the 4 months, plus costs and fees, was £122,000.

3. Mr Lewis is the registered proprietor of a property at 6 Queens Garth, Taymount Rise, London SE23. The loan was secured on that property by a second charge. The first charge is in the name of Topaz Finance Limited, securing the sum borrowed by Mr Lewis when he purchased the property from his mother (who still lives with him in the property) in 2009. Mr Lewis's mother had bought the property from the local authority under the "Right to Buy" scheme.

4. The loan was not repaid at the end of the term, and indeed nothing has been repaid to date. Interest at the default rate means that the amount now said to be due is £666,665.43 plus costs and interest on costs (provision was made for costs and interest in the loan agreement) of £89,618.20 and £4,480.91 respectively; the total amount claimed, as at 3 July 2025, is calculated at £760,764.54.

5. The Financial Conduct Authority ("FCA") is the financial services regulator in the United Kingdom, and its principal role is authorising and regulating financial services firms and companies. As its name suggests, UKBL provides short-term bridging finance secured by charges over property. UKBL is not regulated by the FCA. It would be a breach of the general prohibition in section 19 of the Financial Services and Markets Act 2000 ("FSMA") for UKBL to enter into a regulated mortgage contract, as that is a regulated activity. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the "RAO") contains the relevant Articles which apply in this field of lending.

6. The claim is defended on the basis that the loan was in fact a regulated mortgage contract made by an unregulated lender, and in the circumstances its terms are unenforceable (the effect is that although Mr Lewis accepts a liability to repay the capital sum, he says he is not liable for interest). Mr Lewis further asserts that if contrary to that first point the loan was unregulated, the relationship with UKBL was unfair within the meaning of the Consumer Credit Act 1974 (the "CCA"), and that the amount due should be reduced. It is also said that the default interest rate is an irrecoverable penalty.

7. UKBL says that the loan was unregulated as it was for business purposes (it paid off an earlier bridging loan, which in turn had been taken out to pay off another bridging loan which Mr Lewis had taken out for business purposes), and that nothing was unfair

about the relationship between it and Mr Lewis. It is denied that the default rate was a penalty. UKBL says that if contrary to its primary position the loan was a regulated mortgage contract, it can nonetheless enforce it.

8. Each party had the benefit of very effective representation, with Mr Bennison for UKBL and Mr Johns for Mr Lewis. I am grateful to them both for their clear and careful submissions.

9. The issues I have to decide are:

   Issue 1: Was the loan a regulated mortgage contract, or an unregulated loan?

   Issue 2: If the loan was a regulated mortgage contract, is it nonetheless enforceable?

   Issue 3: Was the default interest rate a penalty?

   Issue 4: Was the relationship unfair?

A brief summary of the legal issues

10. The relevant regulatory and legal framework is in summary as set out in this section of my judgment. It is very much a summary; I will set out the law in more detail later, and it is of course the detail, taken from FSMA and the RAO, which is definitive, rather than my summary.

11. **Regulated/unregulated loan:** The loan would not be a regulated mortgage contract if it was made for business purposes. The UKBL loan was used to pay off the previous loan (which in turn had paid off the first loan), so if the first loan was for business purposes, the second was too, and so was the UKBL loan. If the first two loans were not in fact business loans, then nor would the UKBL loan have been a business loan; instead, subject to the lender's state of knowledge, it would have been a regulated mortgage contract and UKBL would thus have contravened the general prohibition against unregulated lenders making regulated loans. UKBL could only enforce the loan in these circumstances if it reasonably believed that it was not contravening the general prohibition by making the loan.

12. I therefore need to decide whether the loan was for business purposes. If it was, then it was unregulated and enforceable, subject to the points about penalty interest and unfair relationship. If it was not, two other points arise. First, whether UKBL knew or had reasonable cause to suspect that it was not a business loan, and secondly whether UKBL reasonably believed it was not contravening the general prohibition when it made the loan. These latter two points are intertwined.

13. **Penalty interest:** The default rate of interest is not recoverable if in law it amounts to a penalty; whether a clause in an agreement is a penalty is decided as a matter of construction of the relevant provision, and it in essence (a) whether a legitimate business interest is served and protected by the clause, and (b) whether the rate is nevertheless extravagant, exorbitant or unconscionable.

14. **Unfair relationship:** If the relationship between lender and creditor is unfair on one or more of the bases set out in section 140A(1)(a)-(c) of the CCA, remedies are available to the court to ensure that the relationship is no longer unfair. This point does not arise

if, in fact, the loan was a regulated mortgage contract, but only if it was an unregulated loan.

The evidence

15. I heard evidence from two witnesses for UKBL, and then from Mr Lewis.

16. Ms Jade Buswell is a senior underwriter/funder with UKBL who dealt with Mr Lewis after completion of the loan. Ms Buswell wrote to Mr Lewis advising that the loan was due for repayment on 3 February 2023, and she wrote further letters to him about commencing possession proceedings; Ms Buswell accepted that she made an error, and that the loan was not due to be repaid until March (not February) 2023, and this error was eventually spotted, at which point she sent Mr Lewis a further 15-day letter based on the failure to repay in March. Ms Buswell also corresponded with Mr Lewis over his request for an extension of time to pay, which she refused to grant. At the start of her evidence, Ms Buswell produced an up-dated schedule of loss. Ms Buswell's evidence was clear and consistent, and I accept it.

17. Ms Kelly Garvie is a senior underwriter with UKBL. Ms Garvie dealt with the loan application between October 2022 (when the application was made) through to completion (on 3 November 2022) and also dealt with some queries raised by Mr Lewis just after completion. Ms Garvie was questioned about whether she should have appreciated that the loan was not for business purposes, and whether she should have made further enquiries of Mr Lewis, and I will deal with this when I look at the chronology shortly. Of particular importance was Ms Garvie's evidence about how she completed some of the information in the loan agreement documentation and how she dealt with a telephone call in which she ran through the salient points about the loan. Ms Garvie said that she did fill in part of the agreement but on Mr Lewis's express instructions, and she was challenged about this in cross-examination, as she was about the telephone call. Ms Garvie was rather guarded about what she was prepared to say, but I think she was trying to assist the court by stating what she was able to recall. I have been careful to test her evidence against the contemporaneous documentation.

18. Mr Lewis was a forthright witness. The theme of his evidence was that he had been advised by brokers all along to say that this was a business loan, whereas it was not. As it happens, Mr Lewis accepts that the first of the three loans was partly intended for a business which he hoped to set up, but he did not in the event do so. He said that he was told by the brokers that it would be easier to get a loan if he said it was for business purposes, and that all the lenders would be concerned about would be whether he could repay it. In broad terms I accept his evidence in this regard. Mr Lewis went on to assert that he was told by Ms Garvie that he had to present the application to UKBL as a business loan, and that she told him how to complete the application and even completed part of it for him without his instructions. That, for reasons I will set out below, I do not accept. Mr Lewis did not produce any evidence of having applied for loans to repay UKBL, and even though he said in the witness box he had that evidence, it was not disclosed. I have considerable sympathy for Mr Lewis. He borrowed £170,000 and now is said to owe over £760,000. If he loses this claim, he will lose his house and even a sale of the property will not cover a judgment in that amount. But that is the product of the terms of loan and the fact that he has not repaid anything since March 2023 when the loan should have been repaid. It is also the case that Mr Lewis expressly told UKBL that this was a business loan and that the earlier loans were also business loans, which was as I shall explain untrue and he knew it was untrue.

19. In addition to that evidence, I read the statement of Mr Gary Latham, pursuant to a late Civil Evidence Act Notice (for which I gave permission at the start of the trial). Mr Latham had given a witness statement for this case on 11 September 2024, in which he explained that he was a director and shareholder of UKBL. His statement dealt with the loan by way of commentary on the documents, which was not particularly of assistance, but in the latter few paragraphs of his statement he deals with the interest rates charged by UKBL. Sadly, Mr Latham died unexpectedly on 16 May 2025. I have read his statement and have given it such weight as I think appropriate, bearing in mind that there could be no testing of his evidence at trial.

20. Finally, there was a report from Mr David Griffiths, who had been appointed as a single joint expert on short term bridging loan interest rates. I have taken into account what Mr Griffiths said in his report and in response to written questions, all of which I accept and which I found helpful. Mr Griffiths did not give oral evidence at trial.

Chronology and factual findings

21. In this section of my judgment I will go through events in chronological order (although I will have to jump backwards and forwards on occasion) and set out my factual findings. Some of my factual findings are also set out in the later section of this judgment when I deal with the law in more detail.

22. In July 2021, Mr Lewis took out a short-term bridging loan with Skybridge Lending Limited ("SLL"). He had contacted a broker, Finanta Limited ("FL"), who assisted with his application. On 17 May 2021, SLL made an offer in principle to Mr Lewis to lend £68,824.68 gross (net of interest, costs and charges it was £50,000) for a minimum term of six months; interest at 2.5% per month, totalling £10,323.70, together with fees of £8,500.95, were to be deducted from the gross loan. The purpose of the loan was stated to be "2nd charge on home for business investment". In an email from Mr Lewis to SLL of 20 May 2021, Mr Lewis set out (in response to SLL's request that he "provide more of a breakdown for the use of funds") the following: "Expenditure of funds. £15000 dept [sc. debt] consolidation, £10000 light refub [sc. refurb] 2 weeks duration on current Property, 25000 into business."

23. In his evidence at trial, Mr Lewis said that the debts were personal debts, as he was an employee (or was self-employed) but was not running, and never did run, a business (although he had the intention of doing so). He explained that he had intended to set up a property-related business with the £25,000, but his property suffered from water damage; in the event he used the money to do repairs at the property, and later (at some unspecified date, but before he applied for the second loan) he abandoned the intention to start up a business. None of that evidence was challenged, even though it did not feature in his witness statement, and whilst I have some lingering doubts about whether Mr Lewis really had an intention to set up a business, I am prepared to accept it.

24. Mr Lewis signed a Declaration of Use of Funds, in which he declared, "I am entering this agreement wholly or predominantly for the purposes of a business carried on by me." The Declaration also stated, "Raising funds to invest into business. The business is building contracting of which I am a sole trader." In his oral evidence, Mr Lewis said that he really ought to have said "of which I am to be a sole trader".

25. The importance of the words "wholly or predominantly for the purposes of a business carried on by me" is that under the RAO a second charge business loan is not a regulated mortgage contract, and it will be a second charge business loan if, among other things, it is "entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower." I will deal in more detail with the RAO later in this judgment. It seems to me clear that a loan of £50,000 net, of which half was to be used for a business which Mr Lewis at that time intended to set up, could not be "wholly or predominantly" a business loan. The word "predominantly" carries the natural meaning, at the very least, of "more than half" (and I would suggest it must mean something reasonably substantially more than half, but I do not need to decide that point of lexical semantics).

26. Nevertheless, and despite having been expressly told by Mr Lewis in his email that only half of the loan was intended to be used for business purposes, Mr Lewis signed the Declaration. Mr Lewis was in my view clearly aware of the meaning of the words "I am entering this agreement wholly or predominantly for the purposes of a business carried on by me". I accept that Mr Lewis is and was not familiar with the ins and outs of the RAO nor any other regulatory provisions, but this is a clear statement using easily understood language. In my view, Mr Lewis knew that he had only earmarked half of the money for the proposed business, and he knew that he was not being accurate when he said that the money was "wholly or predominantly for the purposes of a business carried on [or even to be carried on] by me". Quite why SLL felt satisfied that it could have made an unregulated loan in the circumstances is a puzzle. It may be that something happened between the email of 20 May 2021 and completion of the SLL loan – about which Mr Lewis has not told me, and in respect of which there is no disclosed documentation – which led SLL to be satisfied about the "wholly or predominantly" point. Since the SLL loan was later paid off by the second loan, I need not speculate. But I am satisfied that as a matter of fact, and I so find, the loan from SLL was not entered into "wholly or predominantly for the purposes of a business carried on by" or, to add the words used in the RAO, intended to be carried on by, Mr Lewis. I am also satisfied that Mr Lewis either knew that it was not, because he knew what "wholly or predominantly" meant in this context, or that as I have said he agreed something with SLL about which I have had no evidence. Since I am not speculating, I find as a fact it was the former, and that Mr Lewis knew that this was not a business loan and that he was not being accurate when he signed the Declaration. I accept Mr Lewis's evidence that FL had told him that it would be easier to get a loan if he said it was for business, and that FL continued to tell him this when he went back to them as the SLL loan term approached the end of its term.

27. On 7 January 2022, Mr Lewis was offered a 3-month extension of the SLL loan term, which was eventually agreed on 19 January 2022, but not before Mr Lewis was in default of a condition that he marketed the property until sold. Because of the default on the loan (nothing was repaid at the term date, before the extension was agreed), Mr Lewis became obliged to pay interest at the default rate under the SLL loan.

28. On 6 April 2022, Mr Lewis took out a replacement bridging loan from Certain Bridge Limited ("CBL"). The loan amount was £115,741.72 gross, for a fixed 6-month term, secured by a second legal charge. Interest was to be charged at 2% per month during the term and, like the SLL, interest was deducted from the gross loan on drawdown, together with a facility fee of £10,845.83 and borrower's broker's fee of £6,000. In the

event of default the monthly interest rate was 5% per month compounded. The purpose of the loan was stated to be "Business cash flow".

29. I accept that a loan used to pay off business borrowings would be a business loan. However, since the SLL loan was not a business loan (within the meaning of the RAO), the CBL loan was not a business loan either; by this time, Mr Lewis had abandoned any intention of starting up a business, and the net amount of the CBL loan was only enough to pay off the SLL loan, all of which he had spent.

30. In my judgment, Mr Lewis knew that he was making a false declaration to CBL when he accepted the loan offer (which referred to "Business cash flow") and signed the Declaration that he was "entering this agreement wholly or predominantly for the purposes of a business carried on by me/us or intended to be carried on by me/us". I do not have copies of the signed acceptance or the Declaration, but as an unregulated lender, I am satisfied that CBL would have ensured that Mr Lewis signed both documents, and I find as a fact that he did. I accept Mr Lewis's evidence that he did so because FL told him he should do so; but I also find that he did so knowing that what he was telling CBL was false in the sense that by the time of the CBL loan, there was no business intention and therefore no need for money for "business cash flow". If the SLL loan had been a business loan, then the CBL loan which paid it off would also have been a business loan. However, as I have already found, Mr Lewis knew that the Declaration to SLL was not accurate, and I find as a fact that he also knew that the Declaration to CBL was similarly untrue.

31. Mr Lewis said in his oral evidence that he was convinced there was a connection between FL and SLL/CBL and worked out that there was (it appears there was at least one common director) – but there is no connection between FL and UKBL and FL were not UKBL's agents.

32. Mr Lewis also told me that by the time of the CBL loan, he had rejected three possible loans because of the terms on offer. The various emails between FL and Mr Lewis refer to three potential loans. I do not accept Mr Lewis's evidence about this. In my judgment, the potential lenders rejected Mr Lewis's applications, not the other way around. He also told me that he had applied for "a proper high street mortgage" but there was no corroborative evidence about that. I do not accept that Mr Lewis would have taken out a further bridging loan, with the usual high rates, if a regular mortgage was indeed a real possibility.

33. The CBL term was coming to an end when in September 2022 Mr Lewis again approached FL to find him another loan to pay it off. The trial bundle contains the FL application form, which I find as a fact Mr Lewis completed online, but I also accept his evidence that it was FL who told him to say that the purpose of the intended new loan was "Funds for business purposes." Mr Lewis knew – for the same reasons as I have set out above – that this was false. The application was referred by FL to UK Property Finance Limited ("UKPF"), another broker, who in the event made an offer of funding on behalf of UKBL on 3 October 2022. The offer was for a net loan of £120,000, which was the amount Mr Lewis needed to pay off the CBL loan, and the application said that the funds were to "Repay existing bridge". The gross amount of the loan was £167,507.57; interest was to be at 2% per month during the term with a default rate of 5% per month compounded; the lender's facility costs were £23,606.10; the external broker's fee due to FL £10,000; and administration costs were £1,145.00.

The loan offer identified the purpose of the loan as being "repayment of an existing bridging loan with [CBL] which ends on the 6th of October… You will repay the bridge by selling and downsizing".

34. Mr Lewis emailed UKPF with a query over the administration fee, and that email of 4 October 2022 included the sentence, "Also can you give clear instructions of which parts of the documents I'm to sign". When UKPF answered that query, they said that "Kelly [Garvie] will be in touch shortly to explain what documents need signing and where." Ms Garvie was dealing with matters for UKBL. On 4 October 2022, Ms Garvie sent various documents to Mr Lewis by email for his signature, including the loan offer. The email said, "we have arranged a document collection appointment Today at 5.30pm, the agent will arrive with the documents already printed off, if you can supply the utility bill and latest bank statement at the time of appointment, and an email explaining what the loan will be used for." Ms Garvie also asked Mr Lewis to deal with 7 matters. These included "Proof of what you used the previous bridging finance for", and "Email confirming what the loan is to be used for and how you intend to pay it back." Ms Garvie sent a similar email to Mr Lewis later that day, which also included the same 7 matters to be dealt with. This email said: "We will then need to set up your document appointment. We will arrange for an agent to come out to you with all the paperwork for you to sign."

35. Mr Lewis had already emailed UKPF early on 4 October 2022 to say that he would "send to solicitor then [at 10:30] and also I will call you in regards to document collection." This – as Mr Lewis explained, and I accept – is a reference to the Occupier's Consent Form, which was to be completed by Mrs Williams, Mr Lewis's mother, once she had taken independent legal advice; Mr Lewis confirmed, in answer to my question of him, that he did not take legal advice at any time in connection with any of the 3 loans.

36. There was no evidence to suggest that the document meeting did not take place as planned that day, and I find as a fact that it did, partly because in the bundle the following documents are all signed by Mr Lewis and dated 4 October 2022, namely the loan offer, the loan application form (identifying the existing lender as "melanite mortgages" and the purpose of the Loan as "bridge repayment"); and UKPF's Terms of Business Agreement. I also accept Ms Garvie's evidence, in her witness statement, that she had booked a document collection appointment for that date and time with their agent Mr Harding "to obtain all completed and supporting documents. This is common practice. The agent will collect the information that the client provides; if anything is outstanding this will be sent by the client by email or post." I do not accept, if it is part of Mr Lewis's case (and it was unclear whether it was), that Mr Harding told Mr Lewis how to complete the form or gave him any advice about it.

37. The loan offer contained a statement that "You will repay the bridge by selling and downsizing." Mr Lewis said that he would not have agreed to that, as it was always his intention to repay by remortgaging with a "normal" mortgage from a "high street" lender, but that is what he agreed to and he did not raise any queries about that statement at the time.

38. The loan offer also included a Declaration in similar terms to those Mr Lewis had signed with SLL and CBL. As he had done before, Mr Lewis declared that "I am / we are entering into the Loan Agreement with UK Bridging Loans (the "Agreement")

wholly or predominantly for the purpose of a business carried on by me / us or intended to be carried on by me / us." For the same reasons I have identified in respect of the earlier loans, Mr Lewis knew this was false.

39. Pages 9 and 10 of the offer were also signed and dated by Mr Lewis on 4 October. These pages comprise "Declarations to be read and answered by all borrowers." There are 4 sections to be answered, which are set out in three columns. The first column sets out a statement, and the second and third columns give the applicant the choice of "Agree" or "Disagree", with each section requesting "Please put a tick in the appropriate box".

40. Section 1 is "Declaration for exemption relating to business (articles 60C and 60O of the [RAO])". The statements in the first column include the by now familiar words: "I am / we are entering into [the Loan Agreement with UK Bridging Loans (the "Agreement")] wholly or predominantly for the purpose of a business carried on by me / us or intended to be carried on by me / us." Each of the four statements in section 1) has a tick in the "Agree" box.

41. Section 2 is "Declaration as to occupancy". There is a tick in the "Disagree" box for "the Property is not and will not be used by me / us nor my / our family as a residence." Mr Lewis was living in the property with his mother and his son and intended to continue to do so, and this declaration was accurate. The statement "We confirm that less than 40 [%] of the property to be mortgaged will be used by me / us and by my / our family [as a] residence". The relevance of this statement is that under the RAO, and again I paraphrase, the loan agreement will be a regulated mortgage contract if (inter alia and subject to exceptions which I will deal with later) at least 40% of the mortgaged property is or is intended to be used as a dwelling by the borrower or a related person. Curiously, this statement has a tick in the "Agree" box, which was not accurate, as the entirety of the property was to be the family home.

42. Section 3 is headed "Non Status", and the statement related to an acknowledgment that this is to be an unregulated commercial non-status loan. It continues, "I/We understand that you have not assessed my / our ability to repay the loan or interest on it. I/ We accept responsibility to do so." There is a tick in the "Agree" box.

43. Finally, section 4 is headed "Non-Regulated Buy to Let Declaration." All 3 of the statements in this section have been ticked in the "Agree" box. It is not clear to me why this was. This was not a buy-to-let mortgage, and the appropriate answer would in fact have been "Not applicable" or "N/A" for that reason. Nevertheless, one of the statements which has been agreed is, as before, a declaration that "I am / we are entering into [the Loan Agreement with UK Bridging Loans (the "Agreement")] wholly or predominantly for the purpose of a business carried on by me / us or intended to be carried on by me / us."

44. At the end of these sections is the statement, "I / We confirm that the above declarations are true and accurate."

45. How those ticks came to be in the boxes is not entirely clear.

46. Mr Lewis is adamant that he never ticks boxes, he puts crosses in boxes. He was not challenged on that evidence, which is I think supported by the documentation to which I will turn shortly.

47. Ms Garvie says nothing in her witness statement about the completion of these 2 pages. In relation to the later replacement offer (about which more shortly), which also contains ticks in the equivalent boxes, Ms Garvie said in her statement that whilst she could not recall if she or Mr Lewis had put the ticks in the boxes, if it was her, she did so on Mr Lewis's explicit instructions. In oral evidence, Ms Garvie said that she had done the same in respect of the first offer.

48. I find as a fact that Mr Lewis did not tick any of the boxes in the offer which he signed and dated on 4 October 2022.

49. I also find as a fact that Mr Harding did not tick those boxes either. If that was Mr Lewis's suggestion (and I think it might have been, although his evidence about the document meeting was a bit unclear), I do not accept it.

50. I find as a fact that the boxes were ticked by Ms Garvie and that she did so without taking any instructions from Mr Lewis. I thought that Ms Garvie was defensive when being asked about this issue, and I do not accept her evidence – given for the first time in the witness box – that she must have had a telephone conversation with Mr Lewis about these boxes which led to her ticking them on his behalf. I very much got the impression that Ms Garvie needed to have a fully completed document for the file, and regarded this as nothing more than (literally) a tick-box administrative exercise. This led her to tick the boxes, even though matters moved on apace and by 7 October 2022, there was a need (as I shall shortly explain) for a new offer to be issued and signed. Most of the ticks in the boxes in fact reflected what Mr Lewis had said in his application form save for (i) section 4), in respect of which as I have noted I cannot understand how that was completed at all, and (ii) the answer about the 40% use, which was plainly wrong.

51. Be all this as it may, by 6 October 2022 Ms Garvie had not received the signed copy of the ID1 identification form for Mr Lewis, which he had sent back by recorded delivery; Mr Lewis seems to blame UKBL for delaying over this, but it is clear from the emails that Ms Garvie told Mr Lewis it had not been received, Mr Lewis gave Ms Garvie the tracking number, and Ms Garvie identified that the letter had not been posted. It was eventually received. Ms Garvie was also chasing Mr Lewis to complete information via an Experian link which she had sent to him.

52. 6 October 2022 was important because it was the date on which the CBL loan fell due for repayment. As the loan had not completed that day – partly at least because the ID1 had not been received, and partly because it seems from the emails in the file that other information had not been received either – Mr Lewis became liable for default interest to CBL. As I have noted, he blamed UKBL for this, but in my judgment it was not their fault.

53. As a result of the additional interest falling due to CBL, a second loan offer was made by UKBL to cover that interest (otherwise the CBL loan could not have been repaid in full). On 7 October, Ms Garvie emailed Mr Lewis for confirmation that he was happy for her "to produce an updated offer to include the extra redemption amount." Ms

Garvie and Mr Lewis then had a conversation, following which Ms Garvie emailed Mr Lewis with a revised offer.

54. This second loan offer was in the same terms as the first save for an increase in the gross loan to £170,062.11 (from £167,507.57); the net loan was now £122,000 (from £120,000); and the lender's facility costs were increased to £23,966.10 (from £23,606.10).

55. Mr Lewis queried why the amount had been increased, and Ms Garvie spoke to CBL, who confirmed that it was the amount added by CBL as the loan was not redeemed on time; she sent this information to Mr Lewis in an email on 7 October. Mr Lewis again queried it, and Ms Garvie replied: "This is because the loan was not going to complete until we have received all documentation, we are still waiting for the ID1 in the post, they [CBL] gave the redemption that included the 5% interest added. If you can advise how you would like to proceed." Mr Lewis replied, "I said yes".

56. On 10 October 2022, Ms Garvie emailed Mr Lewis with the new offer document for him to complete and return.

57. Mr Lewis sent the new offer back to UKBL on 12 October 2022 signed by him and dated 12 October. However, he had not completed pages 9 and 10, the Declarations section which contained the same statements to be agreed or disagreed.

58. The version of the new offer in the file has ticks in the "Agree" column for all of the section 1 statements, ticks in the "Disagree" column for the two section 2 statements, and ticks in the "Agree" column for sections 3 and 4.

59. Mr Lewis is in my judgment correct when he says that he did not place any of those ticks there. I find as a fact that these statements were ticked by Ms Garvie. How did that come about?

60. In the morning of 13 October 2022, Ms Garvie emailed Mr Lewis thanking him for his email (which was the email returning the signed and dated form), and saying: "can you kindly tick the boxes on page 9 & 10 and resend those pages, can you then send the hard copy in the post to our office."

61. Later that afternoon, Ms Garvie emailed Mr Lewis again, saying that the fully completed offer was still outstanding.

62. The next day, 14 October, Mr Lewis emailed Ms Garvie for her confirmation that the only outstanding matter was the Occupier's Consent Form which his mother had yet to sign, and that she would do so the next day. Ms Garvie's response was that amongst other matters, she still required "Fully completed Offer – please complete page 9 & 10 as we require the boxes to be ticked". Mr Lewis returned the Occupier's Consent Form on 17 October, and asked, "Can you now confirm you have everything". Ms Garvie responded that several things were still outstanding, which she identified in bullet points, amongst which was: "Fully completed Offer – please complete page 9 & 10 as we require the boxes to be ticked – or of [*sic*] you can advise what boxes you require ticked I can do this for you." Similar emails were sent by Ms Garvie on 19, 20 and 21 October, but pages 9 and 10 were still not completed and returned.

63. Eventually, Mr Lewis sent an email on 25 October, saying: "I have sent a photo of how I wish for page 9 to be filled in." In his oral evidence, Mr Lewis confirmed that the photo was the one in the trial bundle in which he had placed three crosses:

    (1) Section 1, the "Declaration for exemption relating to business (articles 60C and 60O of the [RAO])", the statement "I am / we are entering into [the Loan Agreement with UK Bridging Loans (the "Agreement")] wholly or predominantly for the purpose of a business carried on by me / us or intended to be carried on by me / us" has a cross in the "Agree" box.

    (2) Section 2, the "Declaration as to occupancy". There is a cross in the "Disagree" box for "the Property is not and will not be used by me / us nor my / our family as a residence."

    (3) Section 3 "Non Status", has a cross in the "Agree" box.

64. None of the other statements on page 9 were answered.

65. Ms Garvie's witness statement said that either Mr Lewis completed pages 9 and 10 in full himself, or he authorised her to do it on his behalf. "If I did complete it then I can categorically confirm that I would only have amended or completed pages 9 and 10 on the specific instruction of Mr Lewis as set out in my email communication to him." In cross-examination, Ms Garvie said that she was not sure, and did not recall, if Mr Lewis had sent the document back "with only 1 cross on it". As I have set out, the photo sent by Mr Lewis had 3 crosses on it, but a further version of page 9 was in the additional trial bundle which was also signed by Mr Lewis and dated 12 October 2022. This version had only 1 cross on it, agreeing with the statement at section 3, but not answering any of the other statements in the other sections. I find as a fact that Mr Lewis did send this "single cross" version to Ms Garvie at some point but Ms Garvie (I think, quite properly save in respect of page 10 which only contained section 4, which had no relevance) carried on chasing Mr Lewis to complete all of pages 9 and 10. The chasing then led to Mr Lewis sending the photo.

66. I find as a fact that having received the photo, Ms Garvie proceeded to tick the boxes on the agreement herself. I find that she did so (as one can see from the final version in the bundle) on top of what I have called "the further version" (the one with the single cross on page 9), so it may be that "the further version" was in fact the version which had been returned to her by Mr Lewis and which she rightly regarded as incomplete.

67. Ms Garvie ticked "Agree" to all the section 1 statements, "Disagree" to all the section 2 statements, and "Agree" to section 3 and all of section 4.

68. The version in the trial bundle clearly shows that there was a cross in the "Agree" column for section 3, and that on page 10 a cross above the Agree/Disagree columns for section 4.

69. Ms Garvie's ticks have overridden those two crosses.

70. I find as a fact that the two crosses had been placed there by Mr Lewis.

71. Mr Lewis had put a cross in the box marked "Disagree" next to the statement that did not intend to use the property as his residence. Mr Lewis's evidence was that it was his

home, and he intended it to remain so, so that was accurate. In the first offer, when Ms Garvie completed all the ticks herself, she had also put a cross in the "Disagree" box, but had wrongly ticked "Agree" next to the statement about 40% of the property being used as a residence (see paragraph 41 above). When Ms Garvie ticked "Disagree" next to the first box this time round, it was accurate and followed Mr Lewis's express instruction by way of the photo, and the tick in the "Disagree" box about the 40% occupancy was this time accurate.

72. Of significance is the fact that in the photo Mr Lewis had confirmed, by putting a cross in the "Agree" box, that this was a business loan.

73. Mr Lewis said that he completed these boxes on the instructions of Ms Garvie, who told him how to answer the questions. I entirely reject that evidence. It is plain from the tenor of the emails that at no point did Ms Garvie tell Mr Lewis what to say or how to answer the statements at pages 9 and 10, and equally plain that it was Mr Lewis who insisted, by sending the photo, that he wanted to agree with the statement that this was a business loan. In so doing, Mr Lewis was yet again not telling the truth; he knew this was not a business loan but just as with SLL and CBL, he was content for UKBL to think and proceed on the basis that it was.

74. On 3 November 2022, Ms Garvie spoke on the telephone to Mr Lewis. The purpose of this conversation was to go through matters prior to completion. Ms Garvie had before her a "Run through script prior to completion", and she confirmed in her evidence that she would have gone through each point in the script, and placed a tick after each paragraph having read that part of the script to Mr Lewis.

75. Ms Garvie's attention was drawn to the section of the script headed "Buy to let", which includes the sentence, "You have confirmed that you or your family members have never lived in the property, nor do you intend to ever live in the subject property in the future." There is a second sentence under the "Buy to let" heading, which says, "You have confirmed that you have 0 buy to let properties already." There is a tick next to that second sentence. Ms Garvie was asked whether she would have read all of that out, and she confirmed that she would have done. When asked why, as it must have been clear to her that the first sentence did not apply as this was not a buy to let and in any event she knew that the property was the family home (particularly because Mrs Williams had signed an Occupier's Consent Form), she said, "Because it was in the script." However, Mr Lewis was insistent that Ms Garvie had not read out that sentence to him, although he accepted that she had gone through the rest of what is in the script in that telephone call. In my view, Mr Lewis is right, and Ms Garvie did not read that sentence out. For her to have done so in the circumstances would have made no sense. Ms Garvie has in fact no real recollection of this call at all.

76. I have thought carefully about whether Ms Garvie is right about the ticks being placed in the boxes on pages 9 and 10 on Mr Lewis's instructions. On balance of probabilities, what I think happened was that armed with the photo with the crosses in 3 of the boxes, and knowing that UKBL required a fully completed form, Ms Garvie told Mr Lewis in the conversation on 3 November that this was required, and that based on his confirmation that he was content for her to do so, Ms Garvie went ahead and ticked the boxes as she did, using the photo as a guide for those questions which Mr Lewis had in fact answered.

77. I have spent rather a long time on the question of who did the box-ticking and why, but ultimately, I think nothing really turns on it. This is because (a) the first offer did not proceed, and (b) it was on any footing Mr Lewis's clear instruction to Ms Garvie that this was a loan for business purposes. The significance of that is something I will deal with later in this judgment.

78. In the meantime, in the emails from Ms Garvie in which she was asking for the boxes to be completed, Ms Garvie was also asking for information she needed from Mr Lewis before she could proceed to completion of the loan. Amongst these, and of great significance, were the two requests I have identified at paragraph 34 above, namely "Proof of what you used the previous bridging finance for", and "Email confirming what the loan is to be used for and how you intend to pay it back."

79. These requests started on 4 October. On 5 October, Mr Lewis had replied, "The Loan will be used to repay current 2cd charge" and "The loan was used to pay 2cd [*sic*] charge." As I understand these answers, what Mr Lewis was saying is that he had taken out what was then his current CBL loan to repay the first loan from SLL, and that the UKBL loan would be used to repay the CBL loan; I do not think there is any other sensible way of reading those replies. On 5 October, Ms Garvie asked for "Proof of what you used the previous bridging finance for – please provide a document". This was asked in two emails that day, one at 09:41 and again at 16:43. Mr Lewis replied on 5 October at 16:51, saying, "ID1 form sent next day delivery Remaining items will be sent within the next 1 hour". There then follow emails by which Mr Lewis sent copies of the ID1, a Santander bank statement and the Occupier's Consent Form, and he apologised "for everything coming in bits". Ms Garvie chased up some outstanding bank documents and the Experian link, and the Topaz account number. There was then the email exchange about the original of the completed ID1 not having arrived in the post (and I have already dealt with that earlier in this judgment).

80. On 6 October, Ms Garvie said that "the lender has reviewed your file and has requested the following before completion … Can you confirm what the funds are to be used for, is it to repay [CBL]?"

81. Mr Johns observed that the request had now changed from requiring "proof" to a simple request for a confirmation. In fact, what happened was the request for "proof" was in relation to "what you used the previous bridging finance for", whereas the intended use of the UKBL money was always to be given by an email confirmation. It is of course right to note that "proof" in the form of a document was never provided (at least, there is nothing on the UKBL which could be said to be that documentary proof). However, I do not think that this has the significance which Mr Johns submitted it did (and which I will deal with when I go through the law in detail later in my judgment).

82. On 10 October 2022, Ms Garvie asked Mr Lewis that she still needed to know "Reason for previous second charge – please advise what the business purposes were for". On 25 October 2022, Mr Lewis sent an email (this was the email to which the photo was attached) saying, "the purpose the loan from certain finance was used to satisfy a previous loan from Skybridge." It was put to Ms Garvie that she did not chase that up (for more details); she said that she wasn't sure if she had, but in my view she clearly did because (finally) on 2 November 2022, the day before completion, Mr Lewis gave the following answer: "The Finance from sky bridge [SLL] and certain [CBL] was used to develop my Property Development Business." This was untrue, and Mr Lewis knew

it. In my view, Mr Lewis would not have sent that email if Ms Garvie had not asked for more information about purpose of the SLL and CBL loans.

83. In his oral evidence, Mr Lewis asked (rhetorically), "Why would they leave it to the last minute? Ms Garvie said, you need to produce something saying you're in a property business or the loan won't go through."

84. I reject entirely Mr Lewis's evidence, and Mr Johns's submission, that Ms Garvie told Mr Lewis that he had to say this in order to get the loan, and that she in effect dictated to him what to say in this email. Not only does the email not read as if it was something Mr Lewis was told what to say (it reads just like all of his other emails, and there is nothing unusual about how it is worded or how the email is set out), Mr Lewis does not assert in his witness statement that Ms Garvie told him what to say in the email; indeed the email is not even mentioned in the statement. In my view the assertion that such an important email was simply Mr Lewis writing down what Ms Garvie had said he needed to say to get the loan completed would, if true, have been mentioned in the statement. The information provided by Mr Lewis in the email had been requested numerous times by Ms Garvie and Mr Lewis had not provided it before; it was required by Ms Garvie, but not dictated by her.

85. The loan completed on 3 November 2022. The CBL loan was redeemed. There was a small balance of less than £500 after redemption, and whilst there is no evidence about it, so far as I am aware, it must have been sent to Mr Lewis. UKBL's second legal charge was registered against the property on 24 November 2022.

86. Mr Lewis had confirmed that his exit strategy was to sell if he had not refinanced by January (he said so expressly in his email of 2 November 2022). Mr Lewis never placed the property on the market.

87. Ms Buswell sent letters to Mr Lewis, reminding him that the loan needed to be repaid (erroneously, as I have noted, she said the repayment dated was 3 February rather than 3 March 2023), and drawing his attention to the default interest rate which would come into effect in the event of non-repayment.

88. Mr Lewis wrote to Ms Buswell on 27 February 2023, saying, "I would like to apply for a one month extension @5% while my re mortgage is finalised, which [was] an option when taking the loan." On 1 March 2023, Mr Lewis emailed, saying, "As for the loan repayment, I will ask my broker to send me details of my mortgage and forward to you." Nothing was sent. On 3 March, Ms Buswell emailed Mr Lewis asking for "details of your mortgage broker dealing with repayment of our loan." The reply from Mr Lewis on 13 March did not give those details, but instead asked for "a bridge redemption statement". A redemption statement was sent to Mr Lewis on 13 March, and it would appear that despite the earlier errors about the date, which by now had been spotted and corrected, the redemption statement was calculated using the correct date.

89. After some further chasing, Mr Lewis wrote to Ms Buswell on 4 April, as follows: "Due to the change in interest rates my remortgage has suffered a delay due to having to recalculate my term. This has caused the late repayment of your loan. I would like to ask for breathing space for 60 days in order for my loan to be processed and you repaid. … If my request for breathing space is not accepted I will arrange to pay 5% to

cover the month leaving the total as it stands but under no circumstances do I want this matter referred to court."

90. Mr Lewis never provided his broker's details nor any details of a mortgage offer, and he did not make any repayment to UKBL. He has not disclosed any documents in relation to any of this in the course of this action. In the latter part of his cross-examination, he said, "I'll prove you wrong tomorrow with my broker's details", but again, nothing materialised.

91. Ms Buswell was criticised by Mr Johns in cross-examination for not having agreed to give Mr Lewis an extension of time. Ms Buswell accepted that she had authority to grant an extension, but she did not do so because Mr Lewis had never provided any written confirmation that he had in fact a remortgage plan and he had not placed the property on the market. I accept that Ms Buswell did nothing wrong in refusing an extension, and indeed in my view her decision not to grant it was entirely understandable. As Ms Buswell explained in cross-examination, "He told us he could repay but never provided any evidence of refinance available to him."

92. In my judgment, and I find as a fact, Mr Lewis has never received any mortgage offers. This is, I think, not surprising. In his witness statement, Mr Lewis said that the damp problem at the property "made my home unsaleable", and I think this would have made it unmortgageable too. If Mr Lewis had in fact made progress towards getting a mortgage to pay off the loan, he would have provided his broker's details to Ms Buswell at the time, and would have disclosed some documentary evidence to support his position in the course of this litigation. I therefore do not accept Mr Lewis's oral evidence that he went into default because UKBL "gave me the wrong date."

93. In my view, by the time the UKBL needed to be repaid, Mr Lewis had no way of repaying it, save for putting the house on the market, which was something he was determined not to do (despite having told UKBL that he would do so if he was unable to refinance); his emails about brokers and remortgaging were simply Mr Lewis stalling for time, in the unrealistic hope that something would turn up.

94. This conclusion is in my view borne out by the fact that on 24 July 2023 Mr Lewis received an offer of a further bridging loan from another unregulated lender, SOMO. This loan offer is expressed to be for "Business purposes – Refinance commercial bridge". It was for a gross amount of £207,000, the net advance after the usual deductions being £173,706.70 (which was not even enough to pay off what was then owed to UKBL). The fact that Mr Lewis was going to yet a fourth unregulated lender for another short-term bridging loan, rather than getting a straight-forward residential mortgage (which would have had to be sufficient to pay off not only UKBL but also the first mortgagee, Topaz), shows that Mr Lewis was in a desperate position. The SOMO loan did not complete.

The law in detail

Issue 1: Was the loan a regulated mortgage contract, or an unregulated loan?

95. The first issue I need to decide is whether the UKBL loan was a regulated mortgage contract. If it is, then the starting point is that it would be unenforceable as it would

have been made in contravention of the general prohibition against non-FCA regulated lenders entering into regulated mortgage contracts.

96. A person cannot carry on a regulated activity in England and Wales unless that person is either (a) an authorised person, or (b) an exempt person. This is referred to as the "general prohibition": section 19 of FSMA.

97. Sections 22(1) and 22(1B) of FSMA provide that an activity is a "regulated activity" for the purposes of FSMA if it is an activity of a "specified kind" which is carried on by way of a business. An activity is "specified" if it is one of the activities specified in the RAO.

98. Entering into a regulated mortgage contract as a lender is a specified kind of activity: Article 61(1) of the RAO.

99. Section 26 of FSMA provides:

> "(1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party. (2) The other party is entitled to recover— (a) any money or other property paid or transferred by him under the agreement; and (b) compensation for any loss sustained by him as a result of having parted with it."

100. Article 61(3) of the RAO defines "regulated mortgage contract":

> "(3) In this Chapter
>
> (a) subject to paragraph (5), a contract is a 'regulated mortgage contract' if, at the time it is entered into, the following conditions are met—
>
> (i) the contract is one under which a person ('the lender') provides credit to an individual or to trustees ('the borrower');
>
> (ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land;
>
> (iii) at least 40% of that land is used, or is intended to be used—
>
> (aa) in the case of credit provided to an individual, as or in connection with a dwelling; or
>
> (bb) in the case of credit provided to a trustee which is not an individual, as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a related person;
>
> but such a contract is not a regulated mortgage contract if it falls within article 61A(1) or (2)."

101. Article 61A(1)(c) of the RAO sets out one of the exemptions, namely that it is a second charge business loan.

102. A second charge business loan is defined in Article 61A(6) of the RAO:

> "'second charge business loan' is a contract that, at the time it is entered into, meets the conditions in paragraphs (i) to (iii) of article 61(3)(a) and the following conditions—
>
> (a) the lender provides the borrower with credit exceeding £25,000;
>
> (b) the mortgage ranks in priority behind one or more other mortgages affecting the land in question; and
>
> (c) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower."

103. Article 61A(3)-(4) provides:

> "(3) For the purposes of this article, if an agreement includes a declaration which—
>
> (a) is made by the borrower, and
>
> (b) includes—
>
> (i) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower,
>
> (ii) a statement that the borrower understands that the borrower will not have the benefit of the protection and remedies that would be available to the borrower under the Act if the agreement were a regulated mortgage contract under the Act, and
>
> (iii) a statement that the borrower is aware that if the borrower is in any doubt as to the consequences of the agreement not being regulated by the Act, then the borrower should seek independent legal advice,
>
> the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b)(i) unless paragraph (4) applies.
>
> (4) This paragraph applies if, when the agreement is entered into—
>
> (a) the lender (or, if there is more than one lender, any of the lenders), or
>
> (b) any person who has acted on behalf of the lender (or, if there is more than one lender, any of the lenders) in connection with the entering into of the agreement,
>
> knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower."

104. The position is therefore in summary that a mortgage will be a regulated mortgage contract unless one of the exceptions applies; one such exception is that the mortgage is a second charge business loan, where one of the conditions is that the loan must be wholly or predominantly for a business carried on, or intended to be carried on, by the borrower; if the agreement contains an appropriate declaration, that raises a rebuttable presumption that it was for business purposes, but if the lender knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or

predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower, the presumption does not apply.

105. I am satisfied that Mr Lewis has never entered into a loan which was "wholly or predominantly" for business purposes. As I have held above, if half of the loan is for a proposed business and half is for personal use, it cannot fall within that definition as a matter of construction and common usage of those words.

106. The effect of the declaration, which I find that Mr Lewis signed without any prompting from UKBL (and even if FL prompted him, FL were not UKBL's agents, but independent brokers), is that the presumption applies unless it is rebutted, which would be the case if the lender knew or had reasonable cause to suspect that it was not a loan for business purposes.

107. In *Campbell v Tyrrell* [2022] EWHC 423 (Ch) at [26], HHJ Hodge QC as he then was said:

> "I accept that a loan which is taken out in order to repay existing business borrowings is taken out wholly for business purposes"

108. I respectfully agree. As I have already observed, had the CBL loan been used to repay a business loan from SLL, then the repayment of the CBL loan from the UKBL loan would make both the CBL and UKBL loans business loans within the meaning of the RAO.

109. In *Kumar v LSC Finance Ltd* [2024] EWCA Civ 254, an exemption declaration was held to be invalid, but as was held at [28]:

> "The representation that the loan was intended wholly or predominantly for business purposes remained a term of the contract. The purpose to which the borrower intends to put the money at the time that the agreement is made is just as much a matter of fact, based on the evidence, as the borrower's intended use of the land after it is acquired. A statement made by the borrower about that purpose at or before the time when the contract is entered into is evidence of that purpose irrespective of whether the statement is in a letter to the lender, or made at a pre-contractual meeting, or appears on the face of the loan agreement itself. That evidence of the borrower's intention falls to be weighed against any evidence suggesting that the loan is not intended to be used for business purposes."

110. Article 61A(3)-(4) have the effect that it is only the lender's knowledge, or the lender's reasonable cause to suspect, which would rebut the presumption. The presumption is otherwise irrebuttable where there is a valid Article 61A(3) declaration.

111. Even though it was Mr Lewis's evidence, which was not challenged, that there never was a "wholly or predominantly" business purpose for the money, and that looked at overall, the evidence is that this was not a loan for business purposes (and indeed, none of the three loans were business loans on the facts), that is not enough to rebut the presumption.

112. Mr Johns submitted that UKBL should have suspected that this might not be a business loan. First, Mr Lewis was asked several times to provide proof in relation to the CBL

and SLL loans, and to state what he intended to use the UKBL funds for, but did not reply until pressed. Secondly, Mr Lewis had only declared to UKBL that the existing charge was being repaid, and that his mother lived at the property, which was the only property he owned. Thirdly, Mr Lewis had not declared any business assets or liabilities. Fourthly, there was nothing in the application form which gave the impression that Mr Lewis wanted to borrow for business purposes and nothing which said that UKBL would only lend for business purposes. Fifthly, none of the emails from Ms Garvie said that UKBL would only lend for business purposes, nor did she ask Mr Lewis what his business was. Sixthly, Ms Garvie was responsible for ticking the boxes on pages 9 and 10.

113. Mr Johns also submitted that UKBL should, in the circumstances of this case, have been alive to the possibility that Mr Lewis might not have been entirely truthful when he said that it was for business purposes.

114. Mr Johns sought to draw an analogy with the facts of *Wood v Capital Bridging Finance Ltd* [2015] EWCA Civ 451. As Mr Johns puts it in his skeleton argument, "There, the Court of Appeal held that the business purpose declaration in the loan agreement was invalid because the borrower had made no secret of the reason she was borrowing the money (not for business carried on by her). There is an analogy to be drawn with the facts of this case: the Defendant made clear in his application form why he required the money and what he was borrowing for."

115. I do not accept these submissions. I have already dealt in detail with the circumstances which led to the completion of pages 9 and 10 of the form, and the emails asking for information about the previous loans and the intention regarding the UKBL money. I am satisfied that UKBL believed that its loan was to repay a previous bridging loan, which in turn was used to repay a first bridging loan, and that the first (and therefore the second) was for business purposes. Mr Lewis said so expressly, and had always said that this was to repay the CBL bridging loan. Mr Lewis also insisted that this was a business loan by sending back the photo of page 9 with the instruction, "I have sent a photo of how I wish for page 9 to be filled in." It therefore followed in my judgment that UKBL believed its money was to be used for business purposes as well, as it was to pay off the second loan, which in turn paid off the first, which was a business loan. This was Mr Lewis's representation again and again. I do not think that the fact Ms Garvie had to chase for information assists Mr Lewis, as this was not the only point Mr Lewis had not dealt with and which Ms Garvie was chasing, nor do I accept that Ms Garvie was put on notice of something untoward and should have appreciated that she might be being told lies. The fact that Mr Lewis did not have a business in 2022 when applying to UKBL is of less importance than that he had taken the first loan as a business loan.

116. I am therefore satisfied that UKBL did not know, nor did it have reasonable cause to suspect, that this was not a loan for business purposes.

117. It follows that this was an unregulated loan, as there was a valid declaration which has not been rebutted.

118. I must nevertheless go on to consider Issue 2, in case I am wrong about that.

Issue 2: If the loan was a regulated mortgage contract, is it nonetheless enforceable?

119. Section 28 of FSMA provides so far as is material:

> "(1) This section applies to an agreement which is unenforceable because of section 26 or 27.
>
> […]
>
> (3) If the court is satisfied that it is just and equitable in the circumstances of the case, it may allow–
>
> (a) the agreement to be enforced; or
>
> (b) money and property paid or transferred under the agreement to be retained.
>
> (4) In considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained the court must–
>
> (a) if the case arises as a result of section 26, have regard to the issue mentioned in subsection (5); or
>
> […]
>
> (5) The issue is whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement."

120. The test here is whether the lender held that reasonable belief. This involves both a subjective test as to what the lender believed and an objective test as to whether that belief was reasonable: *Jackson v Ayles* [2021] EWHC 995 (Ch) at [53]. The focus is on the circumstances of the individual case, in particular (i) those in which the agreement was made; and (ii) those in which it was subsequently performed: *In re Whitely* [2008] EWHC 1782 (Ch) at [35].

121. In my view, it is clear from all the circumstances that UKBL subjectively believed that it was entering into a non-regulated loan and that such a belief was objectively reasonable.

122. I refer to paragraphs 112-115 of this judgment. The same points apply here when considering section 28.

123. For those reasons, I am also satisfied that UKBL had no reason to think that this was not a business loan, and that this was objectively a reasonable belief.

124. I have therefore concluded that were this to have been a regulated loan, it would have been just and equitable in the circumstances of the case to permit the loan agreement to be enforced.

Issue 3: Was the default interest rate a penalty?

125. As to the principles of law concerning whether a provision for default interest is an unenforceable penalty, the Supreme Court approved a three-stage test in *Cavendish Square Holding BV v Talal El Makdessi (Rev 3)* [2015] UKSC 67, which was elucidated in the decision of Mr Fancourt QC (as he then was) in *Vivienne Westwood v Conduit Street* [2017] EWHC 350 (Ch), and I summarise this as follows:

> A liquidated damages clause will not amount to an unenforceable penalty, provided: (1) it is a secondary obligation triggered by a breach of contract (this is a threshold question); (2) the clause is in furtherance of a legitimate interest which the innocent party has in the performance of the primary obligation; (3) and the clause is not extortionate, exorbitant or unconscionable.

126. The same test applies to default interest clauses: see for example *Ahuja Investments Ltd v Victorygame Ltd* [2021] EWHC 2382 and *Houssein v London Credit Ltd* [2024] EWCA Civ 721.

127. Further guidance can be derived from the speeches in *Cavendish*.

128. In *Cavendish*, it was said at [33] and [35] that whilst the penalty rule is an interference with freedom of contract which undermines the certainty that the parties are entitled to expect of the law:

> "In a negotiated contract between properly advised parties of comparable bargaining power, the strong initial presumption must be that the parties themselves are the best judges of what is legitimate in a provision dealing with the consequences of breach."

129. At [32] it was said:

> "The true test is whether the impugned provision is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation. The innocent party can have no proper interest in simply punishing the defaulter. His interest is in performance or in some appropriate alternative to performance."

130. Nonetheless, "compensation is not necessarily the only legitimate interest that the innocent party may have in the performance of the defaulter's primary obligations" – see [32] – and at [31]:

> "A deterrent provision in a contract is simply one species of provision designed to influence the conduct of the party potentially affected. It is no different in this respect from a contractual inducement. Neither is it inherently penal or contrary to the policy of the law. The question whether it is enforceable should depend on whether the means by which the contracting party's conduct is to be influenced are 'unconscionable' or (which will usually amount to the same thing) 'extravagant' by reference to some norm."

131. At [145]:

> "In short, commercial interests may justify the imposition on a breach of contract of a financial burden which cannot either be related directly to loss caused by the breach or justified by reference to the impossibility of assessing such loss."

132. The question of whether a clause is a penalty is to be decided as a matter of construction of the relevant provision, because the question turns on the provision itself and not the circumstances in which it falls to be enforced: see [9]. Whether or not a

clause is penal depends on its substance and not the label attached to it: see [15], [258], [291-2]. Each case will turn on its own facts and circumstances.

133. At [152]:

> "What is necessary in each case is to consider, first, whether any (and if so what) legitimate business interest is served and protected by the clause, and, second, whether, assuming such an interest to exist, the provision made for the interest is nevertheless in the circumstances extravagant, exorbitant or unconscionable. In judging what is extravagant, exorbitant or unconscionable, I consider (despite contrary expressions of view) that the extent to which the parties were negotiating at arm's length on the basis of legal advice and had every opportunity to appreciate what they were agreeing must at least be a relevant factor."

134. Addressing each of the limbs of the test, I reject the submission that the default interest is a penalty.

Limb 1 – primary or secondary obligation?

135. The provisions of the loan agreement impose the default rate as a secondary obligation triggered in the event of non-payment, which is the primary obligation. Mr Bennison did not contend to the contrary.

Limb 2 – legitimate interest?

136. The question is whether the provision for default interest is in furtherance of the lender's legitimate interest in the performance of the primary obligation.

137. Firstly, in my view UKBL had a legitimate interest in enforcing prompt compliance. As was said by Bryan J in *Cargill International Trading PTE Ltd v Uttam Galva Steels Ltd* [2019] EWHC 476 (Comm) at [50]:

> "… it is self-evident in my view that there is a good commercial justification for charging a higher rate of interest on an advance of money after a default in repayment. The person who has defaulted is necessarily a greater credit risk and 'money is more expensive for a less good credit risk than for a good credit risk'. See *Lordsvale Finance Plc v Bank of Zambia* [1996] QB 752 at 763 …"

138. This was a third bridging loan, made in circumstances where as UKBL knew Mr Lewis had been in default in repaying the most recent CBL loan (UKBL did not know that Mr Lewis had also defaulted on the SLL loan, so I have not taken that into account here).

139. Secondly, Mr Lewis had not taken up the suggestion that he take legal advice about the provisions of the loan, including the default rate of interest, but the terms were clear, and in my view Mr Lewis entered into the transaction knowing all about the default rate. As Mr Bennison submitted, the default rate was the same as that under the SLL and CBL loans, and Mr Lewis had not objected to those (indeed, he had accepted his liability to pay default interest as UKBL knew when the CBL loan was not paid on time).

140. Thirdly, it would be wrong to look at this limb of the test by considering what is now actually (said to be) due, because that is purely the result, in the events which have

occurred, of nothing having been paid and the passage of time. This issue is to be decided on the basis of the facts known at the time, that is, in November 2022.

Limb 3 – extortionate, extravagant or unconscionable?

141. Again, I do not regard it as open to Mr Lewis to challenge the rate on the basis of how much is now owed and/or by a comparison with what was originally lent and/or by contrasting it with how much is now (said to be) due. However, the main thrust of Mr Johns's argument on penalty is in relation to the effect of the default rate, and how it has led to a huge increase in what is said to be owed. The problem with that submission is that it is an attempt to construe the relevant provisions other than at the time they were entered into, which is the wrong approach.

142. The expert evidence of Mr Griffiths is in summary:

    (1) There are several factors which affect the setting of a default rate, including the opportunity cost of not being able to make the money advanced work to generate income whilst the borrower is in default and the amount of management time spent in dealing with an account in default; the default rate is there also to incentivise the borrower to repay the loan on time, or to rectify the default within a short period of time.

    (2) The fact that this was a re-bridge of a previous re-bridge shows that this was a higher risk loan.

    (3) It is common for lenders to set a default rate at twice the contractual rate. This is standard market practice.

    (4) Although 2.5-3% is an average rate, 4% is the average rate charged by some lenders with higher risk borrowers, and some will charge 5%.

    (5) Compound interest for default rates on the gross loan amount whatever the nature of the breach of the loan agreement is standard market practice; simple interest would be unusual.

143. Mr Latham's statement refers to UKBL charging contractual interest on a compound basis, but with respect he was wrong about that. The contractual rate is simple interest, and it is the default rate which is compound. I appreciate that Mr Latham's evidence was not able to be tested, but I accept his evidence that the interest rates charged by UKBL are similar to other lenders in the same market – which accords with Mr Griffiths's opinion – and that it is unlikely Mr Lewis would have been able to get a loan on better terms elsewhere – which accords with my factual findings.

144. I am therefore satisfied in respect of the three limbs of the test that (a) the obligation to pay default interest is a secondary obligation triggered in the event of non-compliance with the primary obligation to repay, (ii) that the imposition of default interest in the event of non-repayment is in furtherance of the lender's legitimate interest in the performance of the primary obligation, and (iii) that the rate is not extortionate, extravagant or unconscionable. The onus was on Mr Lewis to establish that the provision was penal. He has not done so.

145. Interest is therefore recoverable at the contractual default rate.

Issue 4: Was the relationship unfair?

146. In this section of my judgment, all statutory references are to sections of the CCA.

147. Mr Lewis can only invoke the "unfair relationship" provisions in sections 140A-C if the loan is unregulated: section 140A(5).

148. Section 140A enables the Court to award the debtor a remedy if the relationship between a creditor and a debtor is unfair, on the basis of:

(a) Any terms of the agreement or of any related agreement;

(b) The way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement); or

(c) Any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement.

149. Where a debtor alleges an unfair relationship, the burden lies on the creditor to prove the contrary: section 140B(9).

150. Section 140B(1) gives the court a wide range of powers if the relationship is held to be unfair.

151. The operation of these provisions has been most helpfully summarised in the speech of Lord Leggatt JSC in *Smith v Royal Bank of Scotland plc* [2024] AC 955 at [12]-[29]. In summary, so far as is relevant to the present case:

(1) The court must determine whether the relationship arising out of the agreement (rather than the agreement itself) is unfair.

(2) The question is whether the relationship is unfair at the time when the determination is made, even if the relationship has ended (which it has not in the present case).

(3) The focus must be on whether the relationship is unfair because of one or more of the three matters set out in section 140A, which I have set out at paragraph 148 above. These are extremely broad possible causes of unfairness, and there is no restriction on the matters to which the court may have regard in deciding whether the relationship is unfair to the debtor, provided only that the court thinks them relevant.

(4) The court must consider the whole history of the relationship, going back not only to the making of the credit agreement but to any relevant act or omission of the creditor before the making of that agreement or any related agreement.

(5) The court has a very wide remedial discretion, where a determination of unfair relationship is made, in deciding what order, if any, to make. The aim is to remove the cause(s) of the unfairness which the court has identified, and to reverse any damaging financial consequences to the debtor of that unfairness, so that the relationship as a whole can no longer be regarded as unfair.

152. Mr Lewis has set out at paragraph 4 of his Defence 8 particulars of unfairness.

(i) The amount "loaned" was very significantly reduced by the deductions from the loan made at drawdown, amounting to over £48,000.

153. The deductions were clearly set out in the documentation, and when Mr Lewis queried them, the reason for the amounts were explained to him. The deductions were also expressly drawn to his attention by Ms Garvie over the telephone and were not queried by Mr Lewis. Further, as UKPF said in their initial email of 3 October 2022, which followed a telephone conversation between Mr Lewis and Ms Jethwa of UKPF, "As per your request, we have added any fees possible to the loan."

(ii) Under the Mortgage Conduct of Business Sourcebook ("MCOB") provisions … automatically rolling up fees and charges into loans is prohibited unless a customer has made a positive election to do so, which Mr Lewis has not.

154. MCOB has no application; it only applies to regulated loans: see MCOB 1.2.2. But in any event, as I have noted, Mr Lewis had expressly requested that all fees and interest should be rolled up.

(iii) The default interest rate applied to the loan was and is unconscionable and unenforceable.

155. Mr Lewis relies here expressly on his submissions that the default rate was a penalty. It was not.

(iv) UKBL has sought to misuse the Article 61A(3) RAO 2001 declaration.

(v) In so acting, UKBL has attempted – and continues to attempt – to evade the application of the consumer protection regime [FCA and MCOB].

156. I can take these together. Express reliance is placed on the assertion that the loan was in fact regulated. But as I have found, there was no misuse of the declaration, because UKBL genuinely believed that this was a business loan and the presumption that it was, because of the declaration, has not been rebutted. There was no attempt to evade the regulations. As noted, MCOB does not apply. Most importantly as Mr Bennison submits if the loan is unregulated there can be no possible unfairness arising from the fact of the Declaration having been made.

(vi) UKBL purported to give notice of its intention to commence possession proceedings on 13 February 2023.

(vii) UKBL therefore purported to terminate the loan without warning and without obvious reason.

157. I will take these together. It is accepted by UKBL that it made an error. I accept Ms Buswell's evidence that it was an innocent mistake and that she did not notice it but it was later pointed out to her by the company's solicitors. I also accept Mr Bennison's submission that it was of no consequence, principally because Mr Lewis made no attempt to repay and was never in a position to redeem the loan in any event.

(viii) UKBL exercised its enforcement rights otherwise than in good faith, including by terminating the loan and enforcing the charge when it was not entitled to do so.

158. This adds very little to any of the other points. I do not accept that UKBL acted in bad faith at any time. I particularly reject Mr Johns's submission in closing that it was in UKBL's commercial interests to take possession of the property. This point was put to Ms Buswell. Her reply was, "No – it is never in our interest to take anyone's property. We want them to redeem as they have promised." That seems to me to be right. I cannot think that any bridging lender wants to take possession of property save as a last resort – it wants borrowers who repay on time.

Conclusion on unfair relationship

159. I can detect nothing at all which renders the relationship unfair, whether in relation to any one of these 8 points, or any combination of them, or when considering all of the matters I have set out in the earlier sections of this judgment. I have also taken into account that UKBL had refused a breathing space, which was raised by Mr Johns in submissions in this context, but as I have said above, there is nothing in that point. Mr Johns also said that this was plainly unfair, because Mr Lewis had sought a loan of £50,000 from SLL, he was encouraged to take a further bridging loan as a "business loan" when it was not, by FL, who encouraged him to do the same with UKBL. I cannot see how this makes the relationship with UKBL unfair. Finally, even though Mr Lewis never took legal advice, he was encouraged to; it was his choice not to.

Conclusion

160. This was an unregulated loan, but even if it was a regulated loan, UKBL is entitled to enforce it, including the default interest provisions. There will be an order for possession, and a money judgment in the amount set out in the schedule produced by Ms Buswell. Mr Lewis's Counterclaim is dismissed.

(End of Judgment)