Neutral Citation Number: [2018] EWHC 90 (Ch)

Case No: HC-2016-003126

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/01/2018

Before :

MR JUSTICE ZACAROLI
- -

Between :
(1) TERRY JOHN NEIL **Claimants**
(2) ANTHONY WRIGHT HALL
-and-

SORAYA JASMINE HENDERSON **Defendant**
- -
- -

Mr Romie Tager QC, Ms Camilla Chorfi (instructed by **Hughmans Solicitors LLP**) for the **Claimants**
Mr Orlando Fraser QC, Mr Donald Lilly (instructed by **Stokoe Partnership Solicitors**) for the **Defendant**

Hearing dates: 20 November – 29 November 2017
- -

Judgment Approved

Mr Justice Zacaroli :

Introduction

1. This is an application by Terry John Neil ("Mr Neil") and Anthony Wright Hall to commit to prison Soraya Jasmine Henderson ("Ms Henderson" or the "Defendant") for alleged contempt of court. It is brought on two procedural footings. First, by way of a Part 23 application dated 8 December 2016 under CPR 81.18(1)(a), relating to an allegedly false witness statement served in the course of proceedings which have since been discontinued. Those proceedings (the "injunction proceedings") were commenced by a company called Manage Security Services Limited ("MSS"), for an injunction to remove Ms Henderson and two other individuals, Malcolm Barter and Anthony Clarke, from its premises, and to prevent them holding themselves out as representing MSS. MSS also sought a declaration that the only validly appointed directors of MSS were Mr Neil and Mr Hall. Second, by way of a Part 8 claim under CPR 81.14(1)(a) relating to alleged interference with the due administration of justice by deploying forged documents before the court in the injunction proceedings. The parties are agreed that this judgment will deal solely with the question whether any of the alleged contempts have been committed, leaving for a further hearing questions as to the appropriate sanction, if any.

2. The alleged contempt of court relates to (1) three documents dated 31 October 2016, but said by Ms Henderson to have been executed on or about 26 or 27 September 2016 (the "September documents"), purportedly signed by a Ms Eva Borkova; (2) a purported witness statement of Ms Borkova dated 4 November 2016 (the "disputed Borkova statement"); and (3) a witness statement of Ms Henderson dated 4 November 2016, exhibiting the September documents.

3. The September documents comprise (1) a document purporting to be a record of a decision by Ms Borkova (the "Purported Record of Decision") as the sole owner of an entity called Cornhill Services ES to remove Mr Neil from office as a director of MSS, and to replace him with Ms Henderson and Mr Clarke; (2) a letter purportedly from Cornhill Nominees ES to MSS giving notice of the removal of Mr Neil as a director of MSS; and (3) a letter purportedly from Cornhill Nominees ES to MSS giving notice requiring the immediate appointment of Ms Henderson and Mr Clarke as directors of MSS.

4. The disputed Borkova statement purports to contain evidence from Ms Borkova confirming that she, trading as Cornhill Services ES, was the owner of one-third of the shares in MSS, that as such she had the power to appoint two directors to the board of MSS, and that she signed the September documents removing Mr Neil and appointing Ms Henderson and Mr Clarke as directors of MSS on 31 October 2016.

5. The Claimants contend that Ms Henderson forged Ms Borkova's signature on the September documents and on the disputed Borkova statement, that the witness statement of Ms Henderson of 4 November 2016 was a false statement because it exhibited the September documents as if they were genuine documents, and that Ms Henderson served the disputed Borkova statement and her own statement exhibiting the September documents on the Claimants in the injunction proceedings, and deployed

them at court hearings on 1 November 2016 and 8 November 2016. It is contended that the deployment of the September documents and the disputed Borkova statement amounted to an interference with the due administration of justice, and that Ms Henderson intended such interference. It is contended that she made her witness statement dated 4 November 2016 without an honest belief in its truth knowing that it was likely to interfere with the due administration of justice.

6. The Amended Grounds in support of the Part 8 committal application contain six separate grounds. The Part 23 claim contains a single ground. I set out all seven grounds in full later in this judgment.

7. Ms Henderson denies all aspects of the claim against her.

Background

The incorporation of MSS

8. Mr Neil and Ms Henderson met in the early 1990s. They were married in March 2007. They have one (now adult) daughter together, and three other adult children from their respective previous relationships.

9. MSS provides door staff to nightclubs and other premises in the West End of London. It was set up in 2002 by Mr Neil and Ms Henderson, together with Mr Barter, Mr Hall (the Second Claimant) and Mr Hall's son, Michael, in order to amalgamate various business interests connected to the security industry. The initial shareholders of MSS were Finecourt Securities Limited, Cornhill Nominees Limited and Compass Securities Limited. Pursuant to a shareholders agreement dated 1 April 2002, Cornhill Nominees Limited was initially allotted 24% of the shares in MSS, but was entitled to subscribe for further shares, to take its holding to 33.3%, on the satisfaction of certain performance targets. At a joint board and shareholders meeting on 19 April 2002, however, the shareholders agreement was varied so that each of the shareholders held 33.3% of the shares.

10. Cornhill Nominees Limited was the vehicle through which Mr Neil and Ms Henderson's interests were to be held. There is a dispute, however, as to the beneficial ownership of the shares held by Cornhill Nominees Limited, following the setting up of MSS.

11. Mr Neil contends that the shares held by Cornhill Nominees Limited were at all times owned beneficially by him and Ms Henderson jointly.

12. Ms Henderson contends, on the other hand, that the shares were, from inception, held for the benefit of Ms Borkova. This came about, she says, in the following circumstances. When she and Mr Neil were setting up MSS they were committing everything they had to the business and shared a concern that if it all went wrong they would be destitute with no gainful employment, four children and a mortgage. On that basis they sought a sponsor, being someone who would commit to support them for a

six month period if it all went wrong. Ms Henderson says that Mr Neil first approached a friend of his and offered him ownership of their shares in MSS in return for a commitment of financial support, but he declined. She therefore approached Ms Borkova. She says that she had met Ms Borkova in London in around 2000 and that they were close friends. According to her, Ms Borkova was then a businesswoman in her own right, running a property management business in Spain. She offered her and Mr Neil's shares in MSS to Ms Borkova in return for Ms Borkova committing to supporting Mr Neil and Ms Henderson, in the event the business failed, by paying them £4,000 per month for six months to enable them to cover their outgoings. She says that she explained to Ms Borkova that as owner of the shares she would be entitled to all dividends, which she then estimated to be between £50,000-£70,000 per year.

13. Ms Borkova denies that any such arrangement was made, and denies having met Ms Henderson or Mr Neil at all until about 2005, when she babysat for their daughter at their property in Las Tortugas, Marbella and subsequently began to look after that property for them.

14. Pursuant to the shareholders' agreement, each of the shareholders of MSS was (subject to them continuing to hold at least 30% of the shares) entitled to appoint two directors of the company. From inception of the business, Mr Neil and Ms Henderson were the directors appointed by Cornhill Nominees Limited.

15. By clause 7.1 of the shareholders' agreement, certain matters could not be undertaken without the unanimous support of all shareholders who held in excess of 30% of the share capital, including the removal and appointment of directors.

The introduction of Cornhill Services ES

16. On 6 March 2008, Mr Richard Lance, of Cornhill Secretaries Limited, wrote to MSS, advising that its nominee company, Cornhill Nominees Limited, was the holder of 333 shares in MSS, and that they understood these shares were held as nominee for Ms Henderson. He asked whether MSS wished for them to continue to hold the shares, or wished to arrange their transfer. He indicated there was a £500 per year charge to continue holding the shares as nominee. On 20 April 2008 a stock transfer form was executed by Cornhill Nominees Limited, transferring its shares in MSS to Cornhill Services ES, the address for which was given as 321 Las Tortugas, Marbella, being Mr Neil's and Ms Henderson's holiday apartment in Spain

17. It is common ground that the transfer to Cornhill Services ES took place notwithstanding that this appears to have constituted a breach of clause 10 of the shareholders agreement, pursuant to which no shareholder could dispose of its interest in its shares without the prior written consent of the other shareholders, or otherwise than in accordance with the transfer provisions in the articles of association.

18. Cornhill Services ES is not a legal entity. There is a dispute as to precisely what it is. Mr Neil contends that it is a name used to denote him and Ms Henderson, in other words that he and Ms Henderson have been, since April 2008, the joint legal and beneficial owners of 33.3% of the shares in MSS.

19. Ms Henderson contends that it is a trading name of Ms Borkova. She says that she was told by Mr Hall, the company secretary of MSS, that Cornhill Nominees Limited no longer wished to hold the shares, and that they would need to be transferred to Ms Borkova. She says that she therefore arranged with Ms Borkova for the transfer of the shares to her, but that Ms Borkova suggested they be transferred into the name Cornhill Nominees ES, so as to distinguish them from her existing Spanish businesses. Ms Henderson says that the address given for Cornhill Services ES was that of her and Mr Neil's apartment in Spain because Ms Borkova was living there at the time.

20. Ms Henderson says that between 2002 and 2010, Ms Borkova received in the region of £300,000 by way of dividends from MSS.

21. Ms Borkova denies that she is, or has ever been, a shareholder in MSS, whether prior to 2008 when the legal owner was Cornhill Nominees Limited, or thereafter on her own account trading as Cornhill Services ES. She denies that she has been involved with any entity with the name 'Cornhill'. She further denies ever receiving any dividends from MSS.

Breakdown of the relationship between Mr Neil and Ms Henderson

22. Ms Henderson and Mr Neil separated in early 2014. They divorced in July 2015. Ms Henderson remained a director of MSS until October 2014. Thereafter she remained an employee of MSS until 15 September 2016, when she resigned rather than face a disciplinary panel which she described as a 'kangaroo court'.

23. In May and June 2014 they participated in a mediation, in the course of which the mediator drew up a memorandum of understanding. This included a paragraph which stated that spousal maintenance was not considered necessary, therefore no such order would be sought. A year later, the divorce proceedings were settled, leading to a consent order dated 8 July 2015. That order required Mr Neil to make payments of £5,500 per month to Ms Henderson by way of maintenance, in perpetuity. Mr Neil says that either he did not sign the consent order (and Ms Henderson forged his signature on it) or he was tricked by her into signing it without appreciating what it contained. He admits that he was paying her £5,500 per month for household expenses (though not pursuant to the consent order) until the former matrimonial home was sold (which occurred in about November 2015), but that this had nothing to do with payment of maintenance. Mr Neil is currently seeking to challenge the consent order, in particular the provision for maintenance payments, in proceedings in the family court.

24. It is Ms Henderson's evidence that from January 2016, when her new partner, Mr Andy Hart, moved in with her, Mr Neil's attitude towards her changed. She says that he became very intimidating towards her, sending threatening and harassing emails, and that on one occasion he tried to run her car off the road. She says she became very frightened of him.

25. Ms Henderson paints a picture of Mr Neil as a violent and intimidating person, pointing among other things to two convictions in the early 1990s, one for robbery and the other for using threatening, abusive, insulting words or behaviour with intention to cause fear

or provocation of violence. She contends that he boasted to her, early in their relationship, of being an enforcer for an organised crime family in London.

26. More recently, she points to the fact that Mr Neil had been arrested in June 2015 on suspicion of bribery and corruption of a police officer. Ms Henderson herself is also the subject of investigation in relation to that matter. She says that she found invoices in MSS's office for bespoke suits, which she believed were purchased for the police officer in question. She also found an invoice for a character witness and an unexplained withdrawal of £20,000 cash. When she questioned Mr Neil on it, she says he became angry and refused to explain.

27. In around May 2016 Ms Henderson said that she wished to have separate legal representation in relation to the allegations of bribery and corruption made against Mr Neil. She says Mr Neil was asking her to lie for him and she felt scared and compromised.

28. Shortly after this, she was suspended from MSS, and disciplinary proceedings were instituted against her. These related to an allegation that she had misappropriated approximately £1.2million from MSS by charging excessive expenditure to her account. Ms Henderson strongly denies any wrongdoing and claims that, on the contrary, Mr Neil had doctored the company's accounting records to disguise excessive expenditure by him from the company's funds for his own benefit.

29. These matters do not have any direct relevance to the issues I have to decide, but they are said by Ms Henderson to be relevant to the credibility of the witnesses who have been called by the Claimants to give evidence in these proceedings. The potential relevance to the credibility of Mr Neil is self-evident. In relation to certain of the other witnesses, in particular Ms Borkova and Catherine Perez (Ms Borkova's Spanish lawyer), it is said that they have been induced to give false evidence by Mr Neil, via threats of violent reprisals and/or bribery. I will return to these allegations later in this judgment, but in short Ms Henderson says that Mr Neil has a propensity for violence and intimidation, and for bribing witnesses, and that he has one or more of three motives to do so in this case: (1) to prevent Ms Henderson from accessing documents of MSS that would incriminate Mr Neil in the bribery investigations; (2) to improve his prospects in the pending family court proceedings; and (3) his personal animosity towards Ms Henderson.

Incorporation of Cornhill Services ES Limited

30. It is Ms Henderson's case that following her suspension from MSS, and in light of her increasing concerns over Mr Neil's behaviour towards her (including the allegation of misappropriation of £1.2million and, she says, the surveillance of her telephone and bugging of her home) she formulated a plan to take control of MSS. She says that she needed to speak to Ms Borkova about using her shareholding to help in this plan.

31. She says that she therefore initiated a call with Ms Borkova sometime in August 2016, during which it was agreed that Ms Borkova's shares in MSS would be transferred to a new company of which both of them would be directors and shareholders, but with Ms

Henderson holding a majority of the shares. This was proposed as a way in which Ms Borkova could continue to have an interest in MSS without having to become involved in litigation with Mr Neil. Ms Henderson claims that by this stage, as a result of what she had told Ms Borkova about Mr Neil's violent past, and his behaviour towards her, Ms Borkova was herself fearful of Mr Neil and did not want to get involved in litigation with him.

32. On 22 August 2016 Ms Henderson caused a new company, Cornhill Servives ES Limited, to be incorporated. The error in the name was subsequently corrected to Cornhill Services ES Limited on 3 October 2016. Companies House records show that both Ms Henderson and Ms Borkova were appointed directors on 22 August 2016, but that Ms Borkova resigned on 22 September 2016. Ms Henderson says that in order to appoint Ms Borkova as a director, she needed Ms Borkova's mother's maiden name, which she obtained on a telephone call with Ms Borkova shortly before 22 August 2016. Information obtained by the Claimants' solicitors from Companies House shows that the personal information pertaining to Ms Borkova provided to Companies House at the time of her appointment as a director of Cornhill Servives (or Services) ES Limited comprised: (a) the last three digits of her telephone number (200); (b) the town of her birth (PRA, or Prague) and (c) the last three digits of her national insurance number (598). The first of those was correct, but the correct town of her birth was not Prague but Kromeriz and the last three digits of her Spanish National Insurance number were in fact 982. The digits "598" are in fact the last three digits of Ms Borkova's identity card, a copy of which had been in Ms Henderson's possession for some years.

33. According to Ms Henderson, on or around 21 September 2016 she telephoned Ms Borkova to explain to her that she now understood that if Ms Borkova was a director of Cornhill Services ES Limited she would need to attend meetings, and possibly court, and be fully involved in Ms Henderson's battle with Mr Neil. She says that it was agreed on this call that Ms Borkova would cease to be a director of the new company, because the whole point of the new structure had been to ensure she was not the individual that would have to deal with Mr Neil, whom she feared. Ms Borkova said (according to Ms Henderson) that she did not want to be involved with MSS anymore, that Ms Henderson could have her shares in MSS directly if she wanted them, but that she should immediately cease to be a director or shareholder of Cornhill Services ES Limited.

34. Ms Borkova denies that she had any contact with Ms Henderson concerning the setting up of Cornhill Servives (or Services) ES Limited, or that she knew anything about that company until 2 November 2016 having been alerted in circumstances I describe below to allegations that she was involved with a company of that or a similar name. There is no corroborating evidence of any of the phone calls which Ms Henderson says were made between her and Ms Borkova in August 2016. Ms Borkova has disclosed such phone records as she says that she has, which contain no record of such calls. Ms Henderson says that she was – at this time – using temporary pre-paid pay-as-you go phones, paid for in cash, and that when she had used up the credit she would discard the SIM card. Accordingly, she has no phone records of her own.

Events in Ibiza in September 2016

35. On 26 September 2016 Ms Henderson flew to Ibiza and stayed there for five nights, with her partner, Mr Hart, spending their days and nights "enjoying the party atmosphere". It is her evidence that prior to flying to Spain she contacted Ms Borkova by text and phone to arrange a time when Ms Borkova would fly from Malaga to Ibiza to discuss various actions to be taken in relation to MSS. She says that Ms Borkova did indeed fly to Ibiza on either 27 or 28 September 2016, and met Ms Henderson at the ME hotel where Ms Henderson and Mr Hart were staying. She says they then drove 15 minutes to a restaurant for lunch, where Ms Henderson gave Ms Borkova drafts of the September documents (which Ms Henderson had drafted) for her to consider and sign, and that after an hour they returned to the hotel, Ms Borkova promising to return the documents, signed, later that day. Ms Henderson says that the September documents, signed by Ms Borkova, were indeed waiting for her at reception later the same day.

36. Ms Borkova denies that any of this took place. Her evidence is that she has never been to Ibiza and was certainly not there to meet Ms Henderson in September 2016.

37. The September documents are in fact dated 31 October 2016. This date appears in type near the top of each of the documents, and again in manuscript at the end of each document. Ms Henderson says that the date was left blank when she received the documents back from Ms Borkova, because she wanted to retain flexibility over when she would actually use the documents to gain control of MSS. She says that she added the date on 31 October 2016.

Events of 1 to 4 November 2016

38. Early in the morning of 1 November 2016, no doubt in order to justify that her actions later that day were taken by someone properly appointed to the board of MSS, Ms Henderson arranged for delivery to the home address of Mr Hall, the Second Claimant, of the September documents. Later that morning she, together with Mr Clarke and Mr Barter, representing Compass Securities Ltd, and a number of security guards hired by her, entered MSS's business premises.

39. Mr Hall passed the September documents onto Hughmans, MSS's solicitors. Mr Neil went to MSS's premises to confront Ms Henderson. There is a dispute as to his precise mood and behaviour, but it is common ground that in order to gain entry he smashed a window, breaking his hand in the process. It also common ground that at some point Mr Neil was escorted from the premises by the police, but there is a dispute as to whether he was removed forcibly or went voluntarily. Mr Jenkins, of Hughmans, arrived at the premises at 10:30am. Mr Neil and Mr Hall gave instructions, on behalf of MSS, to Mr Jenkins to seek an injunction from court that day requiring Ms Henderson, Mr Clarke and Mr Barter to leave the premises.

40. That application was made at 3pm before Hildyard J. Mr Jenkins swore an affidavit of that date in which, consistent with his obligations of full and frank disclosure, he referred to the September documents noting that they purported to be written by Cornhill Services ES. According to Rachel Barber, a consultant solicitor at Keystone solicitors retained by Ms Henderson, the barrister who attended on behalf of the defendants at that hearing, Mr Bheeroo, was instructed on behalf of Ms Henderson and

Mr Barter. Mr Bheeroo relied specifically on the September documents to seek to persuade the judge that Ms Henderson and Mr Clarke were properly appointed as directors of MSS. The judge nevertheless granted an injunction ordering Ms Henderson, Mr Clarke and Mr Barter to vacate the premises, and not to re-enter them until the return date of the 'on notice' application, which was to be 8 November 2016.

41. The events of the next three days concerning the preparation and execution of the disputed Borkova statement are of central importance, and are the subject of substantial dispute. I will therefore need to refer to them in detail.

42. Ms Henderson's evidence is that she telephoned Ms Borkova on the evening of 1 November 2016 and again on the morning of 2 November 2016, and that in the second of those calls Ms Borkova agreed to provide a witness statement for use in the injunction proceedings confirming that she was a shareholder in MSS and had executed the September documents. It was originally planned that a three-way call would take place on the evening of Thursday 3 November 2016, involving Ms Borkova in Spain and Ms Henderson and Ms Barber in England. According to Ms Henderson, however, Ms Borkova changed her mind, and at about 5:30pm on 3 November she telephoned Ms Henderson to say that she was now in England, at a house on St Andrew's Hill in Farnham Common belonging to the friend of a friend. Ms Henderson claims that she visited Ms Borkova at that house, arriving at about 6:30pm, from where they together phoned Ms Barber, in order for Ms Borkova to give instructions as to what should go into her witness statement to be filed on behalf of Ms Henderson.

43. It is common ground that Ms Barber spoke to Ms Henderson and a person whom she believed to be Ms Borkova at 8pm on 3 November for about 45 minutes and that, thereafter, Ms Barber produced a first draft of the statement and subsequently, with the assistance of Counsel and following further contact by email and telephone between her and Ms Henderson (but not Ms Borkova), Ms Barber produced a final draft for signing on the morning of Friday 4 November 2016.

44. It is Ms Henderson's evidence that she had originally arranged with Ms Borkova that she would go back to Farnham Common the next morning, with the final draft of the statement for Ms Borkova to sign. However, on the morning of 4 November, when she realised that she would need to stay by the phone in order to deal with finalising her own witness statement due to be served that afternoon, she arranged for her partner, Mr Hart, to go instead to a pre-arranged meeting point (a lay-by or grassy verge) somewhere near the Farnham Common house.

45. Mr Hart's evidence is that he did indeed take two copies of the statement to the pre-arranged meeting point, where he met a woman with dark hair, who he believed to be Ms Borkova, who signed one of the copies and gave it back to him.

46. The disputed Borkova statement includes the following matters:

    (1) Ms Borkova met Ms Henderson in London in the year 2000, at a time when Ms Borkova was living in Spain, having moved from the Czech republic a year earlier. They became friends and socialised together.

(2) Ms Borkova operates a property management and maintenance service company in Marbella, which she had set up in 2001.

(3) In 2002 Ms Henderson approached Ms Borkova in relation to a company she was establishing with Mr Neil and two others, and asked her to provide a guarantee that if the business went under she would provide up to £4000 a month for six months to cover the family expenses of Mr Neil and Ms Henderson. In return she would be the beneficial owner of the shares (i.e. one third of the shares in the company) and be entitled to dividends. She says she was willing to take the gamble and agreed to the proposal. The company was MSS. The agreement was not documented, as it was based on friendship.

(4) Ms Borkova received dividends of approximately £300,000 from MSS between 2002 and 2010.

(5) In about April 2008 (when Ms Borkova had a young son) Ms Henderson told Ms Borkova that Cornhill Nominees Ltd no longer wanted to hold the shares, and that they would be transferred to Ms Borkova. She agreed to this and provided Ms Henderson with a trading name, Cornhill Services ES. Since 2008 Ms Borkova has been a one third shareholder of MSS in her direct and personal capacity.

(6) In June 2016 Ms Henderson informed her about her suspension as an employee and her troubles with Mr Neil. While she had been willing to provide security by way of informal guarantee for the first six months of MSS, at Ms Henderson's request, that was now some 14 years ago and as she was worried about MSS given her position as shareholder and worried about Ms Henderson, she was willing to transfer the shares she held in MSS to Ms Henderson. A limited company, Cornhill services ES Ltd, was incorporated in August 2016 for this purpose. Ms Borkova was initially a director and shareholder but was then told that it be sensible for her to stand down so she wasn't drawn into the dispute with Mr Neil. She has yet to transfer her shares in MSS to this new company.

(7) Finally she says that as a shareholder she had the authority to appoint two directors. In October 2016 Ms Henderson contacted her to ask her to remove Mr Neil and instead appoint Ms Henderson and Mr Clarke as directors. She signed documentation removing Mr Neil and appointing Ms Henderson and Mr Clarke on 31 October 2016.

47. Ms Borkova denies any involvement in the preparation or signing of the disputed Borkova statement. She denies coming to England at all in November 2016. She agrees that she spoke with Ms Henderson by telephone on the evening of 1 November and the morning of 2 November, and that in one, but most likely the second, of those calls, she was asked by Ms Henderson to sign a statement acknowledging that she was the owner of some shares of a company, but she refused to do so.

48. In fact, as is demonstrated by the contemporaneous documents I refer to in detail below, from the morning of Thursday 3 November 2016 Ms Borkova was occupied in the preparation of her own witness statement dated 7 November 2016 (the genuineness

of which is not in dispute). For that purpose she was in telephone contact on 3 November with Mr Neil and Mr Jenkins. She says that she was with her Spanish lawyer (Catherine Perez) on the morning of 4 November 2016.

49. It is immediately apparent from that short summary that one or other of Ms Henderson or Ms Borkova must be lying, certainly as to the meeting between Ms Borkova and Ms Henderson on the evening of Thursday 3 November. There is no room for any middle ground. In these circumstances, the contemporaneous documents are of considerable importance, and I turn to consider them in detail.

50. The documentary record over the period 1 to 4 November 2016 consists of three parallel sets of communications: first, communications between Ms Henderson and Ms Borkova; second communications between Ms Henderson and Ms Barber concerning the production of the disputed Borkova statement; and third, communications between Mr Jenkins (the Claimants' solicitor), Ms Borkova and Ms Perez, the Spanish lawyer retained by Ms Borkova, leading to the production of Ms Borkova's undisputed witness statement dated 7 November 2016.

(1) Communications between Ms Henderson and Ms Borkova

51. At 7pm Spanish time on 1 November 2016, Ms Henderson sent a text message to Ms Borkova asking her to call her urgently. This text came from a phone number that was different to the number for Ms Henderson that was stored in Ms Borkova's phone. I set out the exchanges of text messages between them over the next three days in full, as taken from Ms Borkova's phone. All the times are Spanish time, which was 1 hour ahead of the time in the UK.

    (1) On 1 November 2016 at 7pm, the following exchanges took place:
        (a) Ms Henderson to Ms Borkova: "Hi. Could you please call me urgently? 07525477666 thank you, Soraya"
        (b) Ms Borkova to Ms Henderson: "Soraya is it you?"
        (c) Ms Henderson to Ms Borkova: "Yes x"
        (d) Ms Borkova to Ms Henderson: "Are you ok?"
        (e) Ms Henderson to Ms Borkova: "Not really. Has terry contacted you? He's told so many lies [sad face emoji]"
        (f) Ms Borkova to Ms Henderson: "No not at all"; "I have not spoken to him since I was told that the flat was sold, when that Indian guy was living there"; "I had no contact with him only with you"
        (g) Ms Henderson to Ms Borkova: "Can you talk"
        (h) Ms Borkova to Ms Henderson: "yes"
    (2) After that exchange of messages, a telephone conversation took place between Ms Henderson and Ms Borkova. Although the precise details of the conversation are in dispute, it is common ground that the discussion related to the September documents that had been presented to court in England that day. It is also common ground that this was in the nature of a preliminary discussion, with the two women agreeing to speak further the next morning.
    (3) Subsequent to that discussion, at 11:01pm, Ms Henderson texted Ms Borkova: "Will call you in the morning to update you, don't worry, it can all get sorted. Terry is a horrible liar and bully but I can solve it. Sorry to bring you into this. Chat tomorrow. Night night. Ps, if he calls you it's best you don't take the call in

case he tries to bully you too, or worse yet lie and manipulate. It's crazy what he's doing right now. xxx"

(4) On Wednesday 2 November, at 9:15am, the following exchanges took place:
   (a) Ms Borkova to Ms Henderson: "Morning. Thank you for letting me know. I still can not believe he lied at court and got my name involved. Let me know what I need to do. Does he still have the same number. I will for sure ignore his call if he tries to contact me.Xxx"
   (b) Ms Henderson to Ms Borkova: "I will call you in an hour if that's ok"
   (c) Ms Borkova to Ms Henderson: "make it please 1.5 hour as I have a meeting at 10 Oki xx"
   (d) Ms Henderson to Ms Borkova: "Perfect"

(5) A little later that morning, at 11:03am, the following exchanges took place:
   (a) Ms Henderson to Ms Borkova: "Is now a good time to call you?x"
   (b) Ms Henderson to Ms Borkova: "Are you ok?x"
   (c) Ms Borkova to Ms Henderson: "Yes now free I was with a client x"; "Are you free to call me?"
   (d) Ms Henderson to Ms Borkova: "5 minutes, just need to get out of my house, terry has it bugged xx"
   (e) Ms Borkova to Ms Henderson: "Oki"

(6) It is common ground that the two women then spoke by phone, and that the topic of the conversation included whether Ms Borkova would provide a witness statement for Ms Henderson to use in the court proceedings in England. As I have already noted, there is a sharp conflict of evidence as to Ms Borkova's response to that request.

(7) Later that evening of Wednesday 2 November, at 10:05pm, Ms Henderson sent the following text to Ms Borkova: "Hiya, hope you and Alan are ok, did you explain Terry's mess to him?x". She received no response.

(8) The following morning at 10:47am on Thursday 3 November 2016, she sent a further text to Ms Borkova: "Can you talk?". There was no answering text.

(9) On Thursday evening, 3 November, at 7:48pm, Ms Henderson sent a further text: "Sweetie, I know this has all been a terrible shock for you so I'm going to try and dirt it [sic] without you having to get involved. Hope you're ok."

(2) Communications between Ms Henderson and Ms Barber

52. Ms Henderson has waived privilege in connection with the preparation of the disputed Borkova statement, and has disclosed the following communications with Ms Barber.

(1) At 9:29am on Wednesday 2 November 2016 Ms Henderson emailed Ms Barber: "…I'm having a call with Eva in a little while and will revert back about a conference call after that."

(2) At 10:35am the same morning, Ms Henderson emailed Ms Barber again: "…I'm just about to talk to Eva."

(3) Later, at 11:25am, Ms Henderson emailed Ms Barber again: "Just had a long chat with Eva, she is very upset and scared of Terry. She says she's never had anything to do with him and can't understand why he's telling so many lies. I told her we need a 3-way call with you and she said she needs to talk to her husband tonight to explain everything as she's worried he might think she had a relationship with Terry and that's why he's now lying so much. Apparently her ex-husband's wife had affairs and he's very insecure. So, just another thing to

add to the mix, but I'll be talking to both her and her husband later tonight, to put him at ease, which means we are conference calling tomorrow."

(4) That afternoon, at 1:36pm, Ms Barber emailed Ms Henderson, noting that "…and Eva has said that she doesn't feel able to speak to me until she has spoken to her husband. I can only remind you that you have to serve clear, precise and complete witness evidence at 4pm on Friday – and therefore time is short."

(5) An hour or so later, at 2:29pm, Ms Barber emailed Ms Henderson: "Again – for a con call tomorrow with Eva if you and Eva can sort out Skype accounts by then, it will be free for her and all of us – saving cost. I mean by that not Skype where we can see each other but simply like a call but via the computer."

(6) The following morning, at 8:46am on Thursday 3 November, Ms Henderson emailed Ms Barber saying: "Eva telephone witness statement is today. I know and she knows, its not a problem. Can I have a bullet point list of what you need to ask her about please so she can prepare and get her head straight?"

(7) Ms Barber sent a list of bullet points by email to Ms Henderson at 10:19. This included such things as how Ms Borkova and Ms Henderson met, when she was asked to be beneficial owner of the shares and why, and how and why she appointed Ms Henderson a director of MSS.

(8) Later that morning, at 11:52, Ms Henderson emailed Ms Barber to say: "conference 3-way call around 8pm, she is coming to the uk and I will be with her. I know its late in the day but it's the only way she feels comfortable and safe, and to be fair to her this has been extremely stressful for her. Is this ok?"

(9) Ms Barber has produced her handwritten notes of a call which she had at 8pm on Thursday 3 November with Ms Henderson and someone she believed to be Ms Borkova. Ms Barber gave evidence, and said that she believed that most of her notes relate to things said by Ms Borkova, but some of them were notes of things said by Ms Henderson.

(10) Following the call, Ms Barber produced the first – relatively short – draft of the disputed Borkova statement, which she emailed to Mr Bheeroo (the barrister retained on behalf of Ms Henderson in the injunction proceedings) at 9:15pm. She noted that "Eva is heading back to Spain on a 12 o'clock flight tomorrow – so I need to get it signed off by 10." A minute later, she emailed Ms Henderson asking for an address to go into the statement. Ms Henderson responded at 9:21pm saying "The address on her id will be fine, the estapona address". This was a reference to a copy of Ms Borkova's ID card, which Ms Henderson had earlier sent to Ms Barber. In fact, the address on the ID card was one which Ms Borkova had previously lived in, but left in either 2007 or 2008.

(11) Mr Bheroo sent the witness statement back, with substantial changes and questions in it, at 10:16pm the same night. Ms Barber forwarded it on to Ms Henderson at 10:44pm. Ms Henderson responded immediately, offering to go through the points in the statement there and then, but Ms Barber replied saying "Morning is better."

(12) The next morning, 4 November, at 6:46am, Ms Barber emailed Ms Henderson telling her she would call in about 10 mins to have a word on the Eva statement.

(13) At 8:29am, Ms Barber emailed Ms Henderson to say: "I am just finishing Eva's – for sending to you – can you get Eva on the phone then so we can go through it?".

(14) Ms Henderson replied at 8:33am: "can you send me the draft you now have for her statement and I will speak to her? She is packing up her and Alans kids and getting ready for get [sic] to the airport".

(15) Ms Barber responded at 8:42am: "You were taking her at 11 – this is tricky – we need to get it signed by 9:30. Just doing the last bits – its important to get it right – grab her please."

(16) Ms Henderson's response, at 8:42am was: "Her flight departs from gatwick at 15:35, I have time and she is rushing around with the kids x". At 8:48am she expanded on this: "its ok, you have time, take a breath, as long as I get her to gatwick by 2pm she will be fine. I'm just trying to leave her be while she does her running around now. When I got to her last night she had two screaming children wanting her attention, she has a bad cold and this is all a favour to me. I promise she will sign her WS before I let her get on a plane, and a call from me going over any changes will be more comfortable for her than a call from anyone else. X"

(17) Ms Barber sent the re-drafted witness statement by email to Ms Henderson at 9:17am. She sent it a minute later to Mr Bheroo asking him to read it.

(18) Ms Henderson emailed Ms Barber at 9:26am saying: "Phoning Eva now, sure she will be happy with it. Shall I wait with her signing until you and Yash [Mr Bheroo] give final approval?" Ms Barber replied at 9:28: "Yes please. Yash is on it now and I am waiting for him to email back any last comments."

(19) Mr Bheroo emailed a further version of the statement to Ms Barber at 9:35, with relatively minor further changes. Ms Barber forwarded a clean version of the further draft to Ms Henderson at 9:46, saying: "Eva needs to read it over with care and be quite satisfied she is able to say what she is saying and is wholly confident that it is true to the best of her knowledge/belief. If she wants any changes then these can be made. Remember that Terry will respond to this. If all is fine please can she sign where indicated on the last page and can you scan it back to me – you can keep the original as we ought to have it ready to produce at court."

(20) The next email from Ms Henderson is at 10:23am: "Andy [her partner] has just popped over to where Eva is to get her signature on the statement, shall I scan and email it to you when he gets back? Or am I couriering over both mine and her original version so that they can go into court before 4pm?" Ms Barber replied at 10:25am, asking her to scan and email them, but keep the originals because they did not need them until Tuesday (the return date of the injunction application).

(21) At 12:03pm, emailed Ms Barber attaching a copy of the disputed Borkova statement, purportedly signed by Ms Borkova. She said: "I'm arranging transport for Eva to Gatwick, I think I need to be reachable and by a computer for the deadline."

(22) There followed an interchange between Ms Barber and Ms Henderson about filing requirements. Ms Barber emailed Ms Henderson at 2:29pm: "They are served by email by 4 and will be couriered as well, one courier from DWF for simplicity. A bundle is put together for the judge on Tuesday."

(3) Communications between Mr Jenkins, Ms Borkova and Ms Perez

53. At 6:50pm (UK time) on Wednesday 2 November 2016, Mr Neil sent a text to Ms Borkova saying: "Hi Eva its Terry Neil (las tortugas) Please call me urgently on 00447957696395. Make sure you call me not Soraya as I need to come and show you some paperwork, me and my lawyers believe that Soraya may have used your name in a fraudulent manor (sic), happy to jump on a plan (sic) with Jazzy [his and Ms Henderson's daughter] and some paperwork to enlighten you. Hope your well. So

sorry to have to contact you in this manor (sic). Please call me urgently 00447957696395".

54. Mr Jenkins, the Claimants' solicitor, has provided written evidence and attended for cross-examination. He states that on 3 November, having taken instructions from Mr Neil, he telephoned Ms Borkova on a Spanish landline number at 12:11, for approximately 15 minutes. He has produced an email from BT confirming the time and duration of that call, and the number called. In that call he told her about the documents having been presented to court by Ms Henderson, purportedly bearing Ms Borkova's signature. He says that Ms Borkova was shocked and upset, and said that she had never signed such documents. She also said that she had spoken to Ms Henderson on the evening of 1 November 2016 and again on the morning of 2 November 2016, during which conversations Ms Henderson had asked her to make a witness statement for use in the English proceedings, in which Ms Borkova would say that she was an owner of a company in Spain which she had transferred to Ms Henderson. Ms Borkova said that she had refused to do so.

55. Mr Jenkins has exhibited his email communications with Ms Borkova following this call. These show that throughout the rest of the day (between 12:51pm and 9:12pm UK time) they exchanged emails concerning the drafting of a witness statement by Ms Borkova, in which she would respond to the suggestion that she had signed the September documents.

    (1) At 12:51pm on Thursday 3 November, Mr Jenkins emailed Ms Borkova attaching copies of the documents Ms Henderson had served, i.e. the September documents.
    (2) At 1:28pm he emailed her again, attaching a draft witness statement for her to consider. He asked her to let him know if she had any comments on it, and that once she was 100% happy with it, she should take it to a local lawyer with her ID documents, and ask the lawyer to write a letter on headed paper confirming that she had signed it.
    (3) At 1:46pm he sent a further email, saying that he understood Ms Borkova had found out about the English company that was registered by Ms Henderson in August 2016 with Ms Borkova as shareholder and director, and said that he had added a section to her statement to deal with this.
    (4) At 2:21pm Ms Borkova emailed Mr Jenkins to say that the draft had been received, that she was currently out and would not be at her desk for another approx. 1.5 hours.
    (5) She emailed again at 3:43pm to say that she was back in, had read it all, and was ready to receive a call. The email from BT exhibited by Mr Jenkins shows that he then called her on the same Spanish land line as before, at 3:44pm for just under 15 minutes. He then emailed her a further version of the statement at 4:03pm, and then again at 5:51pm, having noticed a couple of errors.
    (6) At 8:32pm on the same evening (Thursday 3 November) Ms Borkova then emailed Mr Jenkins attaching the statement with a few corrections. She said that she was visiting her Spanish lawyer in the morning at 9:30am.

56. Mr Jenkins says that he called Ms Borkova on Friday 4 November on her mobile phone, when Ms Borkova was with Ms Perez, her Spanish lawyer. The purpose of the call was to discuss the draft statement that Ms Borkova was preparing at the request of

Mr Neil. Mr Jenkins has exhibited his firm's record of international phone calls over the relevant period. These show a call made to Ms Borkova's mobile telephone number, at 10:06 on Friday 4 November, which lasted 5 minutes and 34 seconds, for which a charge of £1.41 was made.

57. Ms Borkova has disclosed the "service summary" pages from the telephone bill for that same mobile number, for the period 18 October to 17 November 2016. This reveals no roaming charges (the charges made to the holder of a mobile phone in respect of outgoing and incoming calls while it is outside its home country), whether for calls made or calls received during that period. This is to be contrasted with the summary pages from her bill for the period 18 August to 17 September 2016, which included a period when she was in Paris, and which includes roaming charges for calls made and received.

58. Ms Borkova has also disclosed a series of WhatsApp messages between her and Ms Perez on 3 and 4 November. On 3 November Ms Borkova sent a message to Ms Perez saying "Hello Cathie, Hope you are well, can I give you a quick call please. I am wondering if you are available in the office tomorrow. It is eva Borkova". In further messages later on 3 November and early on 4 November they agreed to meet at Ms Perez' offices at 10am on 4 November.

59. At 4pm on Friday 4 November 2016 the disputed Borkova statement was served on Hughmans, together with Ms Henderson's witness statement of that date. Paragraph 2 of Ms Henderson's statement said "exhibited to this witness statement are copy documents in a paginated bundle." The exhibit included copies of the September documents. No other reference was made in the body of the statement to the September documents but, in paragraph 43, Ms Henderson referred to having sent suspension and termination letters to staff "as newly re-appointed director and on behalf of the shareholders Compass and Cornhill ES…"

60. Mr Jenkins forwarded a copy of the disputed Borkova statement to Ms Borkova at 4:21pm, who sent the following message to Ms Perez: "Cathie, thank you so much for putting me in touch with the uk lawyer [Mr Suleman of Bromptons]. There has been a statement issued signed by me [NOT] And mrs Henderson lawyer send this to mr. Neil lawyer. I have forwarded to you on email just in case you would want to see not only it is full of lies including my address etc."

61. Over the course of the next few days Mr Jenkins continued to liaise with Ms Borkova, Ms Perez and Mr Suleman of Bromptons solicitors in London, a firm which Ms Borkova had been advised by Ms Perez to go to, in order to help with producing her witness statement. This led to Ms Borkova's statement dated 7 November 2016, in which she said that she did not sign any of the September documents or the disputed Borkova statement, and that she had never heard of Cornhill Services ES, Cornhill Services ES Limited, and had never been a director or shareholder of any English company nor any company with the name Cornhill in it.

62. On the return date of the application for the injunction, before Rose J, Ms Henderson's statement dated 4 November 2017 and the disputed Borkova statement were included in the court bundle. They were also referred to in Ms Henderson's barrister's skeleton

argument for that hearing. Before the start of the hearing, Ms Henderson had offered undertakings in the form of the injunction already granted. Rose J continued the injunction as against the other defendants (Mr Clarke and Mr Barter). The extent to which the documents were relied on by the court, or affected the orders the court made, are said to be relevant to the question whether there was in fact any interference with the administration of justice, and I deal with those issues later in this judgement. Thereafter however, neither the September documents nor the disputed Borkova statement were relied on at any other hearing in the injunction proceedings. The proceedings were discontinued in early 2017.

63. On 8 December 2016, Mr Neil and Mr Hall issued the applications in these proceedings.

64. The permission applications came before the court on a number of occasions thereafter, but ultimately came before Robert Miles QC sitting as a deputy judge of the Chancery Division on 26 June 2017. The matter was restored before him on 30 June 2017 at which point he finalised an order granting permission to Mr Neil and Mr Hall to bring these committal proceedings.

The Law

65. The Claimants have brought these proceedings under two heads. The first, pursuant to CPR 81.14, for interference with the due administration of justice, relates both to the September documents and the purported Borkova statement. So far as the September documents are concerned, it is contended that the contempt of court consists of: (1) their service on Mr Hall, (2) their deployment in evidence at the 1 November 2016 hearing, (3) their use at the hearing on 8 November 2016 and (4) the service of Ms Henderson's witness statement of 4 November 2016 exhibiting forged documents. So far as the disputed Borkova statement is concerned, it is contended that the contempt of court consists of (1) its service and (2) its deployment in evidence on 8 November 2016.

66. The second head of the claim, pursuant to CPR 32.14 and CPR 81.18, relates to the witness statement of Ms Henderson dated 4 November 2016. CPR 32.14(1) provides that proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest believe in its truth.

67. The forms of conduct that may constitute a contempt of court are many and various. They all, however, share common characteristic: "they involve an interference with the due administration of justice either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it" (*Att-Gen v Leveller Magazine* [1979] AC 440, HL, per Lord Diplock at p.449F).

68. The second head of claim, pursuant to CPR 32.14, is not a separate species of claim, but is "an instance of the general principle that an actual or attempted interference with the administration of justice may constitute a contempt of court": *Daltel Europe Ltd v Makki* [2005] EWHC 749 (Ch), per David Richards J at [74].

69. It is common ground that the proceedings pursuant to 81.14 require both (i) an act of contempt and (ii) an intention to interfere with the administration of justice.

An act of contempt

70. There is no doubt (and no dispute in this case) that misleading the court by the use of forged documents or by presenting a false case is capable of amounting to an act of contempt.

71. There is, however, a divergence of view between the Claimants and the Defendant as to the extent to which an attempt to mislead the court must be successful before an act of contempt is established.

72. In the case of the second head of claim (a contempt consisting of making or causing to be made a false statement in a document verified by a statement of truth) the elements of the act of contempt that must be proved are summarised at volume 2 of the White Book at 3C-11, citing Stewart J in *AXA Insurance UK Plc v Rossiter* [2013] EWHC 3805 (QB), as follows: "(1) that the statement in question was false, and (2) that the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respect." It follows that *actual* interference with the course of justice is not required, provided that the making of the false statement was likely to cause such interference. The Defendant accepts this is a correct statement of the law in the case of the second head of claim, and accepts in particular that it is not necessary to show that the false statement had any actual impact, for example by causing the court to do something which it otherwise would not have done. Since the hearing the Claimants have drawn my attention to the recent decision dated 6 December 2017 in *Liverpool Victoria Insurance Company Ltd v Yavuz* [2017] EWHC 3088 (QB) which confirms this view. At [12], Warby J concludes that "the false statement must have a tendency to interfere with the course of justice in a material way … but I do not think it can be right to say that a person can only be in contempt if they succeed in causing actual interference."

73. In relation to the first head of claim, however, involving the deployment of forged documents, the Defendant contends that it is necessary, in order to establish an act of contempt, to demonstrate that the deployment of forged documents had a significant impact on the court itself, for example, by causing the court to rely upon the forged document in some way. I do not accept this proposition. As is evident from *Daltel Europe v Makki* (cited above) the second head of claim is not a separate species of contempt, but is an example of a more general principle that an actual *or attempted* interference with the administration of justice may constitute act of contempt. The same point was made by Sir Richard Scott V-C, in *Malgar Ltd v RE Leach (Engineering) Ltd*, having noted that CPR 32.14 had not introduced a new category of contempt: "The general law of contempt is that actions done by an individual which interfere with the course of justice or which attempt to interfere with the course of justice are capable of constituting contempt of court".

74. I was referred to the notes in volume two of the white book at 3C-9, where it is noted that a contempt may be committed whether the attempt is successful or not (citing *In re B* [1965] Ch 1112, where a threat made to a witness was held to constitute a contempt even though it had no impact on the witness' evidence). In *Liverpool Victoria Insurance Company v Khan* [2016] EWHC 2590 (QB), permission was sought to bring committal proceedings against a Mr Ahmed, on the grounds that he did an act that was

intended to interfere with and/or was likely to interfere with the course of justice, in that he advised and/or instructed a claimant in a personal injury claim to lie on oath at his civil trial as to the extent of his injuries. The Court concluded that there was a good prima facie case against Mr Ahmed, notwithstanding that the matter did not progress to a trial. Mr Tager QC, for the Claimants, also referred me to the following passage in Arlidge on Contempt, 5th ed, at para 11-3:

> "It is clear in the context of publication contempt, whether at common law or under "the strict liability rule", that it will often suffice to establish a contempt that there has been created a risk that the course of justice will be in some way, at least going beyond de minimis, either prejudiced or impeded (even if it turns out that no harm was done in the event). This will be true also in relation to some forms of non-publication contempt; for example, where the offence consists in an attempt to interfere with a juror, witness or party."

75. In light of the above authorities, in my judgment, in relation to each of the acts of contempt relied on in this case, it is not necessary to show that either the court or another party was actually misled by the deployment of false or forged evidence. Nor is it necessary to show that either the court or another party took action in reliance on the false or forged evidence. It is sufficient to show that the deployment of the false or forged evidence was likely to have one, other or both of these effects. The fact that an attempt to intimidate a witness, or the making of a false statement, can amount to an act of contempt, notwithstanding that the witness is not in fact intimidated or the matter does not proceed to trial, demonstrates that an act of contempt can be completed without the evidence being actually deployed in court.

76. As against this, Mr Fraser QC, for Ms Henderson, relied on *Attorney-General v Newspaper Publishing Plc* [1997] 1 WLR 926, 936, where Lord Bingham of Cornhill said that for a contempt to be established the interference must have had "*a significant and adverse effect upon the administration of justice*". That statement, however, was made in the context of an application to commit the publishers of a newspaper for contempt, said to have consisted of publishing confidential material inconsistent with a court order, and it is important to cite the whole paragraph:

> "We do not accept that any conduct by a third party inconsistent with an order of the court is enough to constitute the actus reus of contempt. Where it is sought to impose indirect liability on a third party, the justification for doing so lies in that party's interference with the administration of justice. It is not in our view necessary to show that the administration of justice in the relevant proceedings has been wholly frustrated or rendered utterly futile. But it is, we think, necessary to show some significant and adverse effect on the administration of justice. Recognising that the restraints upon freedom of expression should be no wider than are truly necessary in a democratic society, we do not accept that conduct by a third party which is inconsistent with a court order in only a trivial or technical way should expose a party to conviction for contempt."

77. It is apparent from this passage that different considerations apply in the case of *indirect* liability such as exists in the case of a publication contempt, particularly as it brings into play countervailing policy considerations concerning restraints upon freedom of expression. The same considerations do not apply in the case of direct liability for contempt, based on the deployment of forged documents. Mr Tager QC accepts that in relation to the forms of contempt relied on here the nature of the interference with the administration of justice must be material, as opposed to trivial (echoing the statement of the elements of the second head of claim by Stewart J in *AXA* cited above). Beyond that, however, I do not consider that the statement of Lord Bingham of Cornhill imposes any different or further requirement that there must have been an actual, as opposed to potential, risk of interference with the course of justice before the act of contempt is made out.

78. Mr Fraser QC also relied upon *Balogh v St Albans Crown Court* [1975] QB 73. That case involved an attempt by Mr Balogh to disrupt proceedings at St Albans Crown Court by releasing laughing gas down a ventilation duct into the trial court. He was caught by the police, however, having stolen a gas cylinder, located the vent and left the cylinder in his brief case in the public gallery of the next door court. The Court of Appeal concluded that this did not constitute contempt, because his actions – while preparatory to the commission of a contempt – had not amounted to its actual commission. As Lord Denning MR put it, at p. 86B-C, "No proceedings were disturbed. No trial was upset. Nothing untoward took place." Mr Fraser QC submits that this is authority for the proposition that in order to establish the acts of contempt alleged in this case, it is necessary to show that there was an actual impact on the court. It is in my judgment inappropriate to seek to extract a general principle, from a case dealing with one specific form of contempt such as releasing laughing gas into a courtroom, to be applied to all forms of contempt. That is particularly so where the contempt concerns knowingly deploying false evidence, where the act of deployment is completed by service of the documents or filing them with the court. I am satisfied, based on the authorities I have cited above, that in the latter case it is sufficient to constitute an act of contempt that the deployment of such evidence is likely to interfere with the due administration of justice.

The mental element

79. There is no issue between the parties as to the mental element that needs to be established in this case.

80. In relation to the first head of claim, it is agreed that, in order to establish a contempt of court in the ways alleged by the Claimants, the test is that set out in *Att-Gen v Sport Newspapers Ltd* [1991] 1 WLR 1194, per Bingham LJ at 1208F-H, in a case concerned with whether a publication amounted to contempt:-

> "the applicant must show that the respondents' publication was specifically intended to impede or prejudice the due administration of justice. Such an intent need not be expressly avowed or admitted but can be inferred from all the circumstances, including the foreseeability of the consequences of the conduct, although the probability of the consequence taken to have been foreseen must be little short of

> overwhelming before it will suffice to establish the necessary intent. But this need not be the sole intention of the contemnor, and intention is to be distinguished from motive or desire."

81. The Claimants point out that whether or not it is necessary to prove a specific intent to interfere with the due administration of justice is unclear, citing *Arlidge on Contempt*, at paragraphs 11-23 to 11-35. I did not hear detailed submissions on this issue, and do not need to determine it, since the Claimants were content to proceed on the basis of Bingham LJ's test in *Att-Gen v Sport Newspapers Ltd*.

82. In relation to the second head of claim, the Defendant accepts that the mental element is established if "*the maker knew that what he was saying was false and that his false statement of truth was likely to interfere with the course of justice*", citing Moore-Bick LJ in *KJM Superbikes v Hinton* [2009] 1 WLR 2406, at 2411C-D.

The standard of proof

83. It was common ground between the parties that all the allegations have to be proved to the criminal standard, namely beyond reasonable doubt, as is made clear in CP PD81, at para 9:

> "In all cases, the Convention rights of those involved should be particularly borne in mind. It should be noted that the standard of proof, having regard to the possibility that a person may be sent to prison, is that the allegation be proved beyond reasonable doubt…"

84. That means that the Court "*must be satisfied so that it is sure that all the essential ingredients of the contempt have been established*": *Therium (UK) Holdings Limited v Brooke* [2016] EWHC 2421 (Comm) at [26]. That does not mean, however, that the court must be sure of any conclusion on a disputed piece of evidence before it can be taken into account. In *JSC BTA Bank v Ablyazov (No.8)* [2013] 1 WLR 1331 Rix LJ cited with approval the following passage in the judgment of Dawson J in *Shepherd v The Queen* (1990) 170 CLR 573, 579–580:

> "the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact—every piece of evidence—relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately."

85. Where, as here, the case turns on a conflict of evidence of witnesses, it is not sufficient for the Court merely to decide which of them to believe. I was referred in this regard to the following passage in *Blackstone's Criminal Practice 2016*, paragraph F3.48: "*In cases which turn on whether the accused or the complainant is telling the truth, it is important for the judge not to give the impression that the jury simply have to decide who to believe; the jury must be told that, in order to convict, they must be sure that the complainant is telling the truth.*"

86. A helpful explanation of the test appears in *Daltel Europe Ltd v Makki* [2005] EWHC 749 (Ch), per David Richards J, at [30]:

> "The burden lies on the claimants to establish the facts constituting an alleged contempt beyond reasonable doubt, so that the court is sure of those facts. I have very much borne this in mind in making all my findings, whether or not I expressly qualified them in that way. In the present case, a number of the allegations rest on inference. If, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn, and at least one of them is inconsistent with a finding of contempt, the claimants fail."

The particulars of contempt

87. Since committal proceedings are of a quasi-criminal nature, it is of cardinal importance that the alleged contemnor should have full notice of the charges which he or she has to face, and should not be at risk of being found of guilty on any other grounds with which he has not been charged: *Sage v Hewlett Packard Enterprise Company* [2017] EWCA Civ 973, per Henderson LJ at [34]-[35] citing the following passage from the judgment of Jackson LJ in *Inplayer Ltd v Thorogood* [2014] EWCA Civ 1511, at [39]:

> "A judge hearing a committal application should confine himself or herself to the contempts which are alleged in the application notice. If the judge considers that other alleged contempts require consideration, the correct course is to invite amendment of the application notice and then provide any necessary adjournment so that the respondent can prepare to deal with those new matters."

88. Henderson LJ added that it is a salutary discipline for any judge delivering or writing a judgment on a committal application to set out each relevant ground of committal before proceeding to consider whether it is made out on the evidence to the criminal standard.

<u>The Allegations of forgery</u>

89. As I have already noted, the allegations of forgery are at the centre of this case. In relation to each of the September documents and the disputed Borkova statement, one or other of Ms Henderson or Ms Borkova must be lying. The resolution of the question

whether the documents were forged will necessarily also resolve the question whether Ms Henderson knew that they were forged.

90. For the reasons that I develop in detail below, I am satisfied so as to be sure of the following matters.

(1) First, Ms Borkova is telling the truth when she says that she did not visit London on 3 or 4 November 2016, and that she did not travel to Ibiza on 27 or 28 September 2016.

(2) Second, and correspondingly, Ms Henderson is not telling the truth when she says that she met Ms Borkova in London on 3 and 4 November, and is not telling the truth when she says that she met with Ms Borkova in Ibiza on 27 or 28 September 2016.

(3) Third, it necessarily follows that the signature on the September documents and on the disputed Borkova statement is a forgery.

(4) Fourth, it also must follow that Ms Henderson knew, at the time she deployed each of the September documents and the disputed Borkova statement in the ways set out in the grounds, that Ms Borkova's signature on them was a forgery.

The disputed Borkova statement

91. In reaching these conclusions in respect of the disputed Borkova statement, I have taken into account the totality of the evidence but, in particular, the matters under the following 13 sub-headings.

(1) Consistency with the contemporaneous documents

92. Ms Borkova's version of events is wholly consistent with the contemporaneous emails, text messages and phone records. Ms Henderson's evidence is, on the other hand, inconsistent with those contemporaneous documents in critical respects.

93. I have set out in detail above the three parallel lines of communication between the key individuals over the period 1 to 4 November 2016, relevant to the preparation of the disputed Borkova statement. There are a number of ways in which they support Ms Borkova's, and correspondingly contradict Ms Henderson's, version of events.

94. First, Ms Henderson's contention that Ms Borkova travelled to England during the afternoon of Thursday 3 November 2016 is inconsistent with Hughmans' phone and email records. It is Ms Henderson's evidence that Ms Borkova telephoned her about 5:30pm to say that she had come to England, and that when she, Ms Henderson, arrived at the house in Farnham Common at about 6:30pm, Ms Borkova was already bathing children in an upstairs bathroom.

95. Hughmans' records, however, show that Ms Borkova was on the phone with Mr Jenkins at 12:11pm for 15 mins, sent emails to him at 2:21pm and 3:43pm, and was

then on the phone again between 15:44 and about 4pm. The flying time for commercial flights (without taking any account of the time to travel to and from the airport at either end) between Malaga and London is between two and a half and three hours. These timings alone make it implausible, at least, that Ms Borkova spent any time during that afternoon flying between Spain and England by commercial airline. In addition, Ms Borkova referred in her emails at 2:21pm and 3:43pm to going away from, and then being back at, her desk, which is also consistent with her being in Spain at those times.

96. It was put to Ms Borkova in cross-examination that she travelled to England in the afternoon of Wednesday 3 November by private jet, paid for by Mr Neil, which would have flown much faster, and on which she could have had access to email and telephone. This possibility was based on no evidence other than the suggestion (denied by him) that Mr Neil has a friend who owns a private jet. In my judgment there is no reason to doubt Ms Borkova's evidence, that she did no such thing. The proposition begs the obvious question: why would Mr Neil fly Ms Borkova to England for the purposes of meeting with Ms Henderson in order to produce a witness statement that would damage Mr Neil's case in the injunction proceedings? The answer suggested by Mr Fraser QC was that Mr Neil was in league with Ms Borkova in a sophisticated plan to entrap Ms Henderson into deploying false evidence, by pretending to provide a witness statement for her. There is no evidential foundation for that suggestion, and I reject it as fanciful.

97. Second, whereas between 1 and 2 November there are no fewer than 19 text messages exchanged between Ms Borkova and Ms Henderson, including for the purposes of making precise arrangements for the two telephone calls in that period, there are no messages at all even hinting at the – in the circumstances more remarkable – proposition that Ms Borkova was to travel to England to meet Ms Henderson in person. On the contrary, the only messages between the time of the call on the morning of 2 November and the time Ms Henderson is said to have been with Ms Borkova in Farnham Common on the evening of 3 November, are from Ms Henderson, twice asking whether Ms Borkova is ok, to which she received no response. While not in itself conclusive, this is considerably more consistent with Ms Borkova's evidence that she never left Spain, than with Ms Henderson's evidence that Ms Borkova made a flying visit to England solely in order to meet with Ms Henderson so as to prepare and sign a witness statement for her benefit.

98. Third, the text sent by Ms Henderson to Ms Borkova at 7:48pm on 3 November 2016 supports Ms Borkova's evidence that there were no further discussions between them about the possibility of her making a witness statement for Ms Henderson, following the call on the morning of Wednesday 2 November. Correspondingly, that text is inconsistent with Ms Henderson's evidence that she was, at the time of sending that text, in the same house as Ms Borkova in Farnham Common.

99. The text reads: "Sweetie, I know this has been a terrible shock for you so I'm going to try and dirt [do it] without you having to get involved. Hope you're ok xx." Against the background that it followed the two texts from Ms Henderson to Ms Borkova over the previous 36 hours, asking whether Ms Borkova was ok, to which there had been no reply, the natural reading of the text is that Ms Henderson was telling Ms Borkova that, contrary to the request she had made on the phone the previous day, she no longer

needed to get Ms Borkova involved at all. Ms Henderson's explanation, that it was sent while she was downstairs in the Farnham Common house, and Ms Borkova had gone upstairs to put children (whom it is said she had brought over from Spain with her) to bed, and was intended to reassure Ms Borkova that although she would be providing a witness statement, she would not have to come to England to give evidence in court, requires a strained reading of the text, and is inherently implausible.

100. Fourth, Ms Henderson's evidence as to the phone call with Ms Barber on 3 November is inconsistent with Ms Borkova's emails to and from Mr Jenkins during the same period. Ms Henderson says that between 6:30pm and 9pm on the evening of Thursday 3 November, she and Ms Borkova were together at the Farnham Common house, and that between 8pm and 8:45pm, they were on a telephone call with Ms Barber, during which Ms Borkova relayed to Ms Barber the facts necessary for the drafting of the disputed Borkova statement in which she was to state that she was a shareholder in MSS and had signed the September documents. At 6:51pm, however, Ms Borkova received an email from Mr Jenkins attaching the 3rd version of the draft of her (undisputed) witness statement (in which she was to deny ever having had any involvement in MSS and denied signing the September documents). At some point between 6:51pm and 8:32pm, Ms Borkova made amendments to that statement and, at 8:32pm (that is, two-thirds through the period of time when Ms Henderson says she was on the telephone with Ms Barber), she emailed the amended version back to Mr Jenkins. Neither Ms Henderson nor Ms Barber suggested that the telephone call was interrupted while Ms Borkova broke off to send an email. Indeed, Ms Henderson said (when asked why she had not emailed the draft of the disputed Borkova statement to Ms Borkova at any stage) that she was not aware that Ms Borkova was receiving emails while she was in England. The fact of Ms Borkova's email to Mr Jenkins is therefore inconsistent with Ms Henderson's account of events on the evening of 3 November.

101. Fifth, Ms Henderson's contention that Ms Borkova was in England on the morning of 4 November is inconsistent with contemporaneous records of the telephone call made that morning by Mr Jenkins to Ms Borkova. As I have noted already, Hughmans' telephone records show that a call was made (and charged for) at 10:06am from Hughmans' office telephone to Ms Borkova's mobile. Ms Borkova's bill for that mobile reveals no roaming charges for the relevant period. This is compelling evidence that she was in Spain at 10:06am on Friday 4 November.

102. Mr Fraser QC suggested that this call might have been made using voice over the internet protocol, such as WhatsApp. This does not explain, however, how it is that Hughmans' phone records show a charge of £1.41 for this call.

103. Sixth, Ms Borkova's evidence that she met with Ms Perez on the Friday morning is corroborated, not only by her WhatsApp exchanges with Ms Perez on the evening of 3 November and the morning of 4 November setting up that meeting, but also by her email to Mr Jenkins at 8:32pm on Thursday 3 November, attaching the draft of her genuine statement, in which she refers to visiting her Spanish lawyer the next day.

104. Mr Fraser QC suggests an alternative theory for what happened on 4 November, which, he submitted, is sufficiently plausible so as to create reasonable doubt as to Ms Borkova's whereabouts on the Thursday evening, even if she was in Spain on the

Friday morning. According to this theory, Ms Borkova left Farnham Common at some time after 9pm on Wednesday 3 November, arriving back in Spain in time to meet with Ms Perez (and presumably receive Mr Jenkins' call) at 10:06am UK time on 4 November. This could not have been achieved by using commercial flights, and is a variation on the plan involving use of a private jet to which I have already referred, devised by Mr Neil and Ms Borkova in order to entrap Ms Henderson into producing a forged witness statement.

105. The implausibility of the private jet theory is exacerbated by this variation, which would have involved Ms Borkova bringing young children with her, bathing and putting them to bed in a house currently being renovated, as part of a charade for Ms Henderson's benefit that she was staying the night, only to get them up again in order to fly back to Spain in the middle of the night. It would also have involved Mr Neil arranging for an imposter to attend a pre-arranged meeting place with Ms Borkova the following morning in order to forge Ms Borkova's signature on the witness statement. This aspect makes no sense at all, since that arrangement would have to have been made, at the latest, on the Thursday night before Ms Borkova flew back to Spain, but on Ms Henderson's evidence it was at that time she, not Mr Hart, who was going to see Ms Borkova the next day, and Mr Hart was not asked by her to go instead until the Friday morning. Ms Henderson undoubtedly knew – to Mr Neil's knowledge – what Ms Borkova looked like, and Mr Neil could not possibly have thought that she would have been tricked by an imposter. Accordingly, I reject this alternative theory to explain why Ms Borkova was in Spain on morning of Friday 4 November, but in England on the evening of Thursday 3 November.

106. Mr Fraser QC contended that Ms Henderson's version of events is consistent with her email communications with Ms Barber over the relevant period. It is an important feature of those emails, however, that on no occasion was Ms Barber placed in direct communication with Ms Borkova, other than on the call at 8pm on Wednesday 3 November. All drafts of the disputed Borkova statement were sent by Ms Barber to Ms Henderson, and any draft received by Ms Barber came from Ms Henderson. Not only is there no record of the draft statement being sent by Ms Barber to Ms Borkova, there is no evidence of the statement being passed on to Ms Borkova at all, even by Ms Henderson.

107. Indeed, it is notable that Ms Henderson repeatedly resisted Ms Barber's attempts to get Ms Borkova on the phone to go through the draft statement. At 8:33am, in response to Ms Barber's request that she get Ms Borkova on the phone, Ms Henderson asks Ms Barber to send through the draft statement, so that she (Ms Henderson) can speak with her, saying that "She [i.e. Ms Borkova] is packing up her and Alans kids and getting ready for the airport". In response to Ms Barber's reply that "its important to get it right grab her please", Ms Henderson said (at 8:42am) Ms Borkova was then "rushing around with the kids". Ms Barber tried one more time (at 8:44am) saying "bear with me the words I am putting in are going to be scrutinised by a judge and the oppo so…". Ms Henderson replied at 8:48am, saying "its ok, you have time, take a breath, as long as I get her to gatwick by 2pm she will be fine. I'm just trying to leave her be while she does her running around now."

108. I note that this exchange of emails is also inconsistent with Ms Henderson's alternative theory – that Ms Borkova returned to Spain overnight to be ready to see Ms Perez at 10am Spanish time.

(2) Unexplained and implausible features of Ms Henderson's version of events

109. There are numerous additional aspects of Ms Henderson's account which are inherently implausible, and for which she can offer no sensible explanation. For example, why is it that Ms Borkova decided to come to England at all? Ms Henderson does not suggest that she asked her to do so, or offered to, or did, pay for her flight. Why, having decided to come to England for the sole purpose of making a witness statement for her, did Ms Borkova not then stay with Ms Henderson, but instead went to an empty house of an unspecified friend of a friend, that was in the middle of being renovated? Why did she make things more difficult for herself by bringing children? Who was the second child (given that Ms Borkova has only one child of her own)? Why is Ms Henderson even now unable to identify the precise house in Farnham Common? Why did Ms Borkova have dark hair on 3 and 4 November when it is common ground that throughout the time Ms Henderson has known her she has otherwise had blonde hair? Why would it have been so difficult for Ms Henderson to find the Farnham Common house again on the Friday morning (having found it – albeit with difficulty in the dark on the Thursday evening), that she required Ms Borkova, notwithstanding she is said to have had a cold, to meet her the following day outside in a muddy lay-by?

(3) Implausible that Ms Borkova was ever a shareholder in MSS

110. The entire premise for the disputed Borkova statement is that Ms Borkova not only was in fact the owner of one third of the shares in MSS, but knew that she was. While it is strictly unnecessary for me to determine whether this premise is true to the requisite standard, I am nevertheless satisfied so as to be sure that Ms Borkova was never knowingly a shareholder in MSS. The story is simply too implausible. It rests on the mostly uncorroborated evidence of Ms Henderson about meeting with Ms Borkova in 2000 in London, and subsequently reaching a deal with her in 2002 that Ms Borkova would be given one third of the shares in MSS in return for guaranteeing the payment of £4000 a month to Mr Neil and Ms Henderson for a six-month period in the event that the business failed.

111. There is no documentary support at all for the contention that Ms Borkova was ever knowingly a shareholder of MSS.

112. It is true that there she is identified as the shareholder, or the beneficial owner of the shares, in the following documents: (1) a letter dated 22 October 2007 to the capital gains tax unit purportedly signed by Mr Neil, which identifies "Eva Borokova" (sic) as the shareholder in MSS; (2) a letter dated 27 May 2008 from HMRC to Mr Neil noting comments made in the letter from Mr Neil to HMRC dated 21 April 2008 that he was appointed to the board of MSS to represent the interests of "Ms Borokova" (sic); (3) a letter dated 16 April 2007 from Ms Henderson to HM Inspector of Taxes stating that the beneficial holder of the shares in MSS held by Cornhill Nominees is Ms Borkova, who was at that date said to reside at 321 Las Tortugas (which is the address of the Neils' property in Spain); (4) a letter dated August 2008 to HM Inspector of taxes,

unsigned, but in the same question and answer format as the letter of 16 April 2007, in which Ms Borkova is again identified as the beneficial owner of Cornhill Nominees Ltd and her address is again given as the Neils' property in Spain; (5) a letter dated 27 July 2015 from HMRC to Mr Staff of Raffingers-Stuart, providing comments on responses provided to previous requests made by HMRC relating to the tax affairs of Mr Neil, Ms Henderson and MSS among others, and referring on page 8 to Ms Borkova being the beneficial owner of a third of the shares in MSS, and to the reason for that apparently being because Ms Henderson wanted an income guarantee should MSS fail; and (6) an account opening form with NatWest bank dated 27 September 2011, apparently signed by Ms Henderson and Mr Neil, which again identifies Ms Borkova as one of three beneficial owners of the shares in MSS, and again states the address as the Neils' holiday home in Spain.

113. None of these documents, however, provides any evidence that Ms Borkova was aware that her name was being used in this way. In fact, in every case, whether it is in 2007, 2008, or 2011, her address is given as the Neils' own apartment in Spain. Ms Henderson's suggestion that Ms Borkova was living in the Neils' apartment at each of these times is unsupported by any other evidence, contradicted by Ms Borkova, and inconsistent (so far as 2011 is concerned) with text messages Ms Henderson otherwise relies on to seek to establish Mr Neil's propensity for violence, which demonstrate that there was a long term tenant in their property at that time. Ms Henderson has also produced certain invoices, dated in 2005, from Cornhill Nominees (the then legal owner of the relevant shares), which together evidence a claim for payment in excess of £150,000. In each case the address is again given as Mr Neil's and Mr Henderson's Spanish apartment.

114. Indeed, there is no document produced in this case which either supports the contention that Ms Borkova had any idea she was said to be a shareholder in MSS prior to the exchanges of messages between her and Ms Henderson on 1 and 2 November 2016, or corroborates the story that Ms Borkova was given the shares in MSS in 2002 in return for providing a guarantee of the Neils' income for six months. Ms Henderson's case is that there would be documents confirming these points on MSS's server, and that her attempts to obtain disclosure of documents on that server have been thwarted. I deal with this point below at paragraph 193.

115. I take into account the following features of the allegation that Ms Borkova was knowingly the holder of one-third of the shares in MSS, in concluding that it is not true.

116. First, it is difficult to see any rational basis for Mr Neil and Ms Henderson parting with the right to all dividends, then anticipated to be in the region of £50,000 to £70,000 per year, in perpetuity, to Ms Borkova, and parting with all and any other ownership rights in respect of MSS, in return for a possible financial commitment from Ms Borkova capped at a mere £24,000. Mr Fraser QC's submission that there is "more than one way to skin a corporate cat", so that Mr Neil and Mr Henderson could extract value through salaries and bonuses, does not meet the point that without any shares at all, they were at the mercy of the general body of shareholders (including Ms Borkova), who could have removed them from the company altogether, and who would be in a position to determine the level of their salaries and bonuses, if any.

117. Second, Ms Henderson's contention that Ms Borkova was already a successful business woman, with an established property business in Spain sufficient to mean that she was someone that Mr Neil and Ms Henderson would believe was capable and willing to bail them out in the event their business failed, is unsupported by any evidence apart from Ms Henderson's assertion to that effect. Ms Borkova's age (she would have been 23 in 2000 when Ms Henderson claims to have met her) makes this unlikely. There is no record that Ms Borkova had *any* business in Spain prior to 2005 and no evidence that her business, even now, is sufficiently substantial to mean that she could be relied on to honour such a financial commitment. Her business in Spain consists of managing approximately 30 residential rental properties (a number which she has built up to over the 10-12 years that she has been carrying on the business) on behalf of various landlords. Her evidence was that this produces an income of approx. €1500 to €1600 per month. While not corroborated by accounts or other documents, these figures are not implausible for a business of the nature of that carried on by Ms Borkova.

118. Third, there is nothing to corroborate the contention that Ms Borkova received in the region of £300,000 by way of dividends from MSS, a contention that is inconsistent with the modest lifestyle enjoyed by Ms Borkova. Mr Fraser QC submitted that there is a reasonable possibility that she has received £300,000 in dividends, because otherwise she could not fund her current lifestyle, consisting of: owning her own home, owning and operating a car, paying for multiple after-school activities for her son, paying for a cleaner/babysitter and running a business managing 30 properties. Not only is this submission inconsistent with the proposition that she is, and was, sufficiently independently wealthy to have been expected to offer the financial guarantee she said to have offered in 2002 (and thus entered into the arrangement entitling her to dividends in the first place), but the description of her current lifestyle is far from extravagant, particularly taking into account that she has only very recently purchased for the first time a home (for €80,000, funded partly with a loan from a friend and partly by a mortgage), and her son's father – her former partner – is nearby and still assists in the child's upbringing.

119. Fourth, the shareholders' agreement entered into by the three legal shareholders of MSS involved Cornhill nominees Ltd being entitled, initially, to 24% of the shares with the right to an increased share up to 33.3% dependent upon the performance of Mr Neil and Ms Henderson. Not only does Ms Henderson not say that this was explained to Ms Borkova, but it is inherently unlikely that she, let alone Mr Neil, would have agreed to an arrangement whereby the only beneficiary of their efforts was Ms Borkova.

120. Fifth, when it became necessary to put a further £80,000 by way of shareholders' funding into MSS, in 2014, Ms Henderson's evidence is that she used her own money, and would not have dreamed of asking Ms Borkova for any help, notwithstanding it is her case that Ms Borkova (and not her) was the shareholder and had by then received £300,000 by way of dividends. It is implausible that Ms Henderson and Mr Neil would have given all the upside of share ownership to Ms Borkova, in good times, but assumed for themselves the burden of providing further shareholder funds when the business was doing less well.

121. Sixth, it is not suggested by Ms Henderson that any part of the more than £150,000 paid in respect of the invoices from Cornhill Nominees to MSS dated April, July and

September 2005, as remuneration for Cornhill having provided the services of Mr Neil and Mr Henderson, was paid to Ms Borkova, or that she knew anything about it.

122. Seventh, the only evidence from Cornhill Nominees Limited, who were the legal owners of the shares until 2008, is that they thought that they were holding the shares as nominee for Ms Henderson: see the letter from Cornhill Nominees Limited dated 6 March 2008 referred to in paragraph 16 above.

123. Eighth, not only is there no evidence to support Ms Henderson's contention that she liaised with Ms Borkova in respect of the incorporation of Cornhill Servives (or Services) ES limited in August 2016, but as I have already noted the information provided to Companies House relating to the appointment of Ms Borkova as a director contained significant errors which strongly suggests that the information is the product of guesswork on the part of Ms Henderson and was not obtained from Ms Borkova, as Ms Henderson claims.

124. The documents to which Ms Henderson refers provide prima facie evidence that Mr Neil was aware that Ms Borkova's name was being used in connection with the shareholding of MSS, and thus call into question his evidence that he knew nothing about it. I do not need to resolve that question, however, because even if both Mr Neil and Ms Henderson knew that Ms Borkova was being portrayed to HMRC and NatWest as the beneficial owner of shares in MSS, when weighed against all of the factors identified above, in particular the inherent implausibility of Ms Borkova actually having been the beneficial owner of the shares and the lack of any evidence to suggest that she knew her name was being used in this way, that does not create in my judgement any reasonable doubt as to the truth of Ms Borkova's evidence that (a) she had no idea at any time that she was a shareholder in MSS and, more importantly, (b) she did not sign either the September documents or the disputed Borkova statement.

(4) Ms Borkova's evidence

125. I have already found Ms Borkova's evidence as to her whereabouts over the first four days of November to be consistent with the contemporaneous documents. In addition, I found her evidence throughout, save in two respects which I deal with below, to be straightforward, inherently plausible and consistent both internally and with the documents. It is difficult to conceive of any reason (other than as part of a highly elaborate plan to entrap Ms Henderson into deploying forged evidence, which I have rejected) why Ms Borkova would have been creating a false trail in her private email and other communications with Mr Jenkins, Ms Henderson and Ms Perez.

126. Mr Fraser QC submitted that although Ms Borkova's oral testimony was at first glance impressive, it bore the hallmarks of impressive fabrication. The only reason advanced as to why Ms Borkova might have fabricated her evidence is that she has been induced to do so by Mr Neil, either because she has been intimidated through threats of violence, or because she has been bribed.

127. There is no direct evidence to suggest that she has in fact been either intimidated or bribed to give her evidence. Mr Fraser QC relied instead on a number of matters from which this might be said to be inferred, each of which I address below.

128. First, he relied upon an exchange of text messages between Ms Henderson and Ms Borkova in February 2013 to suggest that Ms Borkova was well aware Mr Neil was the sort of person who might use violence to get his way. Those messages related to a tenant of the Neils' property in Spain who was considerably late in paying his rent. Ms Henderson refers in one text to the fact that Mr Neil would be on a plane to Spain the next day unless she saw cleared funds. In a later text she says "you can imagine how terry will be with him if he has to fly over!", to which Ms Borkova responded, "yes I can imagine what terry would do".

129. Mr Fraser QC sought to relate that exchange to the text message that Mr Neil sent Ms Borkova on 2 November 2016, when he told her that he wished to show some paperwork and was "happy to jump on a plan (sic) with Jazzy and some paperwork to enlighten you."

130. I accept that Ms Borkova's response to the first exchange of messages in her oral evidence was less than convincing. In particular, her response that she would have imagined what Mr Neil "would do" to have involved getting lawyers involved to write letters, was unconvincing, and suggested a reluctance to admit that she understood that the purpose of Mr Neil's coming to Spain would be to threaten or intimidate in some way the late-paying tenant.

131. I do not regard that reluctance, however, as providing any ground for there being reasonable possibility that Mr Neil may in fact have threatened her in November 2016, or that she would have understood Mr Neil's text of 2 November 2016 as intended to threaten her in any way. There is a world of difference between a landlord willing to use threatening behaviour to induce a tenant to pay rent that is long overdue, and a person willing to intimidate someone to give false evidence. Moreover, the offer by Mr Neil in his text of 2 November 2016 to bring along his daughter, who Ms Borkova had babysat for as a child, is hardly consistent with someone intending to induce fear into Ms Borkova.

132. It was put to Ms Borkova in cross-examination that she knew Mr Neil had a propensity for violence, and various of the matters which Ms Henderson alleges as to Mr Neil's past (such as that he had two previous, albeit long spent, convictions, and that he had been an 'enforcer' for an organised crime group) were put to her. She denied knowledge of all such matters. These denials were entirely plausible. As Mr Tager QC pointed out, if Ms Borkova had in fact been intimidated by Mr Neil on 2 and 3 November 2016 to produce false evidence, she is hardly likely to have taken care to consult both Spanish and English lawyers to assist her in the preparation of that evidence. While recognising the limits of assessing credibility by reference to the demeanour of a witness in court, I add that there was not the slightest indication given by Ms Borkova throughout her time in the courtroom, whether in the witness box or when seated in the body of the court, that she was in any way intimidated by, or fearful of, Mr Neil, who was present throughout.

133. Mr Fraser QC made much of the fact that Ms Borkova had not exhibited to her own evidence the text sent by Mr Neil on 2 November 2016, and that there were no call records for the conversation which took place between her and Mr Neil on 3 November, and for a further call which she says she had with Mr Howell later in the day, in which she told him that her partner had discovered the existence of Cornhill Services ES Limited by an internet search and that she wanted this to be put into the statement being drafted for her. It is first suggested that her withholding of these communications can be construed as a witness who has been intimidated or bribed. I disagree, in particular because she did not attempt to conceal the existence of either the call or the text, both being referred to in her first witness statement dated 7 November 2016, and there would have been no reason to conceal the text in any event, its terms being innocuous, as I have already noted. Then it is suggested that the absence of any record of the calls may mean that she was already in the UK on the morning of 3 November 2016, or using a second phone the existence of which she concealed until giving her evidence. I deal with the second phone below. The possibility of her having already been flown over to England by Mr Neil in a private jet, which was suggested to her briefly as an alternative to her having been flown over during the afternoon, is a variation on the theory that she colluded with Mr Neil to entrap Ms Henderson into giving false evidence which I have already rejected.

134. In relation to the allegation that Ms Borkova has been bribed, the case was originally built on the proposition that Mr Neil had paid for Ms Borkova to go on a romantic trip to Paris as a reward for giving false evidence in the statement that she served on 7 November 2016. This was based on a picture of Ms Borkova in Paris with her partner exhibited on Facebook, and which Mr Hart, Ms Henderson's partner, had reposted bearing a date in November 2016. Ms Borkova however produced the original Facebook entry relating to that trip to Paris which shows that it occurred in August 2016. Ms Borkova did indeed go on a romantic weekend with her partner immediately after service of her statement dated 7 November 2016, but that was a trip to a hotel no more than 5 km from her home, and there is no evidence whatsoever that Mr Neil paid for it. There is no other evidence to create any, let alone any reasonable, doubt in my mind that Ms Borkova might have been bribed by Mr Neil to give false written and false oral evidence to this court. The fact that Ms Borkova has (as she readily accepted) been paid (by Mr Neil) expenses incurred by her in giving evidence does not give me any cause for suspicion that her evidence may have been tainted as a result.

135. Mr Fraser QC pointed to what he said were other weaknesses or inconsistencies in her oral evidence. First, he suggests that in an unguarded moment she admitted something which she had otherwise steadfastly denied, namely that on 26 September 2016 she was away from home, her son being looked after by her partner. The date is highly significant because it coincides with the alleged meeting in Ibiza between Ms Henderson and Ms Borkova. In response to questioning about who looked after her son on the occasion of Ms Borkova's visit to London on 26 June 2016, Ms Borkova originally said that her son would have been at school on that day, but corrected herself saying: "sorry. Yes. You're right. He didn't finish school. He finished school on 23rd of June, Friday, so there was no more school. Sorry. My mistake because I confusing with September 26th and he stayed with his father for those two nights and he on 20… and I arrive on 26th and then he stayed with me." I have no doubt, given the context of that passage, that when Ms Borkova referred to the boy staying with his father for two nights she was referring to June and not September.

136. Second, he relies upon Ms Borkova's admission that she does have a second telephone, having first said she has only one mobile phone which she uses for her work. I do not regard the fact that she admitted to the existence of a second, but unused, phone as providing any ground for undermining her evidence as to her whereabouts in the crucial period 1 to 4 November 2016, particularly as her evidence in this regard is corroborated by the positive evidence relating to the phone records of the phone she is known to have been using.

137. Third, he relies upon an alleged lack of credibility in Ms Borkova's evidence about the contents of the telephone call on the evening of 1 November 2016 with Ms Henderson. Her evidence is that in that telephone conversation Ms Henderson told her that Mr Neil had produced papers to the court suggesting that she, Ms Borkova, was involved with the company. Mr Fraser QC submits that this is implausible, and that for Ms Borkova's evidence to be believed the court would have to be satisfied beyond doubt that Ms Henderson told Ms Borkova that it was Mr Neil who had lied by saying that Ms Borkova was involved in the company, notwithstanding that (as is common ground) only hours later Ms Henderson asked Ms Borkova to provide a witness statement saying that she *was* involved with the company. This, in my judgement, puts the hurdle too high. I accept that there is insufficient evidence for me to be sure as to what was said during the call on 1 November 2016, beyond what is common ground, namely that it included reference to Mr Neil having gone to court and obtained an injunction, and reference to Ms Borkova having an involvement with MSS. I note that Ms Borkova's text sent at 9:15am on Wednesday 2nd November 2016 includes the sentence: "I still can not believe he lied at court and got my name involved", which is consistent with Ms Borkova having understood at that time that it was Mr Neil that had falsely told the court that she had an involvement with the company. Nevertheless I accept that I cannot be sure that that was the way the conversation had gone.

138. The relevant issue, of which the court must be satisfied, beyond reasonable doubt, however, is that Ms Henderson forged the disputed Borkova statement. The question for me is whether any reasonable doubts as to what was said on the telephone on the 1 November 2016 means that I cannot be satisfied, so as to be sure, that Ms Borkova's evidence that she did not sign the disputed Borkova statement is true. Given the totality of the evidence, which points in my judgement beyond reasonable doubt to the conclusion that Ms Borkova was in Spain on 3 and 4 November 2016, the answer to that question is no.

(5) Corroboration by Ms Perez

139. Ms Perez provided a witness statement dated 7 November 2016 in which she said she had known Ms Borkova for about seven years, having been instructed by her from time to time in relation to her property business. She confirmed that Ms Borkova had signed her witness statement dated 7 November 2016 in Ms Perez's offices in Spain. She also provided an affidavit dated 5 June 2017. In that affidavit she exhibited the WhatsApp messages from 3 and 4 November 2016 that Ms Borkova also exhibited, in which the two women arranged an appointment for 10am on 4 November. She stated that Ms Borkova came to see her at 10am on 4 November, with regard to the use of documents bearing her name, that Ms Borkova stayed for about four hours, during which time they had a telephone conversation with Mr Jenkins, the Claimants' solicitor. Ms Perez says

that she put her in touch with Mr Suleman of Bromptons solicitors in England. She confirmed that Ms Borkova has always had blonde hair.

140. Her evidence that she met with Ms Borkova on 4 November is consistent with the WhatsApp messages passing between her and Ms Borkova setting up that meeting, as well as with Ms Borkova's email to Mr Jenkins of 3 November 2016 telling him that she was meeting with her Spanish lawyer the next morning. It is also consistent with the fact that Ms Borkova did in fact produce a witness statement on 7 November 2016, the next working day, and signed it in Ms Perez's office in her presence (which was unchallenged).

141. Ms Perez was, at the time of the trial, seven months pregnant and had been advised by her doctor that it was inadvisable to travel to England to give evidence in person. In those circumstances, I permitted her to give evidence by video link. The connection was unfortunately lost on a couple of occasions, and the sound quality was poor, such that the transcript of her evidence is missing several words. Nevertheless, although the process was sometimes slow, and required certain answers to be repeated, I am satisfied as to what her evidence is on the relevant matters.

142. Mr Fraser QC attacks Ms Perez's credibility in a number of ways. He first contends that her memory of the day was not good, because she could not recall whether Mr Jenkins called her and Ms Borkova during the meeting. It is true that she did not come up to proof in this respect, and that she now accepts that, while the call may well have happened, she cannot be 100% sure. While this may call into question Ms Perez's evidence as to the details of what was said during the meeting, it does not call into question her evidence that the meeting in fact happened, of which she had no doubt.

143. He then submitted that her evidence as to the length of the meeting is internally inconsistent, because she referred to the meeting variously as lasting more than four hours, or approximately four hours, or as being in the morning. I do not regard these differences as significant, or in any way casting doubt on the critical question whether the meeting took place at all. He relied on the fact that she admitted that she did not know from where Ms Borkova sent the WhatsApp messages, or that it was even Ms Borkova who sent them. Ms Perez, however, never purported to give evidence of Ms Borkova's whereabouts when the messages were sent, and her readiness to accept the logic that she could not positively know who sent them (other than that she assumed they were from Ms Borkova because it was her phone number) or where Ms Borkova was, reinforced, rather than detracted from, her credibility.

144. Much of the cross-examination of Ms Perez proceeded on the basis that she had indeed met with Ms Borkova – including the questioning as to the precise time that the meeting started, whether Mr Jenkins called during the meeting, and the precise length of the meeting. Moreover it was positively put to Ms Perez that she had indeed spoken with Ms Borkova, because she had been told about a romantic weekend that Ms Borkova was about to take, said to be reflected in a message from Ms Perez to Ms Borkova saying "Hope you have a nice weekend", followed by a winking emoticon. It was put to Ms Perez that she was well aware of the fact that Ms Borkova was going on a romantic weekend, because they had discussed the fact that this was Ms Borkova's reward from Mr Neil for agreeing to provide false evidence, and that Ms Perez was

playing along to help her with Mr Neil. It was also put to her that she, Ms Perez, was aware of Mr Neil's propensity to violence and was frightened by him so that she was not now telling the truth.

145. It is true that there is a conflict in recollection between Ms Borkova and Ms Perez as to whether Ms Borkova had told her about her romantic weekend. Ms Borkova's answers in cross-examination suggested that she may have discussed with Ms Perez the fact that she was going away for a romantic weekend. The terms of Ms Borkova's reply to Ms Perez about having a good weekend ("Thank you. We booked a romantic weekend away a while ago…") in fact suggest that this was the first mention of that topic so that it may well be Ms Borkova whose recollection was faulty on this point.

146. This difference of recollection provides, in my judgment, however, no reason for concluding that there is any reasonable possibility that Ms Perez may have been intimidated by Mr Neil into providing false evidence as to having met Ms Borkova in Spain on 4 November 2016. She was clear and consistent in her evidence that she had never met Mr Neil, and knew nothing about him or his alleged propensity to violence. Mr Fraser QC submits that her evidence in this regard appeared pre-planned, because she "trotted out the same mantra, using the same formula of words". I disagree. It is true that she denied having met Mr Neil, or knowing who he was, using similar language, on three occasions, but this is not surprising in response to questioning (such as "was Eva Borkova introduced to you by Terry Neil?" and "Hadn't you been told by Terry Neil to expect her to contact you") which implied, but did not expressly state, the thing she was denying.

147. There is no evidence of any prior connection between Mr Neil and Ms Perez or her firm, and no reason to doubt Ms Perez's denial of any knowledge of such matters when put to her in cross-examination.

148. Accordingly, I find that there is no reasonable basis for believing that Ms Perez may have been intimidated or bribed by Mr Neil into giving false evidence, and I accept Ms Perez's evidence that she met with Ms Borkova in Spain on the morning of 4 November 2016.

(6) Mr Jenkins' evidence

149. Mr Jenkins' evidence is that he telephoned Ms Borkova twice on 3 November 2016 on her Spanish landline. In his affidavit dated 7 June 2017 he had assumed that he called Ms Borkova on her Spanish landline only once, at approximately midday for 30 minutes. In that same affidavit he referred to a file note of a further conversation later that afternoon when, in the absence of its appearance in his phone records, he assumed Ms Borkova had phoned him. However, having obtained a more detailed breakdown of his firm's calls from BT, he was able to confirm, in his affidavit dated 13 November 2017, that he had indeed made two separate calls to Ms Borkova's landline and clarify that each call had lasted approx. 15 minutes.

150. He states that during the first of those calls Ms Borkova was upset and explained that she had spoken to Ms Henderson on the evening of 1 November and the morning of 2

November, and that Ms Henderson had asked her to make a witness statement for use in English proceedings in which Ms Borkova would claim to have been an owner of a company in Spain which she had transferred to Ms Henderson. Ms Borkova said that she was not prepared to do this because it was not true.

151. It was suggested to him that his initial memory of the first call having lasted 30 minutes meant that his memory of the substance of the call was flawed. It was also suggested that 15 minutes was hardly long enough in which to relay all the information which Mr Jenkins says was conveyed on the call. Having listened to him give evidence, I have no doubt that his response to this latter point – which is that he gets to the point when speaking – was correct. In any event, the substance of the conversation is borne out by the subsequent exchange of emails, discussing the drafting of what ultimately became Ms Borkova's witness statement dated 7 November 2016.

152. Mr Jenkins also telephoned Ms Borkova on 4 November 2016 at 10:06am. This is again corroborated by phone records, as I have detailed above, which indicate that Ms Borkova was in Spain at the time.

153. Mr Jenkins' provides in his written evidence a further reason why he believed that Ms Borkova was in Spain at the times that he called her. This was because when he made the calls to her Spanish land line, he would have heard a Spanish, as opposed to UK, ringing tone. I accept his evidence that he believed this to be so. Nevertheless, I accept Mr Fraser QC's submission that this evidence is not in itself conclusive as to Ms Borkova's whereabouts at the time of the calls, given that there are circumstances in which a Spanish ringing tone might be heard, when dialling a Spanish phone, even if the recipient of the call is not in Spain.

154. Mr Fraser QC contends that Mr Jenkin's evidence strayed into advocacy. While there were indeed times when his answers indicated a keenness to make points, over and above the answer to the question, which were favourable to his clients case, I do not regard this as detracting from the honesty of his answers. I note that it is often difficult for a solicitor, who is actively representing a client in court, to assume a mantle of complete impartiality upon crossing the court to enter the witness box. I am satisfied that he was attempting to assist the court by providing truthful evidence.

(7) Expert evidence

155. The Claimants called expert handwriting evidence from Dr Audrey Giles. She is an undoubted leading expert in the field with a vast body of experience.

156. Ms Henderson did not call any expert evidence of her own. She had initially instructed an expert, Mr Radley, to prepare a report, but no report was served. It was suggested in correspondence prior to the trial that Ms Henderson was without the necessary funds to pay Mr Radley to complete his report. I do not accept this, particularly since the cost of completing his report was relatively modest, Ms Henderson said that she has been able to borrow money to fund her legal team in the defence of these proceedings, including an eight day trial, and the Claimants offered to provide the funding for Ms Henderson to obtain a report. Ultimately, the reason why Ms Henderson has not served an expert report is of little importance, the critical point being that Dr Giles' evidence is unchallenged.

157. Dr Giles' report, dated 9 August 2017, concluded that there was "very strong" positive evidence for the conclusion that the four questioned signatures were not genuine signatures of Ms Borkova. This is the second highest level on the scale widely used among forensic handwriting experts, second only to "conclusive".

158. Notwithstanding the absence of any evidence to contradict Dr Giles' report, Mr Fraser QC submits that Dr Giles' evidence is not sufficient to show beyond reasonable doubt that Ms Borkova's signature on the September documents or the disputed Borkova statement is not genuine.

159. He points to the fact that, in her report, Dr Giles says that she cannot entirely exclude the possibility that the questioned signatures are genuine, although she regarded that possibility as remote. He points further to the fact that in cross-examination, she reiterated that she could not "absolutely exclude the possibility that for some reason this lady has written these signatures in this form." Mr Fraser QC sought to contrast Dr Giles' reference to the possibility of the signature being genuine as "remote", with a report prepared by Dr Giles in another recent reported case, where she had used the phrase "extremely remote", and also concluded that the evidence of forgery in that case was "very strong". Mr Fraser QC submits that it logically follows that the degree of strength of the evidence as to forgery in the present case must be less than "very strong". I reject this submission. Dr Giles said that whereas there is an accepted and widely used scale to describe the strength of positive and negative evidence (i.e. conclusive, very strong, strong, etc) there is no similar scale when describing a possibility as remote, or very remote. Accordingly, the fact that she used the phrase "very remote" in another case, but only "remote" in this case, provides no ground for concluding that her real view on the strength of the positive evidence indicating forgery in this case is that it is less than the level of "very strong" stated in her report.

160. Mr Fraser QC criticises Dr Giles' report in that, although she mentioned that there were superficial similarities between the questioned and comparison signatures, she did not spell out those similarities. Dr Giles pointed out, however, that it is quite usual for someone seeking to simulate a signature to produce something which has some general similarities, but that what is important, and therefore what she focused on in her report, is the nature and extent of the differences between the questioned and comparison signatures. She reiterated her view that there were extensive and important differences in this case, as set out in her report.

161. Mr Fraser QC submits that some of the alleged distinguishing features of the four questioned signatures were in fact present in some of the comparison signatures, or were far more marginal than her report suggests. The only example he cites is in relation to the radial stroke forming an angular sideways "v" on the letter "k". Mr Fraser QC submits that in cross-examination she conceded that the difference was not (as stated in the report) that there was no sideways "v" in the comparison signatures, but that there was a microscopic curvature in the pen stroke in the comparison signatures. I do not accept that this criticism is justified. Dr Giles states in the report that the differences in the comparison signatures are that the radial strokes are joined, and contain looped curved strokes. There is in my judgment no inconsistency between her oral evidence and her report.

162. Mr Fraser QC criticised Dr Giles for having not referred in her report to some of the examinations carried out into important areas such as external factors affecting the signatures. The absence of negative conclusions in the report – i.e. that there was no evidence that the questioned signatures were induced by alcohol, or by an uneven surface beneath the paper, or by the use of guidelines – does not in my judgment detract from the positive conclusions contained in it.

163. Finally Mr Fraser QC refers to there being material differences in the fourth questioned signature (that appearing on the disputed Borkova statement) and the other three (those appearing on the September documents). He contends that this means there is a reasonable possibility that the signatures on the September documents are genuine, even if the signature on the disputed Borkova statement is forged. I reject that submission, which ignores Dr Giles' answer to this point, namely that there are differences between all four of the questioned signatures, but that there is very strong evidence that they are all simulations. She accepted that she had not formed any view as to whether all of the simulations were by the same person, and said that she did not have the evidence to address that either way.

164. Ultimately, nothing in the cross-examination of Dr Giles provided any reason in my judgment to doubt either her independence or the conclusions reached in her report.

(8) Internal errors in the disputed Borkova statement

165. The Claimants point to three manifest errors in the disputed Borkova statement that call into question its authenticity. First, the printed name that appears immediately under the signature at the end of the document is spelt "Berkova", not Borkova. Mr Tager QC suggests that Ms Borkova is unlikely to have signed her name without correcting that mis-spelling. Second, in paragraph 7, Ms Borkova refers to her son being a baby "at that time", which in the context is clearly a reference to April 2008 when the shares in Cornhill Nominees Limited were supposedly transferred to her. In fact, as established by Ms Borkova's evidence at the trial and corroborated by reference to her son's passport, her son was not born until 2010. Third, in the last sentence of the statement Ms Borkova purports to say that "I signed the documentation removing Terry and appointing Soraya and Anthony Clarke on 31 October 2016", whereas it is Ms Henderson's case that Ms Borkova signed the documents in September during the meeting in Ibiza.

166. Taken in isolation, the first and third of these points are inconclusive. It is common ground that the statement was not drafted or written by Ms Borkova, but was prepared by Ms Barber. The errors could be explained by Ms Borkova having failed to read through the statement adequately before signing it. Nevertheless, particularly in the case of the third error, these are factors which support the conclusion that the disputed Borkova statement is a forgery.

167. The second error is more significant, because Ms Barber, in her note of the telephone call at 8pm on 3 November 2016, records Ms Borkova having told her – in connection with the events concerning the Cornhill Nominee Limited shares in 2008 – that she had been busy with her little boy, now 8, who had been a baby at the time. This cannot be put down to a drafting error. It is highly unlikely that Ms Borkova would have mistaken the age of her own son (who was in fact only six in November 2016).

Accordingly, this provides strong support for the conclusion that the disputed Borkova statement is a forgery.

(9) Mr Neil's evidence

168. Mr Neil's evidence is not directly relevant to the question whether the disputed Borkova statement was forged by Ms Henderson. He cannot corroborate Ms Borkova's presence in Spain, as his only communication with her in the relevant period was by text or phone. I have not, in fact, relied on any evidence of Mr Neil in reaching my conclusions on the key issue concerning Ms Borkova's whereabouts on 3 and 4 November 2016.

169. His evidence is relevant to the theory suggested by Ms Henderson that Ms Borkova was flown to England by Mr Neil on a private jet. I have already rejected this theory. I need only record that it was put directly to Mr Neil and I have no reason to doubt his answer when he denied that any such plan existed or was carried out.

170. The only other potential relevance of Mr Neil's evidence to the central issues concerning the forgery of the September documents and the disputed Borkova statement is in connection with the allegation that he intimidated or bribed Ms Borkova and Ms Perez to give false evidence. In the absence of any direct evidence of intimidation or bribery, Mr Fraser QC relies on the fact, as he submits, that Mr Neil has the propensity to intimidate or bribe witnesses, and the motive for doing so.

171. A number of allegations concerning Mr Neil's past conduct were made by Ms Henderson, some of which were put to Ms Borkova or Ms Perez as I have indicated above. It is impossible for me to conclude whether the allegations themselves are true, since I have not heard evidence from many of the relevant people concerned in them, and have not seen full documentation relating to them.

172. Insofar as certain of the past events are established, in particular the long-spent convictions, I regard them as irrelevant, relating to matters more than 26 years ago. Insofar as Ms Henderson relies on Mr Neil's conduct at MSS's offices on 1 November 2016, even if it is true that he lost his temper, smashed a window to gain access, and had to be restrained by the police, this goes nowhere near demonstrating a propensity to induce others to lie.

173. As for motive, Mr Fraser QC points to three matters. First, persuading Ms Borkova to give false evidence as to her involvement in MSS would prevent Ms Henderson gaining control of MSS, and so prevent her finding documents that would harm Mr Neil's defence in an ongoing inquiry relating to the alleged bribery of a policeman. Second, Mr Neil is seeking to reduce his maintenance obligations in the Family Division proceedings, and establishing that Ms Henderson has forged the September documents or the disputed Borkova statement will improve his chances of showing that she forged his signature on a consent order in the divorce proceedings which imposes on him an obligation to pay £5,500 per month maintenance in perpetuity. Third, he relies on the personal animosity between Mr Neil and Ms Henderson.

174. Mr Fraser QC submits that it is not necessary for me to decide that any of the matters on which he relies to establish either propensity or motive are established, even on the balance of probabilities, since it would be enough if there was a possibility of them being established sufficient that I was left with reasonable doubt as to whether Ms Henderson forged the September documents or the disputed Borkova statement.

175. As against this, it is important to bear in mind the following. First, the central question is indeed whether I am satisfied beyond reasonable doubt that Ms Henderson forged the relevant documents, and the mere fact that there is reasonable doubt over whether Mr Neil has the propensity and/or motive to induce witnesses to lie is merely one factor to be taken into account in reaching my decision on that central question. Second, as Mr Tager QC submits, the mere fact that someone may have a motive to intimidate others into giving false evidence is of little relevance unless there is sufficient evidence from which it can be inferred that such intimidation took place. Third, and most importantly, I have heard evidence from the two critical witnesses who are said to have been induced to lie by Mr Neil and have concluded that there is no reasonable possibility that either of them was in fact induced to lie, particularly taking into account the high degree of consistency between their evidence and the contemporaneous record of events, and the high degree of implausibility in Ms Henderson's own account of the critical events.

176. Accordingly, the allegations made by Ms Henderson against Mr Neil designed to establish a propensity and motive to intimidate or bribe witnesses are in my judgment irrelevant. Even if they were in themselves to be established, I do not find that there is any reasonable possibility that Ms Borkova's or Ms Perez's evidence to this court has in fact been falsified, whether as a result of intimidation or bribery from Mr Neil or otherwise. Given that there is no evidence from Mr Neil that is directly relevant to the issues concerning the allegations against Ms Henderson, I also need not lengthen this judgment any further with a consideration of the matters Mr Fraser QC relied on as damaging Mr Neil's credibility more generally. His credibility, or lack of it, on peripheral issues such as whether he was involved in the business of MSS more closely than he admitted, or whether he knew that Ms Borkova was named as a holder of shares in MSS in communications with HMRC, or whether the allegations of misappropriation made against Ms Henderson were false, is irrelevant given I place no reliance on any evidence from him in reaching my conclusions on the central questions of fact.

(10) Ms Barber's evidence

177. Ms Barber has not provided a witness statement but was called to give evidence on behalf of the Claimants under a witness summons. Most of her evidence adds nothing to the email correspondence which she has disclosed, and which I have described in detail above. As I have already noted, that evidence provides no clue as to the whereabouts of Ms Borkova on 3 and 4 November 2016, other than it reinforces the fact that Ms Henderson was clear in giving Ms Barber the impression that Ms Borkova was in England on both days.

178. Ms Henderson relies heavily, however, on what Ms Barber had to say about the telephone call at 8pm on Thursday 3 November. Her general impression was that Ms

Borkova and Ms Henderson knew each other well and affectionately. In cross-examination she said:

> "I recollect her being very friendly with Miss Henderson. The word that stuck in my mind after the call is that it was – they were sweet. It's an odd word to use but that's the word that stuck in my mind. They were on a speaker phone to me and I could hear there was a sort of side joke between them, there was a little bit of banter. It was fine. You know, I had listened and it struck me that it was – there was no surprise in it, in that sense. It was somebody who was her friend and it was consistent with the documentation that I had, which of course had mentioned Miss Borkova, the earliest I had seen was from 2007 with the HMRC correspondence."

179. Later in her cross-examination she said

> "…they were friends and there was that sense that – I don't want to make too much – there wasn't that much banter but there was this little in joke about a bunch of flowers. You know, small stuff that sounded entirely like someone who'd been – who was a friend…"

180. Mr Fraser QC submits that it is highly unlikely that anybody impersonating Ms Borkova could so convincingly fool a solicitor of Ms Barber's experience and standing, particularly as Ms Barber confirmed in cross-examination that she would never have drafted the witness statement, sent it to Counsel or caused it to be served on 4 November if she had had any concerns about the identity of Ms Borkova or the genuineness of the signature upon the statement

181. Ms Barber also confirmed that it was her recollection that the evidence provided by Ms Borkova appeared to be neither coerced nor rehearsed, nor was there any hint of collusion:

> "I mean, I spoke to Miss Borkova on the phone. She didn't seem like … there was no coercion or collusion or … she seemed quite sensible and willing to speak at that point, despite my prior concerns."

182. I have no doubt that Ms Barber was giving truthful evidence. It is important to note, however, that Ms Barber had never seen or spoken to Ms Borkova before that telephone conversation, and indeed has never spoken to her or, so far as the evidence suggests, seen her since. Prior to the call, Ms Barber had no reason to doubt that the person she would be speaking to was indeed Ms Borkova. Instead, as she made clear during her cross-examination, her concern leading up to the call was that Ms Borkova would not in fact be willing to provide a witness statement or to speak to her. This was because Ms Henderson had repeatedly told her that Ms Borkova was very concerned about getting involved at all, because of her fear of Mr Neil. In light of these points, the fact that Ms Barber *thought* that she was speaking to Ms Borkova is of insignificant weight when trying to determine whether the person she spoke to was in fact Ms Borkova. It is

certainly insufficient to create any reasonable doubt as to my conclusion on the basis of the remainder of the evidence that Ms Borkova was in Spain throughout.

(11) Ms Henderson's evidence

183. Ms Henderson has made four witness statements in these proceedings, in addition to her witness statement of 4 November 2016 served in the injunction proceedings. She attended the trial to be cross-examined on them. She remained steadfast in her protestations of innocence throughout a lengthy, sustained and at times hostile cross-examination. In particular, she stuck steadfastly to all aspects of her evidence concerning Ms Borkova's involvement with MSS and the events surrounding the creation of the September documents and the disputed Borkova statement.

184. For the reasons I have already referred to above, however, I cannot accept that evidence. It is, insofar as it concerns the key issues as to whether (1) Ms Borkova was ever knowingly a shareholder in MSS, (2) the meeting in Ibiza in September 2016 and (3) the meeting at Farnham Common and subsequent events relating to the creation of the disputed Borkova statement on 3 and 4 November 2016, inherently implausible in a number of key respects, and inconsistent with the contemporaneous documents.

185. It was a notable feature of Ms Henderson's cross-examination, that although she was often able to offer elaboration on irrelevant aspects of her evidence she was unable to offer any credible explanation for the numerous implausible features of her evidence on the key issues.

186. For example, she could offer no explanation for the many implausible aspects of Ms Borkova's sudden trip to England on Wednesday 3 November 2016. She says that she had no discussion with Ms Borkova about who the children were, or why she had needed to bring them. She did not see them, even though she assumed that one of them was Ms Borkova's son, whom she had known since he was a baby. More surprisingly, she had no conversation with Ms Borkova as to why she had come to England at all, notwithstanding that she says that Ms Borkova was highly stressed and worried, and she remembers thinking it odd that Ms Borkova had chosen to stay in Farnham Common, given that Mr Neil lived close by, and that it was her fear of having to face Mr Neil that was making Ms Borkova stressed in the first place.

187. When asked why she had not forwarded to Ms Borkova either any draft of the disputed Borkova statement to Ms Borkova, or the list of bullet points for inclusion in the statement that she had provided to Ms Barber earlier in the day, Ms Henderson's answer was that she was fearful that her email was being hacked. This made no sense, given that she was quite happy to exchange the same documents with Ms Barber by email. She sought to explain the discrepancy by saying that she had learned to start all email communications with lawyers with a disclaimer about the contents being legally privileged. I do not accept this explanation which depends upon an untenably fine distinction between being fearful that Mr Neil would hack her emails (which fear would not have prevented her from emailing Ms Borkova) and being fearful that he would deploy hacked emails in court proceedings (which she believed the inclusion of disclaimer language in an email would have prevented). If she had really been concerned that Mr Neil was hacking her emails, then she could easily have asked Ms Barber to send the drafts straight to Ms Borkova.

188. In relation to Ms Borkova's holding of shares in MSS, while Ms Henderson maintained her evidence that she had kept Ms Borkova informed of matters relating to the company, for example the HMRC investigation into the beneficial owner of the shares, she sought to distance herself from the detail, such as who paid the subscription money, when and how much dividends were paid to Ms Borkova (other than repeating it was £300,000 over eight years), and how it was that Cornhill Nominees Limited thought they were holding the shares for Ms Henderson. She claimed to be ignorant of matters such as what a nominee shareholder is, or referred her questioner to others, such as Mr Hall and Mr Neil.

189. In relation to the events in Ibiza in September 2016, when the time, effort and expense which would have been involved in Ms Borkova making the round trip from Malaga was put to Ms Henderson, she said that she had no idea how Ms Borkova got to Ibiza or how she got home. She said she had no conversation with her about what arrangements had been made for her son while she was away. Ms Henderson did offer the speculation that Ms Borkova might have travelled in a private jet owned by a friend of Mr Neil. This possibility has not, however, been pursued as a credible alternative explanation for how Ms Borkova might have got to and from Ibiza. Ms Henderson could not give any evidence as to why Ms Borkova had been willing to make such effort, at her own expense. She did not recall any discussion about this. She speculated that it was because Ms Borkova had been in receipt of £300,000 of dividends from MSS. Even on Ms Henderson's case, however, it was some six years since Ms Borkova had last received any dividends, and she does not recall any discussion about this when she met her in Ibiza. I have already noted that the disputed Borkova statement asserts that the September documents were signed on 31 October 2016, and that there is no reference in it, or in Ms Henderson's own witness statement of 4 November 2016, to them having been signed in September in Ibiza.

190. Overall, Ms Henderson's inability to provide any elaboration of her discussions with Ms Borkova at her alleged meetings with her in September or November 2016, so as to explain inherently implausible aspects, indicated to me that her steadfast refusal to be shaken from her written evidence about those events was the product of remembering a false story, rather than a genuine attempt to give truthful evidence.

191. As I have already noted, it is a striking feature of this case that there are no contemporaneous documents to corroborate any part of Ms Henderson's case concerning Ms Borkova's alleged role, or actions taken, as a shareholder of MSS. In particular, there is no record of any telephone calls, text messages or emails relating to: the alleged contact between Ms Henderson and Ms Borkova over the incorporation of Cornhill Services ES Limited in August and September 2016; the alleged meeting in Ibiza; the alleged visit of Ms Borkova to London in November 2016; and any contact between Ms Henderson and Ms Borkova over the many years that Ms Borkova is said to have been a shareholder of MSS and in receipt of very substantial dividends.

192. Ms Henderson has given various reasons for the lack of records. She says that she has retained no phone records (including copies of text messages) for the crucial periods in August, September and November 2016, because she was then using a series of different pre-paid mobile phones, with temporary SIM cards which she discarded when she had used up the credit. This was done, she says, because she believed Mr Neil was

monitoring her phones and computer. Those who were in close contact with Ms Henderson over this period, or parts of it, including Mr Hart and Ms Barber were unable to corroborate her claim to have been using a succession of different mobile phones.

193. So far as the lack of any email correspondence showing Ms Borkova's role as shareholder is concerned, Ms Henderson contends that the relevant documents will be contained on the MSS server. Prior to the administration of MSS, Ms Henderson made a wide-ranging request for disclosure of documents (although not specific to Ms Borkova's alleged shareholding). The Claimants objected to certain of the requests – for example a snapshot/clone of the entire server, on the basis that the server contained a huge amount of personal, confidential and privileged material. Since MSS went into administration, there have been various communications between Ms Henderson's solicitors and the administrators' solicitors concerning disclosure. In July 2017 the administrators' solicitors indicated that they were collating documents pertaining to Ms Henderson's email account. The proceedings by the company (in administration) against Ms Henderson were then settled, and the request for disclosure was not followed up by Ms Henderson until 29 September 2017. Thereafter, the administrators made it clear that they could not give what would now be third party disclosure voluntarily, because of confidentiality issues, but they would not oppose a court order. To the extent that Mr Neil's consent was required for that disclosure, such consent was given. No application has ever been made, however, for such disclosure. It is Ms Henderson's evidence that she has borrowed money in order to fund her defence of these proceedings. It is not realistic, therefore, that she has been prevented from making an application to get disclosure of emails on MSS's server because of lack of funds.

194. On the other hand, Ms Borkova has provided disclosure of phone records and text messages which not only support her evidence that none of the alleged contact between her and Ms Henderson took place over the summer of 2016, but also demonstrates that the communications that she did have with Ms Henderson from 2012 until the Neils' property in Spain was sold in 2014, were all related to Ms Borkova's role in managing that property.

(12) Mr Hart

195. Despite Mr Hart having been present in Ibiza at the time Ms Henderson says she met with Ms Borkova, and despite him being said to have played a pivotal role in the execution of the disputed Borkova statement, he is in fact unable to corroborate either of the key events.

196. So far as events in Ibiza are concerned, he says that he spent the time, during which Ms Henderson claims to have met with Ms Borkova, sleeping by the hotel pool. He said that he vaguely recalled Ms Henderson telling him that she was going off to meet Ms Borkova for lunch, but told him nothing of the reason for the visit. She told him nothing about it when she got back, and did not say anything about some documents that were to be returned to the hotel later that day.

197. So far as the events on 4 November 2016 are concerned, in his witness statement dated 13 May 2017 he said that he travelled to Farnham Common at the request of Ms Henderson and met with someone whom he assumed was Ms Borkova, and who signed the disputed Borkova statement. He also said that sometime subsequently he viewed Ms Borkova's Facebook page with Ms Henderson, and confirmed that this was the person he had met on 4 November 2016, although noted that in the Facebook picture Ms Borkova had blonde hair, whereas the person he had met had dark hair. In giving evidence to this court, however, in response to the question whether Ms Borkova (whom he saw give evidence) was the person he met at Farnham Common, he said "I cannot confirm or deny if it was someone I've ever met before."

198. Throughout his evidence, Mr Hart repeatedly maintained that he never asked Ms Henderson about anything to do with MSS, or Ms Borkova, and she never told him about it, or her. Indeed, apart from confirming most of the very few facts he had previously stated in his written evidence, he could give no elaboration at all. I found him to be an unconvincing witness, intent on doing no more than sticking to the bare bones of his largely peripheral involvement in the unlikely story told by Ms Henderson. In relation to the only issue where he might have been able to provide direct corroboration of Ms Henderson's evidence – namely that he met Ms Borkova on the morning of 4 November – he notably failed to come up to proof.

199. Given that Mr Hart does not now purport to give evidence that the person he met on 4 November 2016 was Ms Borkova, it is not necessary to conclude that he, too, is lying about the events of that day in order to conclude that Ms Henderson is herself lying. There is, however, no reasonably possible explanation for his evidence as to having met with somebody who he assumed to be Ms Borkova on 4 November at Farnham Common, other than that he is lying. Any other explanation – if Ms Henderson is herself lying about having met with Ms Borkova on 3 November 2016 – requires either that Ms Borkova was flown back to Spain in the middle of the night by Mr Neil, who arranged for a stand-in to meet with Mr Hart on 4 November (which I have rejected) or that Ms Henderson herself arranged a stand-in to meet with Mr Hart at Farnham Common and sign the disputed Borkova statement pretending to be Ms Borkova. That is in my judgment equally fanciful. Accordingly, I reject Mr Hart's evidence as to the events on 4 November.

(13) Other witnesses

200. The Claimants served evidence from two other witnesses, the only purpose of which was to corroborate Ms Borkova's evidence that she was in Spain at the relevant time.

201. The first is from a friend of Ms Borkova called Petra Brejchova. On the second day of the trial I ruled against Ms Brejchova giving evidence by video link, in particular because no satisfactory reason was given why Ms Brejchova could not attend in person. The Claimants have chosen not to call her at all. Her evidence purports merely to corroborate Ms Borkova's evidence that she must have been in Spain at the relevant time because she and Ms Brejchova would meet every day in the course of either dropping off or picking up their children from school. In fact, during Ms Borkova's cross-examination she accepted that she could not be 100% sure that they would have met every day. In light of this, and in view of the fact that the Claimant could have, but

chose not to, tender Ms Brejchova for cross-examination, I give no weight at all to her evidence.

202. The second is from Ms Borkova's recent partner, Mr Alan Molloy. His evidence is that Ms Borkova told him, on 3 November 2016, about the conversation she had had with Ms Henderson, and about her meeting with Ms Perez. He states that Ms Borkova did not travel to England on 3 or 4 November. He was unfortunately unable to give evidence as a result of a recent and serious illness. In these circumstances, Ms Henderson accepts that his evidence may be admitted, but submits that little weight should be given to it since she has not had the opportunity to test that evidence by cross-examination. In the event, I am satisfied so as to be sure that Ms Borkova was not in England on 3 or 4 November 2016 on the basis of the rest of the evidence, without needing to have regard to the evidence of Mr Molloy.

203. Finally, a barrister by the name of Michael Neofytou provided an affidavit at the request of Mr Neil, on which he was cross-examined by video link (as he was conducting a trial in Liverpool as an advocate, and could not attend the trial in this case in person). In October 2011 he had signed a copy of Ms Borkova's identity card, stating: "I certify that the image of Eva Borkova is a true likeness of Eva Borkova, who I have known for two years." In her witness statement of 4 November 2011 Ms Henderson stated that she had arranged for Mr Neofytou to make a certified copy of Ms Borkova's identity card, in connection with the application to NatWest bank by MSS for invoice discounting facilities. She says she had asked him because he knew Ms Borkova socially.

204. In his affidavit, Mr Neofytou stated that he has known Mr Neil and Ms Henderson since 2007, and would often socialise with them in the following years. He said that he had no recollection of signing the copy of Ms Borkova's identity document, but confirmed that it contained his writing and his signature. He confirmed that he does not, and did not in 2011, know anyone by the name of Eva Borkova, socially or otherwise.

205. Under cross-examination, he maintained that he had no recollection of signing the document. In his affidavit he had suggested that he may have signed the document mistakenly believing that it related to the cleaner at the Neils' home (which he had visited on a number of occasions). Under cross-examination, he said that this was purely speculation, as he had no recollection of signing the document.

206. The fact that Mr Neofytou was prepared, in 2011, to attest to having known "Eva Borkova" for two years provides at least some evidence that he did in fact know her, given, in particular that to attest to that fact, if he did not know her at all, was (absent some further explanation) potentially questionable behaviour. As against that, however, it is difficult to see what possible motive Mr Neofytou would have for lying, now, about whether or not he knew Ms Borkova, particularly given that his evidence that he does *not* know her highlights his potentially questionable action in signing the identity document in the first place. In addition, Ms Borkova's evidence (that the Neils had never mentioned Mr Neofytou) corroborates Mr Neofytou's evidence that they did not know each other. Moreover, apart from repeating in her oral evidence that Mr Neofytou certainly had met Ms Borkova "and hence volunteered to witness her ID", Ms Henderson does not give evidence of any occasion or occasions when, and where, the

two of them met. Neither does she give any evidence of the circumstances in which she procured Mr Neofytou's signature on the identity document: there is certainly no evidence that she told Mr Neofytou that the purpose of the document was to enable MSS to provide to the bank evidence as to a shareholder of MSS, in connection with an application for discounting facilities. Taking into account all of these points, I am satisfied that Mr Neofytou and Ms Borkova were not acquainted.

207. In any event, even if Mr Neofytou and Ms Borkova did know each other, given that there is no evidence that Mr Neofytou knew the purpose for which he was asked to sign the identity document, this does not provide any corroboration of Ms Henderson's evidence that Ms Borkova was knowingly a shareholder in MSS. More importantly, I have considered, and rejected, the possibility that if they did know each other, that casts any reasonable doubt on the conclusion – based on the rest of the evidence I have referred to – that Ms Borkova did not sign any of the September documents and the disputed Borkova statement.

Conclusions on forgery of disputed Borkova statement

208. Taking into account all of the matters referred to above, and in particular the many inconsistencies between Ms Henderson's account and the contemporaneous documents, I am satisfied so as to be sure that:

    (1) Ms Borkova was in Spain throughout the period 1 to 4 November 2016; and

    (2) the signature of Ms Borkova on the disputed Borkova statement is a forgery.

209. It necessarily follows from these findings that I am also satisfied so as to be sure that the signature of Ms Borkova on the disputed Borkova statement was forged to the knowledge of Ms Henderson. That is because:

    (1) The fact that Ms Borkova was in Spain on 3 and 4 November 2016 necessarily means that Ms Henderson is lying when she says that she met with Ms Borkova on the evening of 3 November 2016 in Farnham Common;

    (2) It follows that Ms Henderson knew that Ms Borkova was not in a position to sign the disputed Borkova statement on the morning of Friday 4 November 2016, and that Ms Henderson is therefore lying when she says that this was arranged, and happened; and

    (3) Ms Henderson was undoubtedly centrally involved in the production of the disputed Borkova statement. She alone communicated with Ms Barber, and it was she who sent a copy of the purportedly signed copy to Ms Barber, knowing that it was false.

The September documents

210. My conclusions in respect of the disputed Borkova statement mean that I can deal with the September documents more shortly.

211. The unchallenged evidence of Dr Giles is that the purported signature of Ms Borkova on the September documents is forged. For the reasons I have already set out in relation to the disputed Borkova statement, I accept that evidence.

212. In addition, although my finding that the disputed Borkova statement was forged to the knowledge of Ms Henderson does not necessarily lead to the conclusions that the signature of Ms Borkova on the September documents was forged, and also to her knowledge, it provides compelling support for those conclusions.

213. In the first place, if Ms Borkova is telling the truth about the disputed Borkova statement then it is inherently more likely she is telling the truth about the September documents, given the connection between the two, in particular that the former purports to state that Ms Borkova signed the latter. This is another instance where one or other of Ms Borkova or Ms Henderson must be lying. If Ms Borkova was not in Ibiza in September 2016 then it must follow that Ms Henderson is lying about that, and therefore knows that Ms Borkova could not have signed the September documents.

214. I have already considered, and rejected, the suggestion that Ms Borkova has been induced to give false evidence by being either intimidated or bribed by Mr Neil. There is no other reason for her to have fabricated her evidence about this alleged meeting in Ibiza.

215. Further, my conclusions in relation to the disputed Borkova statement mean that the instructions given to Ms Barber as to its contents came solely from Ms Henderson. The final paragraph of the first, and each subsequent draft, of the statement purported to confirm that Ms Borkova had signed the September documents on 31 October 2016. That paragraph also stated that it was in October that Ms Henderson contacted Ms Borkova to sound her out about removing Mr Neil as a director. Those statement contradict Ms Henderson's later evidence that Ms Borkova had signed the documents on 27 or 28 of September 2016. It is important to note that there is no mention that the September documents had been signed in Ibiza in September 2016 in the evidence served by or on behalf of Ms Henderson on 4 November 2016. The suggestion emerged for the first time in written submissions that Ms Henderson prepared on 13 January 2017, and followed Ms Borkova's evidence in a statement of 7 November 2016, that she could not have signed the September documents on 31 October 2016 because she was out horse riding with her family on that date, which was a bank holiday in Spain.

216. The contention that the September documents had been signed in September is also inconsistent with a particular feature appearing on the face of the documents. The September documents are each dated in manuscript at the end, next to the purported signature, 31 October 2016. Ms Henderson's evidence is that when Ms Borkova signed the documents the date section on them was left blank for the reason that the decision was yet to be made as to when to serve them on the Claimants. Each of the documents however, also bears the date 31 October 2016 in type in the respective headings. In relation to the Purported Record of Decision for example the heading of the document

comprises one continuous sentence, in a single line of type, reading "record of a decision of the sole owner of the company made on 31 October 2016". No explanation for this was given in any of the affidavits or witness statements of Ms Henderson. When presented with this discrepancy in the course of her cross-examination, Ms Henderson said that she inserted the date in type subsequent to the document having been signed, and that the exact alignment of the date with the existing type on each of the documents was achieved by running the original document through a printer for a second time. This explanation not having been given before, this was not a question which the handwriting expert, Dr Giles, was asked to look at. The originals of the documents were not available in court. So far as the Claimants are aware, the last that was seen of those originals was when they were passed to Ms Henderson's proposed expert, Mr Radley. While not conclusive, the precise alignment of the date with the existing type in each of the September documents provides a strong indication, in my judgement, that it was part of the document as originally created. Moreover, Ms Henderson was unable to explain why it was necessary, when it came to dating the documents, to go to the considerable trouble of creating a further version with a *printed* date as well, given that she could, and indeed did, simply add the date in manuscript.

217. The absence of any documents corroborating the supposed meeting in Ibiza, is a further indication that it did not occur. In stark contrast to the numerous messages exchanged between Ms Borkova and Ms Henderson in order to arrange a time to speak on the telephone on the first and second of November 2016, there is not a single message in evidence in relation to setting up a meeting in Ibiza.

218. Ms Borkova has provided various items of evidence said to corroborate the fact that she did not visit Ibiza in September 2016. These consist of (1) bank and credit card statements showing no purchases in Ibiza at the relevant time, or payment for any flight to get there, (2) receipts of purchases made on 27 and 28 September 2016 in her home town, (3) photographs taken from her phone timed and dated 27 and 28 September, said to be pictures taken at or near her home, (4) an exchange of emails with a client arranging to meet him in the early hours of 28 September 2016, and (5) her phone records for the period showing no contact with Ms Henderson for the whole month between 18 September 2016 and 17 October 2016. Mr Fraser QC submitted that none of these items was conclusive, for example because payments could have been made from a different bank account, or different credit card, and calls and messages could have been made using a different phone, and there is nothing to establish beyond reasonable doubt that the photographs on the phone were either taken by Ms Borkova, or insofar as she features in them were taken at or near her home. Further, it is said that the fact she was in her hometown in the early hours of 28 September 2016 did not preclude her from having travelled to and back from Ibiza in one day. I accept that none of this evidence is, in itself, sufficient to establish beyond reasonable doubt that Ms Borkova did not travel to Ibiza on 27 or 28 September 2016. Nevertheless, the combination of these factors provides strong corroboration for Ms Borkova's version of events.

219. Ms Henderson's account of the meeting in Ibiza contains several implausible features in itself. She cannot explain why, if she was looking to Ms Borkova to provide help, she would not have travelled to Marbella herself, given that she was in Ibiza for a week's holiday consisting of partying, rather than expecting Ms Borkova, at her own expense, to make the round-trip to Ibiza. Nor can she explain why, on top of that, Ms

Borkova paid for lunch for the two of them or why, if the sole purpose of Ms Borkova flying to Ibiza was (from Ms Henderson's perspective) to sign three relatively short documents, why Ms Borkova was not able to sign them over lunch, but had to return the signed documents later that afternoon to the hotel reception. It is not suggested that she needed to consult with anybody else before signing them.

220. In addition, the contention that there was a meeting between Ms Borkova and Ms Henderson in Ibiza in September 2016 requires the story that Ms Borkova was knowingly a shareholder in MSS to be true which, for the reasons I have already set out, I do not accept.

221. Taking all of these factors into account, I am satisfied so as to be sure that there was no meeting between Ms Henderson and Ms Borkova in Ibiza in September 2016. There being no other possible explanation given by Ms Henderson as to how the September documents were signed by Ms Borkova, it follows that I am satisfied so as to be sure that the purported signature on each of the September documents is a forgery, and was known by Ms Henderson to be a forgery.

222. I note for completeness that the Claimants relied on witness statements from Mr Molloy and Ms Brejchova to corroborate Ms Borkova's evidence that she did not travel to Ibiza. For the reasons given above in connection with the disputed Borkova statement, I take no account of either witness statement in reaching my conclusion in respect of the September documents.

The Grounds of the alleged contempt

223. I now turn to consider the detail of each of the separate grounds of alleged contempt.

Ground 1: Service of forged documents on the Second Claimant

224. The particulars of this ground are as follows.

(1) On 1 November 2016, in advance of and in anticipation of court proceedings likely to be brought by the Claimants against the Defendant, the Defendant served or caused to be served directly on the Second Claimant the September documents.

(2) The September documents were served directly on the Second Claimant by posting them through his letterbox.

(3) The September documents were forged.

(4) The Defendant knew that the September documents were forged.

(5) At the hearing on 1 November 2016, Counsel for the Defendant made reference to one of the September documents, being the Purported Record of Decision.

(6) By authorising another person to serve on her behalf the September documents in advance of and in anticipation of court proceedings likely to be brought by the Claimants against the Defendant, the Defendant intended that the Claimants and

their solicitors, and in due course a Judge, would treat the September documents as genuine documents of which one or more would be relied on at future court proceedings and the Defendant thereby interfered with the due administration of justice by deploying forged documents in this way to advance her case in future court proceedings.

225. I deal with each of the elements set out in the particulars of this ground in turn.

226. As to (1) and (2), the Defendant admits that she caused the September documents to be couriered to the address of the Second Claimant, being the registered office of MSS. I deal with her alleged intention below.

227. As to (3) and (4), I have already found that the September documents were forgeries, and that the Defendant knew this to be so.

228. As to (5), there is no doubt that the Purported Record of Decision to remove Mr Neil and appoint Ms Henderson and Mr Clarke as directors was referred to by Counsel, Mr Bheeroo, at the hearing before Hildyard J on 1 November 2016. The transcript of that hearing records that Mr Bheeroo, in response to a question from the judge as to what evidence there was of a valid appointment of a director by someone who qualifies as a shareholder, handed to the judge "the documents that I do have in my possession". It is clear from the subsequent reference by the judge to "Cornhill Services ES, Eva Borkova, in the record of the decision", that one of the documents handed to him by Mr Bheeroo was one of the September documents.

229. The Defendant contends, however, that Mr Bheeroo was not then her counsel, since he had been instructed that day by Mr Barter. The transcript of the hearing records Mr Bheeroo telling the judge that he was instructed by Compass, via DWF solicitors, and by Cornhill Services, via Keystone Law. Mr Fineman of DWF confirmed this. Neither Keystone Law nor the Defendant were present in court. In fact this made no sense, because neither Compass nor Cornhill Services ES was a party to the application: the injunction was sought against the Defendant, Mr Clarke, Mr Barter and persons unknown occupying MSS's premises. Mr Bheeroo was in fact representing Mr Barter (instructed by DWF) and the Defendant (instructed by Cornhill). In her evidence to this court, Ms Barber confirmed that Mr Bheeroo attended at court on 1 November 2016, to her knowledge and at her instruction, to represent both Mr Barter and the Defendant. She also said that Mr Bheeroo's error (in saying that he represented Cornhill Services ES) was subsequently corrected by a letter sent to the Court. Accordingly, I am satisfied that Mr Bheeroo was representing the Defendant at the hearing on 1 November 2016.

230. The Claimants face difficulties, however, in establishing that the service of the September documents on the registered office of MSS could amount to an actual or attempted interference with the administration of justice, or that the Defendant intended such interference.

231. In my judgment, couriering the September documents to the registered office of MSS did not constitute an act of contempt. In itself, it was not capable of impacting at all on the administration of justice, being neither a step in court proceedings, nor a step preparatory to the issue of any court proceedings by the Defendant. The administration

of justice could only be affected if the September documents were subsequently deployed in the course of proceedings. In that event, it would be the subsequent deployment in proceedings which constituted the act of contempt, not their service on MSS.

232. In those circumstances, I do not strictly need to consider the mental element in respect of ground 1. I will nevertheless state shortly my reasons for finding that the allegation that Ms Henderson intended, by service of the September documents, to interfere with the administration of justice is not established beyond reasonable doubt. I conclude that it is at least reasonably possible to infer that Ms Henderson's intention in causing the documents to be served on MSS was limited to enabling her to take control of MSS that day. I accept that, if she had thought about Mr Neil's likely reaction, she should have appreciated that he would resort very quickly to court proceedings. That, however, is insufficient to establish beyond reasonable doubt that Ms Henderson did give consideration to that possibility, and had come to that conclusion. Mr Tager QC pointed to the fact that Ms Henderson had consulted Ms Barber on 31 October 2016, i.e. the day before the service of the documents on MSS. The contents of any discussion that took place at that meeting with Ms Barber are unknown, as privilege has not been waived in respect of it. While one inference to be drawn is that Ms Henderson anticipated that court proceedings were imminent, it is not the only possible inference. In any event, it does not follow that she would then have assumed that the September documents would be deployed *by Mr Neil* in such court proceedings.

Ground 2: Deploying as evidence a forged document at 1 November Hearing

233. The particulars of this ground are as follows:

(1) At a hearing on 1 November 2016 in the High Court before Hildyard J, the Defendant allowed the Judge to rely upon an affidavit from the Claimants' solicitor, the First Affidavit of Matthew George Jenkins dated 1 November 2016 and the documents exhibited thereto (the September documents) and thus allowed the Judge to treat those documents as genuine;

(2) At that same hearing, the Defendant instructed or allowed Counsel for the Defendant to make reference to and describe to the Court the Purported Record of Decision in the course of his oral submissions, relying on the contents of that document as evidence in support of her case.

(3) By allowing the Judge to rely upon the genuineness of the September documents and causing or allowing the Purported Record of Decision to be referred to, described to and relied upon by the Defendant's Counsel in the course of his oral submissions at that hearing, the Defendant interfered with the due administration of justice by knowingly deploying and relying upon forged documents as evidence in support of the Defendant's case and by deceiving the Judge into believing that the September documents were genuine documents and had been written and signed by Eva Borkova.

234. The Defendant contends that the particulars at (1) are demurrable, because an omission cannot constitute an act of contempt. Mr Fraser QC cited, for this proposition, *Att-Gen v Guardian Newspapers Ltd* [1989] 2 FSR 163, at [179] per Knox J. That case arose

out of the famous Spycatcher litigation and concerned, among other things, the question whether a county council would be liable for contempt if it stocked newspapers in its public libraries without examining the same to ascertain whether or not they contained information obtained by Peter Wright in his capacity as a member of the British Secret Services. Knox J was concerned, at p.179, not to make general findings as to whether future conduct would, or would not, amount to a contempt of court. He was prepared to conclude, however, that he was satisfied, so long as the question was confined to the effect of not examining newspapers to see whether or not they contained offending material, "that there would be no actus reus by reason of that omission and therefore no contempt of court by reason of that omission."

235. The circumstances here are different, since the September documents originated from Ms Henderson in the first place. In my judgment, the relevant question here (so far as whether there was an act of contempt) is whether the Defendant can be said to have caused the September documents to be placed before the Court. If she had taken step one, which put in motion a chain of subsequent steps which she knew (or perhaps considered it likely) would lead to the September documents being placed before the Court, then it might be possible to conclude that the act of contempt was established, notwithstanding that all of the steps that occurred after step one were undertaken by others, so that all she did thereafter was *omit* to stop those subsequent steps from being taken.

236. In this case, step one consisted of Ms Henderson serving the September documents on MSS's registered office. In my judgment, the Claimants have not established to the requisite standard of proof, that the Defendant knew that taking that first step would, or was likely, to cause the September documents to be placed before the Court by the Claimants (or by MSS which, at that stage, was the claimant, acting through Mr Neil and Mr Hall). The reason the documents were exhibited to Mr Jenkins' affidavit was so that the Claimants could comply with the duty to give full and frank disclosure when applying for an injunction without notice. There is no evidence that Ms Henderson was aware of the existence of such a duty.

237. The particulars at (2), relating to the Purported Record of Decision which was placed before the court by the Defendant's own counsel raises different considerations. Adopting a similar approach as in relation to the particulars at (1), the relevant question is whether Ms Henderson took any step which put in motion a chain of steps leading to Mr Bheeroo placing the document before the Court and, if so, whether she knew, or at least consider it likely, that those subsequent steps would be taken, and did nothing to prevent them.

238. The relevant facts are as follows:

    (1) On 1 November 2016 Ms Henderson spent all day in MSS's offices. She was there with, among others, Mr Barter. Also present was Mr Fineman of DWF, Mr Barter's solicitors. Her own solicitor, Ms Barber, was not there.

    (2) Mr Fineman attended court. Mr Bheeroo of counsel was instructed 15 minutes before the hearing began. Neither Ms Henderson nor Ms Barber attended court. I have already found (in relation to ground 1) that Mr Bheeroo was instructed by

both Mr Fineman and Ms Barber to attend court on behalf of, respectively, Mr Barter and Ms Henderson.

(3) It is common ground that the September documents emanated from Ms Henderson, in the sense that it was she who created them, dated them on 31 October 2016, and caused copies to be served on MSS's registered office.

(4) No evidence has been led by the Claimants to explain how the Purported Record of Decision found its way into Mr Bheeroo's hands.

(5) Ms Henderson was cross-examined on this, as follows:

"Q. Who, other than you via Keystone, could have given Mr Bheeroo the four pieces of paper that he handed to the judge as being the ones that justified your and Mr Clarke's appointment as directors?

A. Are you talking about 1 November now?

Q. Yes, 1 November, that's what I'm –

A. They were probably given to Joshua Fineman when he was in the offices with us on 1 November –

Q. Who gave them to Mr Fineman?

A. That would have been either myself or Mr Barter, we were all in the boardroom –

Q. They were given, if they were given by Mr Barter they would have been given on your behalf.

A. Presumably.

Q. They are your documents.

A. I wasn't actually communicating much with Mr Fineman, I was running round the office trying to keep the staff calm.

Q. You knew that they were documents that were going to be relied on in court, weren't you, to justify your appointment.

A. I knew that they were assembling some papers to rush off to court with, yes.

Q. You knew they were important documents because it's by those documents that Mr Neil is removed as a director and you and Mr Clarke are appointed in his place.

A. On 1 November I spent most of my time with the staff or trying to read through financial files that were in the office, trying to figure out what Mr Neil had done with the money from the company and if it was still viable and what was going on. I did not have Rachel Barber there. Mal had Joshua Fineman there. He ran off to court when he heard that everyone else was running off to court. Rachel did not go to court and neither did I. Whatever papers there were in the boardroom that Mr Barter assembled - and I would have also put all my papers on the table. I'm not saying that I didn't provide those papers. I don't know what bundle Mr Fineman took to court on 1 November, I wasn't there.

Q. But you had them with you at the MSS premises and showed them to the police, didn't you?

A. I had various documents with me. I certainly had those. I don't know if I had multiple copies.

Q. You showed the police the document ...

A. Yes.

Q. ... removing Mr Neil as a director ...

A. Yes.

Q. ... and appointing you and Mr Clarke as directors in his place.

A. Correct, I do remember showing that to the police, yes.

Q. Yes. Those were the two pieces of paper that justified everything you had done on 1 November.
A. No, along with the Fine Court letter and Mr Barter's paper –
Q. The Fine Court letter.
A. Yes, there is."

239. It is impossible for Ms Henderson to have given instructions directly to Mr Bheeroo to deploy the Purported Record of Decision in court on 1 November, since they had not met prior to the hearing. There is no evidence that Ms Henderson gave such instructions indirectly. Indeed, that is unlikely to have happened, given that neither Ms Henderson nor Ms Barber attended court, Mr Bheeroo was instructed only 15 minutes before the hearing, and Mr Fineman was acting for Mr Barter, not Ms Henderson.

240. The Claimant's case in this respect is therefore based upon the fact that Ms Henderson put a copy of the Purported Record of Decision on the boardroom table (as she admitted), that she knew that Mr Fineman was collating documents to take to court, that he picked up papers from the boardroom table for that purpose, and that she knew that the Purported Record of Decision (along with the other September documents) was a critical piece of evidence in support of her claim to be a properly appointed director of MSS. Notwithstanding Ms Henderson's protestations that she did not need the September documents because she was able to rely upon authority from the other shareholders, Finecourt and Compass, to justify her position, I am satisfied so as to be sure that she certainly did appreciate the importance of the September documents in justifying her appointment. Indeed, the very fact (as I have found) that she forged Ms Borkova's signature on them, and subsequently on the disputed Borkova statement, demonstrates her appreciation of the relevance of the documents in establishing the validity of her appointment.

241. Nevertheless, while I consider it to be a very real possibility, I am not satisfied on the basis of the above evidence, so as to be sure, that Ms Henderson knew or believed it likely that Mr Bheeroo would deploy the documents in submissions before the judge. I take into account the fact that matters were moving fast on 1 November, and that it is a reasonable possibility that Ms Henderson was pre-occupied in locating and reading financial files and left consideration of what papers should be taken to court to Mr Fineman.

242. Accordingly, I find that neither the act of contempt, nor the requisite mental element, is satisfied to the required standard in relation to ground 2.

Ground 3: Service of a witness statement exhibiting forged documents

243. The particulars of this ground are as follows:

(1) On 4 November 2016, the Defendant authorised her solicitors to serve on the Claimants' solicitors the Defendant's own witness statement in the High Court proceedings dated 4 November 2016 which described its exhibit in paragraph 2 as "copy documents", in circumstances where the exhibit included as purported true copies of genuine documents the September documents.

(2) By authorising her solicitors to serve that witness statement on the Claimants' solicitors, the Defendant intended that the Claimants and their solicitors would treat the witness statement as exhibiting copies of genuine documents, rather than forgeries of the September documents, and the Defendant thereby interfered with the due administration of justice by deploying forged documents to advance her case in the High Court proceedings.

244. The Defendant submits that the court cannot be sure that the September documents were forged, or that Ms Henderson knew that they were forged. I have already rejected those submissions.

245. So far as the alleged act of contempt is concerned, the Defendant submits that the reference to the September documents as "copy documents" in paragraph 2 of Ms Henderson's statement was true, even if the documents were forged, that the mere exhibiting of forged documents does not constitute an act of contempt, and that there was an insufficiently substantial or adverse effect on the administration of justice so as to amount to an act of contempt. Developing the latter point, the Defendant submits that the Claimants had already exhibited the September documents, and that Ms Henderson's witness statement had minimal impact on the subsequent proceedings.

246. For the reasons set out earlier in the section of this judgment dealing with the legal principles, I reject the submission that it is necessary, in order to establish an act of contempt, that the conduct must have had an impact in the sense of causing a court to do something it otherwise would not have done. I also reject the submission that the deployment of forged documents by serving them on another party to proceedings, as exhibits to a witness statement, cannot be an act of contempt merely because those forged documents have already been exhibited to an earlier witness statement of that other party. The purpose and inevitable effect of exhibiting the September documents to Ms Henderson's witness statement was to indicate to the recipient that they were being put forward as genuine. That purpose and effect arise irrespective of whether the other party has already exhibited the documents to its own evidence. I should also make clear that this conclusion is not dependent on construing any part of the witness statement itself as stating that the exhibited documents were genuine. That is the subject of ground 7, and I deal with that separately below.

247. This ground does, however, raise the additional question whether an act of contempt may be committed merely by the service of evidence, within the context of proceedings, on another party. The Defendant submits that service of the forged documents on the Claimants did not have a sufficiently substantial or adverse effect on the administration of justice so as to amount to an act of contempt.

248. The point is ultimately academic in this case, since the deployment of Ms Henderson's witness statement exhibiting the September documents did not end with service on the Claimants. It was also filed at court and deployed at the hearing on 8 November 2016 (which matters are the subject of ground 4, considered below). I conclude, in respect of ground 4, that deployment of the statement on 8 November 2016 is sufficient to constitute an act of contempt. Accordingly, it is strictly unnecessary to consider separately whether service of the statement on the Claimants, without more, would amount to an act of contempt. Nevertheless, in my judgment it is capable of doing so, for the reasons set out in the section of this judgment dealing with the legal principles,

at paragraphs 72-78. It may well be that if nothing happened *other* than the service of forged documents on another party, then the conduct would not reach the level of seriousness to justify permission being given by the court to bring committal proceedings in the first place. That, however, does not mean that the conduct does not constitute an act of contempt.

249. So far as the mental element is concerned, the Defendant makes four points: (1) the court cannot be sure that Ms Henderson was aware that the September documents were forgeries; (2) there is no evidence establishing Ms Henderson's involvement in the preparation of the exhibit, nor other evidence establishing beyond reasonable doubt that she was aware that the exhibit contained the September documents; (3) the Claimants were not parties to the proceedings at the time, because the claimant at the time was MSS, so the court cannot be sure that Ms Henderson intended that the Claimants and *their* solicitors would rely on the September documents; (4) an interference with the administration of justice was not a foreseeable consequence, let alone an overwhelmingly probable consequence, of service of the statement.

250. My conclusion that I am sure that Ms Henderson was aware that the September documents were forgeries disposes of the first point. As to the second point, I am satisfied so as to be sure that Ms Henderson was aware that the September documents were exhibited to her witness statement, for the following reasons:

    (1) Her witness statement was prepared, served and filed at court in conjunction with the disputed Borkova statement. They were clearly intended to be read together. Indeed, Ms Henderson's own statement contains essentially the same material as the disputed Borkova statement so far as Ms Borkova's alleged history with MSS is concerned.

    (2) The principal purpose of the combined evidence was to advance Ms Henderson's case that she was a properly appointed director and entitled to remain in control of MSS to the exclusion of Mr Neil. At paragraph 43 of her own statement, Ms Henderson stated in terms that she was a newly re-appointed director on behalf of the shareholders Compass *and Cornhill ES*. The only foundation for the latter part of that statement was the September documents. The disputed Borkova statement refers, in its final paragraph, expressly to the September documents.

    (3) Ms Henderson created, dated and either signed or caused someone else to sign the September documents. She caused them to be served on Mr Hall. She accepted in evidence that she showed them to the police on 1 November at MSS's premises in order to justify her presence at the offices. I have no doubt that she appreciated the importance of the September documents to the case that the evidence being served on her behalf on 4 November 2016 was intended to advance.

    (4) In these circumstances, I find it inconceivable that she was not aware that the September documents were among the documents being served on MSS's solicitors on 4 November 2016.

251. As to the third point, the Claimants were the persons who were then causing MSS to bring the proceedings (and were substituted in place of MSS as claimants in the proceedings at the hearing on 8 November). I have no doubt that the Defendant

intended Mr Neil and Mr Hall, as the natural persons causing MSS to take proceedings and to instruct Hughmans solicitors for that purpose, to rely upon the statement as genuine.

252. As to the fourth point, in my judgment where an act of contempt consists of serving forged documents on another party to proceedings, the requirement to show that there is an overwhelming probability that the administration of justice will be interfered with is likely to be readily established. That is because the interference consists of causing other parties and the court to be misled into believing that the documents are being put forward as genuine. Where the court is sure (as I am) that the person putting forward the forged documents knew them to be forged, then it is difficult to see what other intention she had. Accordingly, I am satisfied so as to be sure that Ms Henderson did intend that the September documents would be treated by the Claimants as genuine.

Ground 4: Use of September documents at the hearing on 8 November 2016

253. The particulars of this ground are that:

(1) The Defendant caused or allowed the September documents to be used at and for the purposes of a hearing on 8 November 2016 before Rose J, in the following manner:

(a) The hearing bundle contained the Defendant's witness statement dated 4 November 2016 and its exhibit, including the September documents;

(b) Counsel representing the Defendant referred to the September documents in his skeleton argument dated 7 November 2016;

(c) The September documents were read by the judge prior to the hearing;

(d) Because they were relied on by the Defendant, the Judge concluded that the September documents represented evidence of a genuine dispute about the removal of Mr Neil as a director and the validity of the appointment of the Defendant and Mr Clarke as directors of the company as a result of which she ordered that the Claimants should be substituted for the Company as claimants in the proceedings.

(2) By causing or allowing the September documents in the hearing bundle to be presented to the Court and used and relied upon by her Counsel at the hearing on 8 November 2016, the Defendant interfered with the due administration of justice by knowingly providing forged documents to the Court as evidence in support of the Defendant's case and by deceiving the judge into believing that the September documents had been written and signed by Ms Borkova.

254. The Defendant contends that there was no sufficient act of contempt under this ground on four bases (in addition to the contention that the court cannot be sure that the September documents are forgeries, which I have already dealt with).

255. First, it is submitted that the allegation that Ms Henderson "allowed" the acts cited is demurrable because an omission cannot constitute an act of contempt. For the reasons

given under ground 2 above, I do not consider the allegation that Ms Henderson "allowed" the documents to be deployed in court to be one of pure omission, and the relevant question is whether she is responsible for having caused the documents to be deployed. Accordingly, the allegation that she "allowed" the documents to be used in this way adds nothing to the allegation (which is also made) that she "caused" them to be so used. As to this, it is secondly submitted that the allegation that Ms Henderson caused the deployment of the September documents to occur in the way alleged in ground 4 cannot be made out beyond reasonable doubt, because there is no material evidence that Ms Henderson read or approved Mr Bheeroo's skeleton argument or was aware of the reference to the September documents within it.

256. It is important to note that the particulars of ground 4 refer to two ways in which the documents were deployed before the court: first, by being included in the hearing bundle and, second, by being referred to in Ms Henderson's counsel's skeleton argument.

257. I accept that there is no evidence that Ms Henderson read or approved the contents of her counsel's skeleton argument and no evidence that she was aware of the references to the September documents within it. I am, however, satisfied so as to be sure that Ms Henderson was aware that the September documents were included within the hearing bundle for the court, for the following reasons:

(1) She knew that her witness statement and the disputed Borkova statement were being prepared for the purpose of being filed with the court, in response to the order for filing of evidence made by Hildyard J on 1 November 2016. If she had any doubt about this it must have been dispelled, first, by Ms Barber's email to Ms Henderson at 8:44am on 4 November 2016, in which she said that "the words I am putting in are going to be scrutinised by a judge…" and, second, by Ms Barber's further email at 2:49pm on the same day, referring to the filing requirements for both statements, in which she said "They are served by email by 4 and will be couriered as well … A bundle is put together for the judge on Tuesday".

(2) She knew that the hearing on 8 November 2016 before Rose J was the return date in respect of the injunction granted by Hildyard J on 1 November, and therefore knew that this was a hearing at which her own statement and the disputed Borkova statement would be before the court.

(3) For the reasons set out in paragraph 250 above, dealing with ground 3, I am satisfied that Ms Henderson knew that the September documents were exhibited to her witness statement.

258. Third, it is submitted that the allegation that Rose J was deceived into believing that the September documents had been written and signed by Ms Borkova is itself demurrable, as there is no evidence that the judge was so deceived. I agree that this particular allegation is unrealistic (let alone made out beyond reasonable doubt), in circumstances where the authenticity of the September documents was clearly in issue at the hearing on 8 November, and no decision was reached by the judge on the question. It is also true that the allegation is, in part, inconsistent with the fact (which is common ground) that it is not suggested that Ms Borkova "wrote" the September documents. The

allegation of knowingly interfering with the due administration of justice is, however, based not only on deceiving the judge, but also on "knowingly providing forged documents to the Court as evidence in support of the Defendant's case". The fact that the particulars of ground 4 contain certain matters which cannot be established does not, in my judgment, mean that the claim that an act of contempt was committed cannot be justified on the basis of allegations within the particulars which are established.

259. Fourth, it is submitted that the alleged conduct had an insufficiently serious impact on the hearing. In particular, it is submitted that:

(1) The Defendant gave undertakings prior to the hearing on 8 November 2016 so that it was not substantively effective;

(2) Rose J did not rely upon or accept the September documents as genuine, particularly as she had before her the genuine statement of Ms Borkova dated 7 November 2016 contesting their validity;

(3) The order substituting the Claimants, as claimants in the proceedings in place of MSS, was done at the request of the Claimants and not as a result of the judge having read the September documents; and

(4) The proceedings were discontinued shortly thereafter.

260. For the reasons set out in the section of this judgment dealing with the legal principles, I conclude that it is not necessary, in order to establish an act of contempt, that the deployment of the September documents caused the court to act in any particular way. In any event, in my judgment, the deployment of the September documents by their inclusion in the hearing bundle for the hearing on 8 November 2016 caused both the Claimants and the court to proceed on the basis that there was a genuine dispute as to the authenticity of the September documents, and therefore as to whether Ms Henderson was properly appointed a director of MSS. That is conduct sufficient to constitute an act of contempt.

261. So far as the application to amend to substitute Mr Neil and Mr Hall as claimants in place of MSS is concerned, while it was made by their own counsel, the only reason it was necessary to do so (and why it was therefore ordered by the court) was because the issue of control of MSS, in particular whether Mr Neil and Mr Hall were the proper directors, was a central issue in the case. This is clear from the discussion between counsel for the Claimants and the Judge, recorded on page 9 of the transcript of the hearing. Whether or not (as the Defendant submits) that would have been an issue anyway given Mr Barter's position is in my judgment not to the point, since the question whether Mr Neil was a director was undoubtedly relevant to this issue, and his purported removal depended on the validity of the September documents.

262. The Claimants also pointed, in their Supplemental Skeleton argument, to two orders made by the judge which they say were caused by the deployment of the September documents: a disclosure order against the Claimants and a costs order. The Defendant objects that these matters were not pleaded as particulars of this, or any, ground of contempt and therefore cannot be relied upon. The Defendant also submits that the disclosure order was made on the application of Mr Barter, not Ms Henderson, and that

the costs order was as likely, if not more likely, to have been caused by the submissions advanced on behalf of Mr Barter, and not by reason of the September documents. So far as the disclosure order is concerned, I agree that it appears from the transcript of the judgment of Rose J to have been sought only on behalf of Mr Barter. So far as the costs order is concerned, I accept that the Judge's reasoning in making no order as to costs, although made in response to submissions from Mr Bheeroo which related to the position of both defendants ("What if the defendants are shown to be the shareholders and have validly appointed directors?"), appears to have been based on the fact that "both sides have won something and lost something" at the hearing before her. Since Ms Henderson had offered undertakings prior to the hearing, the only person – on the defendants' side – who could have been said to have won anything at that hearing was Mr Barter. Accordingly, I conclude that neither of the additional matters relied on by the Claimants at trial adds anything to their case, as set out in ground 4, that the deployment of the September documents at the hearing on 8 November 2016 constituted an act of contempt. In those circumstances, I do not need to consider the Defendant's submission that no regard should be paid to them because they did not feature in the particulars of ground 4.

263. In relation to the mental element of ground 4, in addition to contending that the court cannot be sure that she was aware that the September documents were forgeries (which I have already rejected), the Defendant contends that the court cannot be satisfied that she intended that her use of the September documents should interfere with justice in the manner alleged in the particulars of ground 4. The Defendant relies in this respect on the fact that the September documents were already exhibited to Mr Jenkins' witness statement of 1 November 2016, and that it was not an overwhelming probability that the deployment of the documents would result in the substitution of the Claimants for MSS as claimants in the proceedings.

264. The fact that the September documents were already exhibited to Mr Jenkins' witness statement is in my judgment irrelevant. For the reasons already set out, the exhibiting of the September documents to Ms Henderson's own witness statement can only have been intended by her to convey to a recipient of it, including the court, that she contended they were genuine. The fact that her statement was served together with the disputed Borkova statement, which makes express reference to the September documents, puts this beyond doubt. For the reasons I refer to under ground 3 above, the probability that the court would, as a result, be misled can properly be characterised as overwhelming. It is not necessary, in my judgment, to establish that there was an overwhelming probability that the court would act in any particular way (for example, by making the substitution order).

265. Accordingly, I am satisfied so as to be sure that both the act of contempt, and the requisite mental element, of ground 4 are established.

Ground 5: Service of the disputed Eva Borkova Statement

266. The particulars of this ground are as follows:

(1) On 4 November 2016, the Defendant made or caused to be made and authorised her solicitors to serve on the Claimants' solicitors, a forged witness statement (the disputed Borkova statement), purporting to be from Ms Borkova, giving as her

purported current address Calla Lima, Selwo Hills, 10702 Estepona, Malaga, Spain, and containing a statement of truth purportedly signed by Ms Borkova.

(2) The disputed Borkova statement was forged.

(3) The Defendant knew that the disputed Borkova statement was a forged document.

(4) By authorising her solicitors to serve on the Claimants' solicitors the disputed Borkova statement the Defendant intended that the Claimants and their solicitors, and in due course the judge, would treat that witness statement as a genuine witness statement made by Ms Borkova rather than a forgery and the Defendant thereby interfered with the due administration of justice by deploying a forged witness statement to advance her case in the High Court proceedings.

267. The Defendant contends that an act of contempt has not been established beyond reasonable doubt for the following reasons.

268. First, because there is reasonable doubt as to whether the disputed Borkova statement was forged. For the reasons given above, I am satisfied so as to be sure that the disputed Borkova statement is a forgery.

269. Second, because the service of the disputed Borkova statement had no substantial or adverse effect on the administration of justice, given that Ms Henderson gave undertakings prior to the commencement of the 8 November 2016 hearing, Rose J did not rely on or accept the statement as genuine, and the proceedings were discontinued by consent shortly thereafter. The Defendant further submits that the order substituting the Claimants for MSS was not based upon any form of reliance upon the disputed Borkova statement, whether by the court or by the Claimants. These are essentially the same submissions as those made in relation to the September documents under grounds 3 and 4. For the same reasons as I have given in relation to grounds 3 and 4, I reject these submissions. I am satisfied so as to be sure that the service of the disputed Borkova statement constituted an act of contempt.

270. So far as the mental element of ground 5 is concerned, the Defendant first contends that it cannot be shown beyond reasonable doubt that she knew that the disputed Borkova statement was not genuine. I reject this, for the reasons already given.

271. The Defendant makes the same technical point, as is made in relation to the September documents, that the court cannot be sure that she intended for the Claimants and their solicitors to rely upon the statement, since the Claimants were not then parties to the proceedings. I reject this for the same reasons as given in above in relation to ground 4.

272. Finally, the Defendant contends that the court cannot be sure that she intended to deceive the judge at the hearing on 8 November 2016, since she gave an undertaking for the disposal of that hearing and therefore did not rely on it at the hearing. For the same reasons as I have given in relation to the same submission made in respect of the September documents, I reject that submission. I am satisfied so as to be sure that the Defendant intended that both the Claimants and the court would be misled into believing the disputed Borkova statement was genuine. In my judgment that is a sufficient intention in order to establish the necessary mental element in ground 5.

273. Accordingly, I am satisfied so as to be sure that the act of contempt and the requisite mental element are made out in respect of ground 5.

Ground 6: Deploying as evidence the disputed Eva Borkova Statement at the hearing on 8 November 2016

274. The particulars of ground 6 are as follows:

(1) Knowing that it was a forgery, the Defendant caused or allowed the disputed Borkova statement to be used at and for the purposes of a hearing on 8 November 2016 before Rose J in the following manner:

(a) The hearing bundle before the court contained a copy of the disputed Borkova statement;

(b) Counsel representing the Defendant referred to the disputed Borkova statement in his skeleton argument dated 7 November 2016;

(c) The judge read a copy of the disputed Borkova statement before making the order dated 8 November, which was accordingly referred to and recorded in the recitals and schedule to that order;

(d) Because it was relied on by the Defendant, the judge concluded that the disputed Borkova statement represented evidence of a genuine dispute about the removal of Mr Neil as a director and the validity of the appointment of the Defendant and Mr Clarke as directors of MSS, as a result of which she ordered that the Claimants should be substituted for MSS as claimants in the proceedings.

(2) By causing or allowing the copy of the disputed Borkova statement in the hearing bundle to be presented to the court and used and relied upon by her counsel at the hearing on 8 November 2016 as evidence supporting the Defendant's case the Defendant interfered with the due administration of justice by knowingly providing a forged witness statement to the court as evidence in support of the Defendant's case and by deceiving the judge into believing that the disputed Borkova statement had been made by Ms Borkova and that she had signed its statement of truth.

275. The Defendant's submissions in relation to both the act of contempt and mental element in respect of ground 6 are essentially the same as the submissions advanced in relation to the September documents in respect of ground 4. I reject them for the same reasons as set out above in relation to ground 4.

276. Accordingly, I am satisfied so as to be sure that the act of contempt and the requisite mental element in respect of ground 6 are established.

Ground 7: Making a false statement in a witness statement verified by a statement of truth

277. The particulars of this ground are as follows:

(1) The Defendant exhibited the September documents to her witness statement dated 4 November 2016;

(2) That witness statement stated at paragraph 2 that "Exhibited to this witness statement are copy documents…" (the "Paragraph 2 Statement")

(3) The witness statement was verified by a statement of truth;

(4) The Paragraph 2 Statement implied and was intended by the Defendant to be understood as meaning that the September documents exhibited to the witness statement were copies of genuine documents.

(5) The September documents were forged, and the Defendant knew that they were forged.

(6) Accordingly:

(a) the Paragraph 2 Statement was a false statement contained in a witness statement verified by a statement of truth which was signed by the Defendant; and

(b) The Defendant made the Paragraph 2 Statement without an honest belief in its truth.

278. In my judgment, this ground is not made out.

279. That is because I am not satisfied beyond reasonable doubt, that the Defendant knew that the Paragraph 2 Statement was false (even assuming that it was false). As the Court of Appeal said in *JSC BTA Bank v Ereshchenko* [2013] EWCA Civ 829, at [40], per Lloyd LJ, relying upon a passage at [30] of David Richards J's judgment in *Daltel v Makki* (above), "if and insofar as the Bank's case depends on the judge drawing an inference as to Mr Ereshchenko's state of mind, then the Bank's case can only succeed if the inference of dishonesty is the only possible inference that can reasonably be drawn."

280. The difficulty here lies in the fact that the Paragraph 2 Statement is, if taken literally, true: the documents exhibited to the statement were indeed copy documents. I accept that one interpretation of that statement is that it implies that the copies are of documents which are themselves genuine. Even if, which is possible, that is the preferred objective interpretation of the statement, in order to find that the Defendant had the requisite state of mind, it must be shown that she understood the statement to have that meaning. In my judgment, it is a reasonable inference that the Defendant simply gave no thought to the Paragraph 2 Statement, which is in the nature of a "boiler plate" provision more likely to have been drafted by her solicitor and not considered in any depth by her. In those circumstances I cannot be sure that the Defendant knew that it was false.

281. That does not, however, mean that I have any reasonable doubt that the Defendant knew that the September documents were forged, that she knew they were being deployed in evidence by being exhibited to her witness statement of 4 November 2016, and that they were filed in court for the purposes of the hearing on 8 November 2016. These are findings critical to the conclusion that grounds 3 and 4 are established.

Conclusion

282. For the above reasons, I conclude that Ms Henderson is guilty of the acts of contempt set out in grounds 3, 4, 5 and 6, but that she is innocent of the acts of contempt set out in grounds 1, 2 and 7.