

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)**



Claim No:

B E T W E E N :

THURROCK BOROUGH COUNCIL

Claimant

- and -

**(1) LIAM JAMES KAVANAGH
(2) ROCKFIRE CAPITAL LIMITED (IN LIQUIDATION)**

Defendants

PARTICULARS OF CLAIM

A. SUMMARY

1. Between 2017 and 2020, the Claimant invested about £400 million in bonds issued by a company majority-owned by the First Defendant, which were to be secured against a portfolio of solar farms known as the “Miramar portfolio”. These bonds were marketed by the First Defendant and the Second Defendant, a company wholly owned by the First Defendant. The investments were made in reliance on valuations procured by the Defendants and based on assumptions provided by the Defendants. The bonds were also subject to strict terms restricting the use of the invested funds.
2. A substantial portion of the funds invested by the Claimant were not applied for the purposes permitted by the bonds. Instead they were diverted by the First Defendant, largely for his personal benefit, in breach of contract and breach of trust. The Claimant’s investigations continue, but it appears that about £150 million was misapplied in this way.
3. Further, the Claimant’s investments in 2018, 2019, and 2020, totalling £130 million, were induced by fraudulent misrepresentations about the basis on which the valuations were prepared. The Defendants are each responsible for these misrepresentations.
4. All payments under the bonds ceased in February 2022. The underlying solar assets were sold in February 2024, which resulted in some recovery for the Claimant. However, the Claimant has sustained a substantial net loss, even after these sales.



5. The Claimant advances the following claims: (i) deceit; (ii) inducing breach of contract; (iii) knowing receipt; (iv) dishonest assistance; (v) equitable proprietary claims; and (vi) unlawful means conspiracy.

B. PARTIES

6. The Claimant (“**the Council**”) is the local authority for the borough of Thurrock in the county of Essex.
7. Mr Sean Clark was at all material times Director of Finance at the Council (“**Mr Clark**”). Mr Chris Buckley was at all material times Senior Financial Accountant at the Council (“**Mr Buckley**”). Mr Clark and Mr Buckley were at all material times acting on behalf of the Council.
8. The First Defendant (“**Mr Kavanagh**”) was, at all material times, involved in the business of owning and operating solar farms in the United Kingdom.
9. At all material times, Mr Kavanagh was the ultimate owner of a group of companies operating under the name “Rockfire Energy” and later “Toucan Energy” (“**the Rockfire/Toucan Group**”). The ultimate holding company was Rockfire Energy Holdings Limited, later renamed Toucan Energy Holdings Limited. The Rockfire/Toucan Group was involved in the business of owning and operating solar farms in the United Kingdom.
10. The Second Defendant (“**Rockfire Capital**”) is a company incorporated in England and Wales. Rockfire Capital was at all material times wholly owned by Mr Kavanagh. Rockfire Capital was placed into members’ voluntary liquidation on or about 25 August 2020. On or about 17 August 2023, the liquidation was converted into a creditors’ voluntary liquidation.
11. Rockfire Investment Finance Plc (“**Rockfire Investment Finance**”) is a company incorporated in England and Wales. Rockfire Investment Finance was at all material times owned as to 80% by Mr Kavanagh and as to 20% by Mr Andrew Williams (“**Mr Williams**”). Rockfire Investment Finance was placed into members’ voluntary liquidation on or about 18 February 2021. On or about 9 August 2023, the liquidation was converted into a creditors’ voluntary liquidation.
12. A relevant company in the Rockfire/Toucan Group was RFE Gen Co Limited, later renamed Toucan Gen Co Limited (“**RFE Gen Co**”).
13. Mr Kavanagh was:



- 13.1 the self-described “*Founder*” of Rockfire Capital;
 - 13.2 appointed a director of Rockfire Capital on or about 10 June 2009;
 - 13.3 at all material times, Chief Executive Officer of Rockfire Capital; and
 - 13.4 a director of Rockfire Investment Finance from on or about 7 September 2015 to on or about 25 July 2020.
14. Mr Williams was:
- 14.1 appointed a director of Rockfire Capital on or about 29 August 2013;
 - 14.2 appointed secretary of Rockfire Capital on or about 4 September 2015;
 - 14.3 at all material times, Chief Financial Officer of Rockfire Capital;
 - 14.4 appointed a director of Rockfire Investment Finance on or about 7 September 2015; and
 - 14.5 appointed secretary of Rockfire Investment Finance on or about 7 September 2015.

C. THE COUNCIL’S INVESTMENTS

- 15. From 2017 to 2020, the Council invested in bonds related to a group of 32 solar farms known as the “Miramar portfolio” (“**Miramar Portfolio**”).
- 16. Each solar farm was at all material times owned by a special purpose vehicle. The shares in all 32 special purpose vehicles were at all material times owned by Perpetual Power (UK) Limited (“**PP UK**”). The shares in PP UK were in turn at all material times owned by Perpetual Power (UK) Holdings Limited (“**PP Holdings**”). PP Holdings was originally owned by Magnetar Solar (UK) Limited (“**Magnetar**”), but it was purchased by the Rockfire/Toucan Group in 2017 as set out below.
- 17. The Council invested by paying money to Rockfire Investment Finance, or Rockfire Capital as Rockfire Investment Finance’s agent, in exchange for bonds issued by Rockfire Investment Finance. As is set out in further detail below, the Council invested money in bonds relating to the Miramar Portfolio on four occasions:
 - 17.1 £235 million and £33 million, totalling £268 million, in December 2017 (“**2017 Tranches**”);
 - 17.2 £40 million in November 2018 (“**2018 Tranche**”);



17.3 £50 million in February 2019 (“**2019 Tranche**”); and

17.4 £40 million in January 2020 (“**2020 Tranche**”).

(The 2018 Tranche, the 2019 Tranche, and the 2020 Tranche are together referred to as the “**Additional Tranches**”.)

D. THE 2017 TRANCHES

D1. Invitation

18. In late 2017, Rockfire Capital approached the Council with a proposed investment related to the Miramar Portfolio. The proposed transaction was to involve the following:

18.1 The Council would loan money to Rockfire Investment Finance, which would issue bonds to the Council. These would be known as “Issue 8 Solar Bonds”.

18.2 Rockfire Investment Finance would then lend the money to RFE Gen Co, which would use it to acquire the shares in PP Holdings from Magnetar.

18.3 Rockfire Investment Finance would make interest payments to the Council under the bonds (and would ultimately repay the capital).

18.4 Rockfire Investment Finance’s obligations under the bonds would be secured against the Miramar Portfolio under certain security documents. The rights under those documents would be held by a security trustee on trust for the bondholders.

D2. 2017 Valuation

19. As part of the investment process, Rockfire Capital engaged the Association for Public Service Excellence (“**APSE**”) to provide a valuation of the Miramar Portfolio. This valuation was required by the Council to ensure that there was adequate security for the sums to be lent as part of the 2017 Tranches.

20. APSE produced a (final) report dated 8 November 2017 valuing the Miramar Portfolio at about £542 million (“**2017 Valuation**”).

21. The 2017 Valuation was, and stated that it was, based on assumptions and information provided by Rockfire Capital. The 2017 Valuation included a detailed breakdown of the assumptions and information.



22. One assumption provided by Rockfire Capital, which was known in the market as the ‘power curve’, was the electricity price that each solar farm could expect to achieve for electricity produced in the relevant period, adjusted for inflation, excluding other revenue streams such as government subsidies.
23. In the 2017 Valuation, APSE used a power curve derived from data provided by Baringa Partners LLP (“**the Baringa Power Curve**”). Baringa Partners LLP is a consultancy which produces independently assessed pricing forecasts which are commonly used by participants in the solar industry.
24. On or about 8 November 2017, Ms Molly Warnock (Mr Kavanagh’s personal assistant) (“**Ms Warnock**”) emailed the 2017 Valuation to Mr Clark and Mr Buckley.

D3. Investment

25. The Council invested £268 million (in tranches of £235 million and £33 million) on or about 20 December 2017. It did so by transferring that sum to Eversheds Sutherland (International) LLP (“**Eversheds**”) on or about 18 December 2017. Eversheds held the money on behalf of Rockfire Investment Finance subject to an undertaking dated 18 December 2017 (“**the Eversheds Undertaking**”). Eversheds released the money on or about 20 December 2017, as is explained in further detail below.
26. On or about 20 December 2017, Rockfire Investment Finance executed (as a deed poll) an instrument setting out the terms on which bonds would be issued (“**2017 Bond Instrument**”). The 2017 Bond Instrument is attached to this Particulars of Claim and certain relevant terms are pleaded below.
27. On or about 20 December 2017, Rockfire Investment Finance issued:
 - 27.1 235 million bonds to the Council in relation to the £235 million investment (“**2017 Bonds (First Tranche)**”), together with a bond certificate dated 20 December 2017 (“**Bond Certificate 1**”); and
 - 27.2 33 million bonds to the Council in relation to the £33 million investment (“**2017 Bonds (Second Tranche)**”), together with a bond certificate dated 20 December 2017 (“**Bond Certificate 2**”).
28. Both Bond Certificate 1 and Bond Certificate 2 stated that the bonds were issued “*subject to the rights and restrictions contained in the [2017 Bond] Instrument*”.



29. The Council advanced the 2017 Tranches, and Rockfire Investment Finance issued the 2017 Bonds (First Tranche), the 2017 Bonds (Second Tranche), Bond Certificate 1, and Bond Certificate 2, under:

29.1 A contract between the Council and Rockfire Investment Finance formed on or about 20 December 2017 on the terms contained in the 2017 Bond Instrument (“**2017 Bond Instrument Contract**”). The contract was formed:

29.1.1 By Rockfire Investment Finance making an offer to the Council when inviting it to invest £268 million in the bonds, and the Council accepting the offer by advancing that sum.

29.1.2 Alternatively, by the Council offering to invest by transferring £268 million to Eversheds (as Rockfire Investment Finance’s agent), and Rockfire Investment Finance accepting that offer by retaining (and not returning) those funds.

29.2 Alternatively, the 2017 Bond Instrument.

D4. Relevant terms

30. Clause 6 of the 2017 Bond Instrument provided:

[Rockfire Investment Finance] shall use the net proceeds of the issue of the Bonds to provide, in accordance with Clauses 4.1 and 4.2 and otherwise on such terms as shall be determined at the sole discretion of the Company, the Loan to [RFE Gen Co] in order to fund, or refinance the funding of, [RFE Gen Co’s] acquisition of the entire issued share capital of [PP Holdings] or to provide shareholder loans from [RFE Gen Co] to [PP Holdings], in each [case] secured in accordance with Clause 4 (the “Permitted Purpose”).

31. “Permitted Purpose” was defined in Clause 1.1 to have the meaning given to it in Clause 6. “Loan” was defined in Clause 1.1 to have the meaning given to it in clause 4.1.

32. Clause 4.1 provided (relevantly):

... The proceeds of the Bonds will be invested by being applied in granting and making a loan (with the same maturity, principal and interest terms as the Bonds) (the “Loan”) to [RFE Gen Co] ...

33. Clause 10.1.7 provided (relevantly):

... all outstanding Bonds held by a Bondholder shall become immediately repayable, at the option of the Bondholder, at par together with all accrued interest up to and including the date of redemption, on the occurrence of any of the following events (each a “Default Event”):

...



any failure by [Rockfire Investment Finance] to use the proceeds for the Permitted Purpose.

34. Clause 6 therefore had the effect that Rockfire Investment Finance could only use any money invested in the bonds to provide a loan to RFE Gen Co on the same maturity, principal, and interest terms as the bonds in order to:

34.1 fund, or refinance the funding of, RFE Gen Co's acquisition of the entire issued share capital of PP Holdings; or

34.2 provide shareholder loans from RFE Gen Co to PP Holdings

("the Permitted Purpose").

35. In the premises of paragraphs 30 to 34 above, it was the mutual intention (objectively ascertained) of the Council and Rockfire Investment Finance (alternatively, of the Council) that any money advanced under the terms contained in the 2017 Bond Instrument would not be at the free disposal of Rockfire Investment Finance, and could only be used for the Permitted Purpose.

36. Any money advanced under the terms contained in the 2017 Bond Instrument was therefore held by Rockfire Investment Finance on trust for the Council, subject to a power to apply it to the Permitted Purpose.

D5. Use of the 2017 Tranches

37. The Council's investigation into the use of the 2017 Tranches is ongoing. However, the Council has established, from bank statements provided to the Council in October 2023 by liquidators of Rockfire Investment Finance, that:

37.1 on or about 20 December 2017, Eversheds transferred £20,331,310.41 to Rockfire Investment Finance via bank transfer, which it is inferred was part of the proceeds of the 2017 Tranches; and

37.2 later on the same day, Rockfire Investment Finance transferred £15 million to Mr Kavanagh via bank transfer.

38. The Council infers from the fact that this sum was transferred to an account held by Mr Kavanagh that he received this sum for his personal benefit.

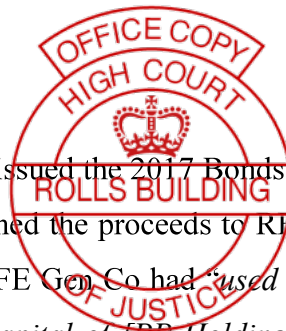


39. The Council continues to investigate what happened to the balance of the £20,331,310.41 that was transferred to Rockfire Investment Finance. However, the Council has not identified any evidence that the balance was applied for the Permitted Purpose.
40. The Council assumes that Eversheds, acting on behalf of Rockfire Investment Finance, transferred the remainder of the 2017 Tranches (that is, the money other than the £20,331,310.41 transferred to Rockfire Investment Finance) for the Permitted Purpose (and that these funds were applied in order to acquire the shareholding in PP Holdings and/or to refinance the funding of that acquisition and/or to provide shareholder loans to PP Holdings).

E. CLAIMS RELATING TO THE 2017 TRANCHES

E1. Inducing breach of contract (claim against Mr Kavanagh)

41. The transfer of £15 million of the 2017 Tranches to Mr Kavanagh for his personal benefit was not in accordance with the Permitted Purpose. Rockfire Investment Finance therefore breached the 2017 Bond Instrument Contract.
42. The Council infers that:
 - 42.1 Mr Kavanagh caused or encouraged Rockfire Investment Finance to commit the breach of contract pleaded in paragraph 41 above.
 - 42.2 Mr Kavanagh did so with knowledge that he was causing or encouraging it to act in breach of contract.
 - 42.3 Mr Kavanagh thereby intended to induce a breach of contract by Rockfire Investment Finance.
43. The Council infers these matters from the following circumstances:
 - 43.1 Mr Kavanagh was, at all material times, a director and the CEO of Rockfire Capital and a director of Rockfire Investment Finance.
 - 43.2 Mr Kavanagh led the negotiations on behalf of Rockfire Capital for the investment of the 2017 Tranches.
 - 43.3 Mr Kavanagh signed the 2017 Bond Instrument on behalf of Rockfire Investment Finance.
 - 43.4 On or about 20 December 2017, Mr Kavanagh signed, on behalf of RFE Gen Co, a “Project Performance Agreement” between the Council and RFE Gen Co. Recital A



recorded that Rockfire Investment Finance had issued the 2017 Bonds (First Tranche) and 2017 Bonds (Second Tranche) and had loaned the proceeds to RFE Gen Co (defined as the “Loan”). Recital B recorded that RFE Gen Co had *used the proceeds of the Loan to purchase the entire issued share capital of [PP Holdings] and to make loans to [PP Holdings]*”. Recitals A and B purported to record that the whole of the 2017 Tranches had been used in accordance with the Permitted Purpose.

43.5 In light of these facts:

43.5.1 Mr Kavanagh must have read the 2017 Bond Instrument and been aware of the restrictions in it. Alternatively, if he did not have actual knowledge of its terms then he must have made a conscious decision not to enquire as to those terms (and this is sufficient to constitute knowledge of those terms, for the purposes of this claim).

43.5.2 Rockfire Investment Finance would not have transferred funds to Mr Kavanagh unless Mr Kavanagh had either given an instruction for such a transfer to be made or (at least) encouraged that such a transfer be made.

43.6 Mr Kavanagh was the recipient of the transfer of the £15 million referred to in paragraph 41 above.

43.7 So far as the Council is aware, Mr Kavanagh accepted the transfer of £15 million from Rockfire Investment Finance and used those funds for his own benefit.

44. In causing or encouraging Rockfire Investment Finance to act in breach of contract, Mr Kavanagh was not acting in good faith or within the scope of his authority as director of Rockfire Investment Finance. Paragraphs 41 to 43 above are repeated. In the circumstances:

44.1 Mr Kavanagh’s conduct breached his directors’ duties to Rockfire Investment Finance in that it (a) did not promote the success or best interests of Rockfire Investment Finance and (b) gave rise to a conflict between his duties as director and self-interest as recipient of the funds.

44.2 Such conduct was not properly authorised by Rockfire Investment Finance.

44.3 In either case, Mr Kavanagh would have known that his conduct breached his directors’ duties and lacked proper authorisation. Such conduct was therefore undertaken in bad faith.



45. In the premises, Mr Kavanagh is liable to the Council for inducing the breach of contract by Rockfire Investment Finance pleaded in paragraph 41 above.
46. The Council is entitled to damages from Mr Kavanagh for the loss it has suffered as a result of that wrong.
47. Had Rockfire Investment Finance not committed the breach of contract pleaded above then either:
 - 47.1 the funds would have been applied for the Permitted Purpose, in which case it is averred that they would have been used to refinance the funding of RFE Gen Co's acquisition of the shares in PP Holdings, thereby reducing the debt owed to other lenders and increasing the Council's net recovery upon sale of the underlying solar assets; or
 - 47.2 the funds would have been returned to the Council, and the relevant part of the bond repaid early.
48. In either case the Council has suffered loss, as a result of the breach of contract and Mr Kavanagh's inducement of the breach of contract, equivalent to the amount of the misapplied funds.

E2. Knowing receipt (claim against Mr Kavanagh)

49. Further and in any event, in the premises of paragraphs 29 and 30 to 36 above:
 - 49.1 Rockfire Investment Finance held the £20,331,310.41 transferred to it on 20 December 2017 on trust for the Council, subject to a power to apply it to the Permitted Purpose; and
 - 49.2 in transferring £15 million of that sum to Mr Kavanagh on or about 20 December 2017, rather than applying it to the Permitted Purpose, Rockfire Investment Finance breached that trust.
50. The Council infers from the circumstances set out in paragraph 43 above that:
 - 50.1 Mr Kavanagh received the transfer of £15 million from Rockfire Investment Finance for his own use and benefit.
 - 50.2 Mr Kavanagh knew that:



50.2.1 The £20,331,310.41 that Eversheds transferred to Rockfire Investment Finance was trust money (alternatively, he knew the facts that meant that the money was trust money).

50.2.2 Any use of that money which did not involve applying it to the Permitted Purpose would be in breach of trust and that the transfer of such money to Mr Kavanagh was therefore carried out in breach of trust (alternatively, he knew the facts that meant that such use of the money would be a breach of trust).

51. In the premises, Mr Kavanagh's knowledge was such as to render the receipt of those funds unconscionable.

52. The Council is therefore entitled, at its election, to equitable compensation or an account of profits from Mr Kavanagh, in at least the amount of the misapplied funds.

E3. Dishonest assistance (claim against Mr Kavanagh)

53. Paragraphs 41 to 43 and 49 to 50 above are repeated.

54. In the premises:

54.1 Mr Kavanagh caused, encouraged, or assisted Rockfire Investment Finance to breach its trust by transferring £15 million to Mr Kavanagh on 20 December 2017.

54.2 Such conduct was carried out dishonestly. In light of Mr Kavanagh's knowledge of the facts, as pleaded above, his conduct would have been regarded as dishonest by the objective standards of ordinary decent people.

55. Mr Kavanagh is therefore liable for dishonest assistance of this breach of trust.

56. The Council is therefore entitled, at its election, to equitable compensation or an account of profits from Mr Kavanagh, in at least the amount of the misapplied funds.

E4. Equitable proprietary claim (claim against Mr Kavanagh)

57. In the premises, to the extent that Mr Kavanagh retains any part of the £15 million transferred to him in breach of trust, or traceable proceeds of any part of that sum, he holds that money or those proceeds on trust for the Council.

E5. Unlawful means conspiracy (claim against Mr Kavanagh)

58. Mr Kavanagh and Rockfire Investment Finance combined to achieve the common end of transferring £15 million of the 2017 Tranches out of Rockfire Investment Finance and the



Rockfire/Toucan Group to Mr Kavanagh for his personal benefit using unlawful means. The Council infers that combination from the circumstances pleaded in paragraph 43 above.

59. Mr Kavanagh and Rockfire Investment Finance took concerted action consequent on that combination, in causing, encouraging, or assisting the making of, and the making of, the transfer of £15 million to Mr Kavanagh on 20 December 2017. Paragraphs 41 to 44, 49 to 51, and 53 to 55 above are repeated.
60. Mr Kavanagh and Rockfire Investment Finance intended to injure the Council. Such intention is inferred from the fact that Mr Kavanagh and (through at least Mr Kavanagh) Rockfire Investment Finance must have known that such misapplication would inevitably harm the Council, by:
 - 60.1 Preventing such funds from being applied for the Permitted Purpose, or otherwise preventing them from being returned to the Council, which would have benefited the Council. Paragraph 47 above is repeated.
 - 60.2 Instead, allowing Mr Kavanagh to dissipate such funds or otherwise deal with them so as to render it more difficult for the Council to recover them at a later date.
61. The unlawful means used by Mr Kavanagh and Rockfire Investment Finance comprised:
 - 61.1 Rockfire Investment Finance's breach of contract (pleaded in paragraph 41 above);
 - 61.2 Mr Kavanagh's inducement of Rockfire Investment Finance's breach of contract (pleaded in paragraphs 41 to 44 above);
 - 61.3 Rockfire Investment Finance's breach of trust (pleaded in paragraph 49 above);
 - 61.4 Mr Kavanagh's knowing receipt of money from Rockfire Investment Finance transferred in breach of trust (pleaded in paragraphs 49 to 52 above); and
 - 61.5 Mr Kavanagh's dishonest assistance in Rockfire Investment Finance's breach of trust (pleaded in paragraphs 53 to 56 above).
 - 61.6 Mr Kavanagh's breaches of directors' duties to Rockfire Investment Finance (pleaded in paragraph 44 above) and/or if (which is denied) the funds transferred to Mr Kavanagh had been held by Rockfire Investment Finance on RFE Gen Co's behalf, Mr Kavanagh's breaches of directors' duties to RFE Gen Co, on the basis that Mr Kavanagh instructed the transfer and/or received and retained the funds and such conduct (a) did not promote the success or best interests of the company and (b) gave rise to a



conflict between Mr Kavanagh's duties as director and self-interest as recipient of the funds.

62. The Council has suffered loss as a result of the conspiracy. Paragraphs 47 to 48 above are repeated.
63. To the extent relevant, Mr Kavanagh and Rockfire Investment Finance knew that that the means pleaded in paragraph 61 above were unlawful or did not believe that the means used were lawful.
64. In entering into and carrying out the conspiracy as alleged above, Mr Kavanagh was not acting in good faith or within the scope of his authority as director of Rockfire Investment Finance. Paragraphs 44.1 to 44.3 above are repeated.
65. In the premises, Mr Kavanagh is liable in the tort of unlawful means conspiracy for the loss caused to the Council.

E6. Balance of the £20,331,310.41 transferred to Rockfire Investment Finance

66. The Council has not seen any evidence that the balance of the sum of £20,331,310.41 transferred to Rockfire Investment Finance on 20 December 2017 was applied for the Permitted Purpose. The Council infers that this sum was not so applied.
67. Insofar as the sums were applied other than for the Permitted Purpose, the said conduct would constitute a breach of contract and breach of trust by Rockfire Investment Finance, for the reasons given above.
68. It is inferred, given Mr Kavanagh's role within Rockfire Investment Finance and his willingness to direct that the £15 million sum referred to above be misapplied, that any misapplication of the further funds was undertaken at his direction or with his encouragement. Paragraph 43 above is repeated.
69. In the circumstances:
 - 69.1 Mr Kavanagh induced Rockfire Investment Finance's breach of contract and dishonestly assisted its breach of trust. Paragraphs 42 to 48 and 53 to 56 above are repeated, save that the relevant breaches of contract and trust arose from the misapplication of the additional funds.
 - 69.2 Further, insofar as Mr Kavanagh received these misapplied funds for his use and benefit, he is additionally liable for knowing receipt and (to the extent he retains the funds



or their traceable proceeds) subject to equitable proprietary claims. Paragraphs 49 to 52 and 57 above are repeated.

69.3 Further and in any event, Mr Kavanagh is liable in unlawful means conspiracy in respect of these misapplied funds. Paragraphs 58 to 65 above are repeated, save that the combination and concerted action related to the misapplication of the additional funds contrary to the Permitted Purpose.

F. THE ADDITIONAL TRANCHES

F1. The 2018 Tranche

(a) Invitation

70. In or about November 2018, Mr Kavanagh met with Mr Clark and Mr Buckley and raised the possibility of the Council providing an additional investment in bonds relating to the Miramar Portfolio.

71. On or about 12 November 2018, Mr Williams sent an email to Mr Clark and Mr Buckley, copying Mr Kavanagh and Ms Warnock, confirming the details of the proposed additional investment. Mr Williams said (relevantly):

Further to your meeting with Liam last week we write to confirm the details of a top up investment we would like [the Council] to make.

As confirmed the syndicate banks have offered Liam a refinance of the portfolio which would if he accepts it ... change some of the dynamics of the [original] investment. What we [therefore] propose is a transaction as outlined herewith. This is based on receiving an additional investment of the sum of £40m by the 21st November 2018.

(b) 2018 Valuation

72. On or about 12 November 2018, Mr Clark replied to Mr Williams's 12 November 2018 email, saying that the Council required analysis of the increased value of the Miramar Portfolio to justify additional investment.

73. On or about 13 November 2018, Mr Williams replied to that email, offering to provide the 2017 Valuation or to instruct APSE to prepare a new valuation. On or about 13 November 2018, Mr Clark replied to that email, asking for a new valuation from APSE.



74. On or about 14 November 2018, Mr Williams emailed Mr Peter Walker (an independent consultant engaged by APSE), copying Mr Kavanagh, providing the assumptions to be used in the new valuation. The email attached an assumption sheet.
75. In the email, Mr Williams indicated that the assumptions were consistent with those used in the 2017 Valuation, with some changes. In relation to the power curve, Mr Williams said:
- This is the big change, we have currently fixed a proportion of our prices for the portfolio at £61.45 per MW with the balance on merchant expected to be even higher.*
76. The assumption sheet listed the following power curve:
- Wholesale electricity – Power prices fixed for Summer 2019 - £61.45 per MWh*
77. In or about November 2019, APSE sent to Rockfire Capital a report dated 19 November 2018 valuing the Miramar Portfolio at about £665 million (“**2018 Valuation**”).
78. The 2018 Valuation was, and stated that it was, based on the updated assumptions and information provided by Rockfire Capital on or about 14 November 2018.
79. The 2018 Valuation did not use the Baringa Power Curve. Nor did it use a power curve derived from data provided by any other third party that produced independently assessed pricing forecasts. Instead, it used a power curve that assumed a power price of £61.45 per MWh in year 1, indexed to an inflation assumption for subsequent years (“**£61.45 Power Curve**”). APSE used the £61.45 Power Curve in the 2018 Valuation as a result of the assumption provided by Mr Williams on or about 14 November 2018 (pleaded in paragraphs 74 to 76 above).
80. The 2018 Valuation gave a significantly higher valuation of the Miramar Portfolio (about £665 million) than that which had been given in the 2017 Valuation (about £542 million). The principal reason for this was that the 2018 Valuation used the £61.45 Power Curve rather than the Baringa Power Curve (or a power curve derived from data produced by another independent market data specialist).
81. On or about 19 November 2018, Mr Williams emailed Mr Clark, copying Mr Kavanagh and Ms Warnock, attaching the 2018 Valuation.

(c) Investment

82. On or about 21 November 2018, the Council invested £40 million. It did so by transferring that sum via bank transfer to an account with the name “Rockfire Capital GLO”. The Council



assumes from the name of the account that the bank account was held by Rockfire Capital. If this account belonged to Rockfire Capital then Rockfire Capital received the money as agent for Rockfire Investment Finance.

83. On or about 21 November 2018, Rockfire Investment Finance issued 40 million bonds to the Council ("**2018 Bonds**"). Rockfire Investment Finance issued a bond certificate for the 2018 Bonds dated 21 November 2018 ("**Bond Certificate 3**").

84. Bond Certificate 3 stated that the bonds were issued "*subject to the rights and restrictions contained in the [2017 Bond] Instrument*".

85. The Council advanced the 2018 Tranche, and Rockfire Investment Finance issued the 2018 Bonds and Bond Certificate 3, under:

85.1 A contract between the Council and Rockfire Investment Finance formed on or about 21 November 2018 on the terms contained in the 2017 Bond Instrument ("**2018 Bond Instrument Contract**"). The contract was formed:

85.1.1 By Rockfire Investment Finance making an offer to the Council when inviting it to invest £40 million in the bonds, and the Council accepting the offer by advancing that sum.

85.1.2 Alternatively, by the Council offering to invest by transferring £40 million to Rockfire Capital (as Rockfire Investment Finance's agent), and Rockfire Investment Finance accepting that offer by retaining (and not returning) those funds.

85.2 Alternatively, the 2017 Bond Instrument.

86. The permissible uses of the 2018 Tranche were therefore limited to the Permitted Purpose, as stated in the 2017 Bond Instrument.

(d) Use of the 2018 Tranche

87. The Council is not aware that any part of the money comprising the 2018 Tranche was used for the Permitted Purpose.

88. In the premises, the Council infers that Mr Kavanagh removed the money comprising the 2018 Tranche from Rockfire Capital (directly or indirectly) for his personal benefit. This inference is based on:



88.1 The lack of any explanation by Mr Kavanagh of the use of these funds, despite him being given the opportunity to explain the position in pre-action correspondence.

88.2 The transfer of significant funds from the 2017 Tranches, the 2019 Tranche, and the 2020 Tranche for Mr Kavanagh's personal benefit (pleaded above and below), from which it is inferred that a similar approach was taken in relation to the 2018 Tranche.

F2. The 2019 Tranche

(a) Invitation

89. On or about 14 December 2018, Mr Kavanagh met with Mr Clark and Mr Buckley and discussed a further additional investment by the Council in bonds related to the Miramar Portfolio.

90. On or about 25 January 2019, Mr Williams emailed Mr Clark, copying Mr Kavanagh and Ms Warnock, saying (relevantly):

Please find attached the original APSE report from October 2017, the revised valuation report from November 2018 and the Letters of Assurance issued by APSE on both occasions on the Miramar portfolio.

The reports show an increase in value from:

| | |
|---------------------------------|---------------------|
| <i>October 2017</i> | <i>£542,245,001</i> |
| <i>November 2018</i> | <i>£665,873,557</i> |
| | |
| <i>Portfolio Value increase</i> | <i>£123,627,556</i> |

Based on your conversations with Liam we propose:-

- An additional £50M of investment on the Issue 8 solar bond of £235m, taking it to £285M ...*

91. The email from Mr Williams attached the 2018 Valuation.

(b) Investment

92. On or about 8 February 2019, the Council invested £50 million. It did so by transferring that sum via bank transfer to an account with the name "Rockfire Capital". The Council assumes from the name of the account that the bank account was held by Rockfire Capital. If this account belonged to Rockfire Capital then Rockfire Capital received the money as agent for Rockfire Investment Finance.



93. On or about 8 February 2019, Rockfire Investment Finance issued 50 million bonds to the Council (“**2019 Bonds**”). Rockfire Investment Finance issued a bond certificate for the 2019 Bonds dated 8 February 2019 (“**Bond Certificate 4**”).
94. Bond Certificate 4 stated that the bonds were issued “*subject to the rights and restrictions contained in the [2017 Bond] Instrument*”.
95. The Council advanced the 2019 Tranche, and Rockfire Investment Finance issued the 2019 Bonds and Bond Certificate 4, under:
- 95.1 A contract between the Council and Rockfire Investment Finance formed on or about 8 February 2019 on the terms contained in the 2017 Bond Instrument (“**2019 Bond Instrument Contract**”). The contract was formed:
- 95.1.1 By Rockfire Investment Finance making an offer to the Council when inviting it to invest £50 million in the bonds, and the Council accepting the offer by advancing that sum.
- 95.1.2 Alternatively, by the Council offering to invest by transferring £50 million to Rockfire Investment Finance, and Rockfire Investment Finance accepting that offer by retaining (and not returning) those funds.
- 95.2 Alternatively, the 2017 Bond Instrument.
96. The permissible uses of the 2019 Tranche were therefore limited to the Permitted Purpose, as stated in the 2017 Bond Instrument.

(c) Use of the 2019 Tranche

97. On or about 21 March 2019, Rockfire Capital transferred £47,167,525.91 by bank transfer to Rockfire Investment Finance. The Council infers from the amount and timing of the payment that the money was part of the 2019 Tranche.
98. Funds that had comprised the 2019 Tranche were transferred by Rockfire Investment Finance for at least the following purposes, which appear in each case to have been made for Mr Kavanagh’s personal benefit:
- 98.1 on or about 27 March 2019, about £9.1 million was used to purchase a Bombardier private jet, via payment to McAfee and Taft;
- 98.2 on or about 5 April 2019, about £0.7 million was paid to a bank account with Coutts & Co under the reference of “Investment Land L Kavanagh”;



- 98.3 on or about 30 April 2019, about £2 million was paid to Crown Investments;
- 98.4 on or about 27 June 2019, about £0.8 million was paid to Lancaster Sports Car Ltd (the Council infers, to purchase a sports car for Mr Kavanagh);
- 98.5 on or about 27 June 2019, about £3 million was used to purchase a property in Mallorca in Mr Kavanagh's name, via payment to Mallorca Law;
- 98.6 on or about 24 July 2019, 25 July 2019, and 7 August 2019, about £13.7 million was used to purchase a yacht, via transfers to Ince Gordon Dadds;
- 98.7 on or about 29 August 2019, about £2.5 million was paid to Malta Customs;
- 98.8 on or about 12 September 2019, about £0.9 million was paid to Crown Investments;
- 98.9 on or about 11 October 2019, about £1.9 million was paid to Car Logistics; and
- 98.10 between about 26 March 2019 and about 13 November 2019, about £1.91 million was paid to Alpha Aeria (for, the Council infers, the charter of a Bombardier jet).
99. In addition, between about 15 April 2019 and 2 December 2019, about £10.1 million of the 2019 Tranche was paid to Rockfire Capital.
100. The Council continues to investigate these payments and other payments that may have been made using the proceeds of the 2019 Tranche. However, the Council is not aware that any part of the 2019 Tranche was used for the Permitted Purpose.

F3. The 2020 Tranche

(a) Invitation

101. In or about January 2020, Rockfire Capital sought a further investment by the Council in bonds related to the Miramar Portfolio.
102. On or about 15 January 2020, Ms Warnock sent a blank application form for further bonds to Mr Buckley, copying Mr Clark and Mr Kavanagh. Although the bonds were described as "Issue 13 Solar Bonds", it is apparent from the matters pleaded at paragraphs 103 and 112 below that they were to be issued on the same terms as the previous Issue 8 Solar Bonds.
103. Ms Warnock followed up with a further explanatory email to Mr Clark and Mr Buckley, copying Mr Kavanagh, on or about 17 January 2020. She said:



Further to recent correspondence regarding the Issue 13 Solar Bonds, I am emailing today to set out further details and attach the APSE report and accompanying APSE Letter of Reliance.

Due to the banks refinancing their debt in the [Miramar] portfolio at a lower rate, there is now an opportunity for [the Council] to top-up their investment of the [Miramar] Portfolio (Issue 8 Solar Bond), with Rockfire utilising this refinance in order to offer [the Council] a top-up investment in the portfolio with a competitive interest rate. Please see below the terms of the Issue 13 Solar Bonds ...

APSE have produced an executive summary valuation of the portfolio based on up to date data provided from the solar portfolio, showing the current value of the portfolio at £621,963,419.85. Thurrock currently have Issue 8 Solar Bonds to the value of £358,000,000, by topping up their current holding in the [Miramar] Portfolio their total Bond value will be £398,000,000.

The Issue 13 Solar Bonds are a top-up investment of the current Issue 8 Solar Bonds, therefore no further security documentation is required as it is already covered by the security terms for the Issue 8 Solar Bonds. We have named this top-up Issue 13 to easily differentiate on interest return statements between the original Issue 8 Solar Bonds and the top-up.

We trust the above information and attached APSE report can assist with your investment decision.

Should you require any further information please do not hesitate to contact Liam or I directly.

...

Molly Warnock | PA to Liam Kavanagh

104. Ms Warnock's email attached a report from APSE dated 16 January 2020 valuing the Miramar Portfolio at about £621 million ("**2020 Valuation**").

(b) 2020 Valuation

105. The 2020 Valuation stated that it was based on updated assumptions and information provided by Rockfire Capital on or about 10 January 2020.

106. The 2020 Valuation did not use the Baringa Power Curve, as the 2017 Valuation had done. Nor did it use a power curve derived from data provided by any other third party that produced independently assessed pricing forecasts. Instead, it used the £61.45 Power Curve, as the 2018 Valuation had done.

107. Rockfire Capital provided the £61.45 Power Curve to APSE, and instructed APSE to use that power curve for the purposes of the 2020 Valuation, on or about 10 January 2020. Rockfire Capital did so on the express instructions of Mr Kavanagh. In particular, the Council is now aware that:



107.1 On or about 8 January 2020, Mr Dan Skilton (Financial Controller at Toucan Energy Services Limited, which was part of the Rockfire/Toucan Group) (“**Mr Skilton**”) sent an email to Mr Ian Walsh (Finance Director at Rockfire Capital) (“**Mr Walsh**”), copying Mr Dan Kirk (Managing Director, and a director, of Toucan Energy Services Limited) (“**Mr Kirk**”). In the email, Mr Skilton provided information that was to be provided to APSE for the purposes of the 2020 Valuation. It is inferred that Mr Skilton had been requested to provide this information on the basis that he was the individual within the Rockfire/Toucan Group who was best placed to assess the potential performance of the Miramar solar assets, and thus to provide appropriate assumptions for use in the 2020 Valuation.

107.2 In relation to the power curve, Mr Skilton said:

In terms of wholesale prices closer to delivery... I've put some numbers at the bottom of the spreadsheet based on offers from Smartest for S20/W20 and my estimates for S21/W21 based on the info presented on Smartest's portal. I'd go with Baringa thereafter as no real liquidity or visibility to lock in values past these periods ...

The Council therefore infers that Mr Skilton had included in the attached spreadsheet (which the Council has not seen) electricity pricing data based on actual offers from a buyer (SmartestEnergy) and an estimate for the following year's pricing based on information on the that buyer's pricing portal. Mr Skilton suggested that for pricing thereafter the market-standard Baringa Power Curve should be used, given the lack of visibility over electricity prices for later periods.

107.3 Mr Walsh forwarded this email to Mr Kavanagh on the same day, and said:

Just to make you aware on the proposed £40m. We have received this from Toucan. The average power price they are predicting is £41.70/MWh (compared to £61.45/MWh in the previous valuation APSE did) so will have a significant impact on their valuation.

Can we discuss in the morning please?

The “*proposed £40m*” is a reference to the investment from the Council that would become the 2020 Tranche. The Council also infers from the email that the average power price that Mr Skilton had predicted in his attached spreadsheet was £41.70 per MWh. Mr Walsh compared this to the power price used in the 2018 Valuation, which was £61.45 per MWh, and noted that the difference would have a “*significant impact*” on the valuation (i.e. it would significantly reduce the valuation).



107.4 Mr Kavanagh initially responded to Mr Walsh on the same day, copying Mr Williams and Ms Warnock, saying:

Yes we should just let [APSE] make the assumptions on power prices not toucan..

Give me a buzz in the morning and I will confirm what can be sent by Rockfire to [APSE] only

107.5 On or about 9 January 2020 (the next day), Mr Kavanagh sent a follow-up email to Mr Walsh, copying Mr Williams, Ms Warnock, and Ms Emily Webb, saying:

You can call me when you want but we will issue a model is an assumption of power price at £62..

We are not responsible for the investment decision of others neither do we undertake DD on others behalf.. power prices go up and down valuation goes up and down..

Please remember that this is a very very long term play with the council they never want the portfolio sold and are in for the long term.. if in any particular year due to prices or breakdowns whatever the sun doesn't shine it won't be a problem for them to accommodate drops in income..

These funds along with the existing will be used to create a new family investment office and to create wealth for years to come this has always been my plan and we have only now to achieve this markets appetites many factors mean this is now..

By all means check with me these things but I have given a direct instruction and that is how it is..

108. Thus:

108.1 in January 2020, the relevant individual(s) with responsibility for the Miramar Portfolio within the Rockfire/Toucan Group considered that an updated (and lower) power curve should be provided to APSE based on their actual expectations of the potential performance of the Miramar Portfolio; and

108.2 however, Mr Kavanagh explicitly instructed that the higher £61.45 per MWh figure should be provided, without identifying any basis for believing that this figure was achievable by the Miramar Portfolio, in order to ensure a higher valuation and thereby fund his “*new family investment office*”.

(c) Investment

109. Following receipt of the 2020 Valuation, the Council decided to invest £40 million in the bonds. Mr Clark signed the completed application form and sent it to Ms Warnock on or about 22 January 2020.



110. On or about 27 January 2020, the Council invested £40 million. It did so by transferring that sum via bank transfer to an account with the name “Rockfire Capital Global Client Account No.1”. The Council assumes from the name of the account that the bank account was held by Rockfire Capital. If this account belonged to Rockfire Capital then Rockfire Capital received the money as agent for Rockfire Investment Finance.
111. On or about 27 January 2020, Rockfire Investment Finance issued 40 million bonds to the Council (“**2020 Bonds**”). Rockfire Investment Finance issued a bond certificate for the 2020 Bonds dated 27 January 2020 (“**Bond Certificate 5**”).
112. Bond Certificate 5 stated that the bonds were issued “*subject to the rights and restrictions contained in the [2017 Bond] Instrument*”.
113. The Council advanced the 2020 Tranche, and Rockfire Investment Finance issued the 2020 Bonds and Bond Certificate 5, under:
- 113.1 A contract between the Council and Rockfire Investment Finance formed on or about 27 January 2020 on the terms contained in the 2017 Bond Instrument (“**2020 Bond Instrument Contract**”). The contract was formed:
- 113.1.1 By Rockfire Investment Finance making an offer to the Council when inviting it to invest £40 million in the bonds, and the Council accepting the offer by advancing that sum.
- 113.1.2 Alternatively, by the Council offering to invest by transferring £40 million to Rockfire Investment Finance, and Rockfire Investment Finance accepting that offer by retaining (and not returning) those funds.
- 113.2 Alternatively, the 2017 Bond Instrument.
114. The permissible uses of the 2020 Tranche were therefore limited to the Permitted Purpose, as stated in the 2017 Bond Instrument.

(d) Use of the 2020 Tranche

115. On or about 27 January 2020, after the Council had transferred the 2020 Tranche to Rockfire Capital, Rockfire Capital transferred £40 million by bank transfer to Rockfire Investment Finance. The Council infers from the amount and timing of the payment that the money was the 2020 Tranche.



116. Rockfire Investment Finance used money that had comprised the 2020 Tranche to make all or part of at least the following payments for Mr Kavanagh's personal benefit:

116.1 on or about 2 December 2020, about £20.75 million was paid to Skyfield Estate LLP and then on to Wilsons Solicitors, and used to purchase of the Ashe Park estate, a residential property;

116.2 on or about 17 December 2020, about £20 million was paid to Mr Kavanagh personally; and

116.3 on or about 21 December 2020, about £18.6 million was paid to Mr Kavanagh personally.

117. The Council is not aware that any part of the money comprising the 2020 Tranche was used for the Permitted Purpose.

118. In the premises, the Council infers that Mr Kavanagh removed all or a substantial part of the money comprising the 2020 Tranche from Rockfire Investment Finance (directly or indirectly) for his personal benefit.

G. CLAIMS RELATING TO THE ADDITIONAL TRANCHES

G1. Deceit (claims against Rockfire Capital and Mr Kavanagh)

(a) Representation

119. Rockfire Capital provided each of the 2018 and 2020 Valuations to the Council:

119.1 The 2018 Valuation was provided to the Council on or about 19 November 2018 (in the email from Mr Williams to Mr Clark and Mr Buckley pleaded in paragraph 81 above).

119.2 The 2018 Valuation was provided to the Council on or about 25 January 2019 (in the email from Mr Williams to Mr Clark pleaded in paragraphs 90 and 91 above).

119.3 The 2020 Valuation to the Council on or about 17 January 2020 (in the email from Ms Warnock to Mr Clark and Mr Buckley pleaded in paragraphs 103 and 104 above).

In each case Rockfire Capital impliedly represented to the Council that, to the extent that each valuation report was based on assumptions and information provided by Rockfire Capital, Rockfire Capital believed that that information was, and those assumptions were, appropriate for use in a valuation of the Miramar Portfolio. These representations are referred to



below as the “**2018 Valuation Representation**”, “~~2019 Valuation Representation~~” and “**2020 Valuation Representation**” (together “~~the Valuation Representations~~”).

120. A reasonable person in the Council’s position would have understood that each Valuation Representation was being made when Rockfire Capital provided the relevant valuation report to the Council, in light of the following circumstances:

120.1 The Council did not have any direct communication with APSE. Rather: (i) Rockfire Capital engaged APSE; (ii) Rockfire Capital provided APSE with certain assumptions and information which APSE used to prepare the valuation reports; (iii) APSE provided the valuation reports to Rockfire Capital; and (iv) Rockfire Capital then provided the valuation reports to the Council.

120.2 It was explicitly stated that the 2018 Valuation and 2020 Valuation were prepared on the basis of assumptions and information provided by Rockfire Capital to APSE. Each valuation report noted that “[t]he financial modelling undertaken by APSE Energy has been based on updated assumptions and information provided by Rockfire Capital dated [14 November 2018 or 10 January 2020]”.

120.3 In each case APSE issued a letter to the Council, which said that the Council could rely upon the valuations “*subject to the assumptions made in the model*”, i.e. the assumptions provided by Rockfire Capital. Further, in the 17 January 2020 email pleaded in paragraph 103 above, Ms Warnock expressly stated that “*APSE have produced an executive summary valuation of the portfolio based on up to date data provided from the solar portfolio*”.

120.4 In the circumstances it was objectively apparent that (a) the quality of the valuations depended on Rockfire Capital having provided appropriate information and assumptions to APSE for use in the valuations, and (b) Rockfire Capital sought to encourage the Council to rely on those valuations in deciding whether or not to invest in further bonds. Any reasonable recipient of the valuations from Rockfire Capital would therefore have understood that Rockfire Capital was representing that it at least *believed* that it had provided appropriate information and assumptions to APSE.

121. The 2020 Valuation Representation also amounted to a direct representation by Mr Kavanagh because the representation was made by Ms Warnock as Mr Kavanagh’s agent. Ms Warnock signed off her email of on or about 17 January 2020 with “*Molly Warnock | PA to Liam*”



Kavanagh". She also noted in that email that "[s]hould you require any further information please do not hesitate to contact Liam or I directly".

122. Further, Mr Kavanagh is personally liable for all the Valuation Representations because he manifestly approved and adopted them:

122.1 The Council infers that Mr Kavanagh approved the Valuation Representations from the following circumstances:

122.1.1 Mr Kavanagh was a director and the CEO of Rockfire Capital.

122.1.2 Mr Kavanagh was closely and directly involved in the provision of the assumptions and information to APSE:

- (a) For the purposes of the 2018 Valuation that is clear from Mr Williams's email of 14 November 2018 (pleaded in paragraph 74 above), which began by referring to an earlier conversation between Mr Kavanagh and Mr Walker.
- (b) Mr Kavanagh was responsible for the decision to provide APSE with the £61.45 per MWh figure for the 2020 Valuation. That is clear from Mr Kavanagh's emails on or about 8 and 9 January 2020 (pleaded in paragraphs 107 to 108 above), in which he described it as a "*direct instruction*".

122.1.3 Mr Kavanagh's emails dated 8 and 9 January 2020 (see paragraphs 107 to 108 above) further demonstrate Mr Kavanagh's close control over the creation of the valuations to be provided to the Council.

122.1.4 Mr Kavanagh's personal assistant sent the 2020 Valuation to the Council on Mr Kavanagh's behalf on 17 January 2020. He must have directed her to do so. It is inferred that he gave a similar instruction to Mr Williams when Mr Williams sent the 2018 Valuation to the Council on 19 November 2018 and 25 January 2019.

122.2 Mr Kavanagh manifested his approval and adoption of the Valuation Representations to the Council as follows:



122.2.1 Mr Kavanagh led the negotiations to secure further investment from the Council in 2018, 2019, and 2020, to which the Valuation Representations were central.

122.2.2 Mr Kavanagh was copied into each of the emails by which the valuation reports were provided to the Council, and thus would have been expected—as director and CEO of Rockfire Capital—to correct the position if he knew that the information or assumptions underlying the valuations were not appropriate.

123. In the alternative, Mr Kavanagh is liable as an accessory to Rockfire Capital’s fraudulent misrepresentations. In the premises of paragraphs 163 to 170 below, (i) Mr Kavanagh assisted in making Rockfire Capital’s fraudulent misrepresentations and (ii) that assistance was pursuant to a common design by Mr Kavanagh and Rockfire Capital.

(b) The representations were false

124. The Valuation Representations were false because, when Rockfire Capital provided:

124.1 the 2018 Valuation to the Council on or about 19 November 2018,

124.2 the 2018 Valuation to the Council on or about 25 January 2019, and

124.3 the 2020 Valuation to the Council on or about 17 January 2020,

Mr Kavanagh, and therefore Rockfire Capital, did not believe that the £61.45 Power Curve was appropriate. Rather, Mr Kavanagh knew that the Miramar Portfolio would not realistically achieve an average power curve of £61.45 per MWh, and that any valuation based upon that power curve would be excessive. In the circumstances, it was not an appropriate power curve to provide to APSE for the purpose of preparing the Valuations. Mr Kavanagh’s knowledge and belief is to be attributed to Rockfire Capital.

125. The Council infers from the following circumstances that Mr Kavanagh, and therefore Rockfire Capital, did not believe that the £61.45 Power Curve was appropriate:

125.1 In relation to the 2020 Valuation, Mr Kavanagh was told that the £61.45 Power Curve was excessive but instructed that it be provided to APSE anyway. Thus in the 8 and 9 January 2020 emails pleaded in paragraphs 107 to 108 above:

125.1.1 Mr Kavanagh was explicitly told by Mr Walsh that the average power curve predicted by Mr Skilton (the Financial Controller within the Rockfire/Toucan



Group, who had considered what assumptions should be provided to APSE in relation to the Miramar assets) was £41.70 per MWh and that this would “*have a significant impact*” on APSE’s valuation.

125.1.2 Mr Kavanagh explicitly instructed Mr Walsh that the £61.45 per MWh power curve be provided to APSE in any event. He said that “*I have given a direct instruction and that is how it is*”.

125.1.3 Mr Kavanagh did not suggest (and did not believe) that £61.45 per MWh was an average power curve that was supported by data regarding the predicted performance of the Miramar Portfolio, or that it would actually be achieved by the Miramar Portfolio. Rather, Mr Kavanagh’s reason for providing the higher figure was to procure a higher valuation and additional lending, and thereby enrich himself. He stated explicitly that “*[t]hese funds will be used to create a new family investment office and to create wealth for years to come this has always been my plan*”.

125.1.4 In the circumstances Mr Kavanagh cannot have believed that the £61.45 Power Curve was an appropriate assumption to provide to APSE for the purposes of valuing the Miramar Portfolio, since it was not supported by data regarding the predicted performance of that portfolio and (in any event) was not a level of performance that he believed would be achieved. Rather, he knew (and intended) that it would lead to a grossly inflated valuation.

125.2 The Council infers that Mr Kavanagh similarly knew that the £61.45 Power Curve was an inappropriate assumption to use in the 2018 Valuation, but that he gave a similar instruction that it be provided to APSE. Pending disclosure, it is noted that:

125.2.1 Mr Kavanagh took the final decision in relation to the power curve to be used in the 2020 Valuation. It is unlikely that he was consulted on this issue in relation to the 2020 Valuation but not the 2018 Valuation.

125.2.2 It is inferred that in 2018 Mr Kavanagh was told by others within the Rock-fire/Toucan Group that the £61.45 Power Curve was an inappropriate power curve to provide to APSE, but that (as in 2020) he instructed that it be provided to APSE in any event.

125.2.3 As Mr Williams said in his 14 November 2018 email to APSE, the use of the £61.45 Power Curve was the “*big change*” driving the higher 2018 Valuation.



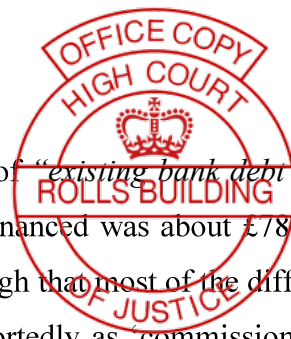
Providing this assumption thereby allowed Rockfire Investment Finance to secure significant additional borrowing from the Council. Further, as the 8 and 9 January 2020 emails demonstrate, (a) Mr Kavanagh was motivated by securing a higher valuation which would allow him to raise further funds from the Council for his personal benefit, (b) he said that securing such funds had “*always been my plan*”, and (c) he was willing for Rockfire Capital to supply an inappropriate assumption to APSE to secure this outcome. It is inferred that he sought to give effect to this plan in 2018, as in 2020, by ensuring that the £61.45 Power Curve was provided to APSE despite knowing that it was inappropriate.

125.3 In any event, even if Mr Kavanagh did not specifically instruct that the £61.45 Power Curve be provided to APSE in 2018, he must have known that it was an inappropriate assumption to provide. In particular:

125.3.1 At all times £61.45 per MWh was a completely unrealistic average price to expect from the supply of the Miramar Portfolio at the relevant times. Mr Kavanagh, who had years of experience in the solar industry and was the ultimate owner of extensive solar assets, must have known that.

125.3.2 The £61.45 per MWh figure produced a much higher valuation than the Baringa Power Curve used in the 2017 Valuation, which was issued a relatively short time before the 2018 Valuation. This was apparent to Mr Williams (and, the Council infers, Mr Kavanagh), as pleaded above. So far as the Council is aware, there had been no objective change in the market or anticipated performance of the Miramar assets that could have justified a very significant increase in the valuation in such a short period. Mr Kavanagh must therefore have realised that it was inappropriate to use the £61.45 Power Curve assumption in preference to the (market standard) Baringa curve, since it produced a substantial change in the valuation without any objective justification.

125.4 Mr Kavanagh made a deliberate misrepresentation in at least one other fund-raising document issued to the Council at or around the time of the 2018 Tranche. In August 2018, the Rockfire/Toucan Group sought to obtain funding from the Council in order to refinance its borrowing in relation to another group of solar assets (the “Wirsol portfolio”). The bond prospectus issued by Rockfire Capital in relation to that fundraising was signed by Mr Kavanagh personally. It falsely stated that the Rockfire/Toucan



Group was intending to refinance £85 million of “existing bank debt”. This was not true, since the actual amount of debt to be refinanced was about £78 million, as Mr Kavanagh knew. It was intended by Mr Kavanagh that most of the difference (£5 million) was to be paid to Rockfire Capital, purportedly as ‘commission’, and (it is inferred) extracted from Rockfire Capital by Mr Kavanagh for his own benefit. These matters were considered by the High Court in *Toucan Energy Holdings Ltd v Wirsol Energy Ltd* [2021] EWHC 895 (Comm). The Court found that:

125.4.1 *“[i]t is unlikely that Mr Kavanagh did not draft or read even the most basic information in the prospectus: but even if he did not, the false information about the [bank] debt seems very likely to have originated with him”* (at paragraph 741);

125.4.2 *“a regulatory document bearing his name contained clear untruths on an important matter: the size of the existing debt and the use to which the funds were to be put”* and that *“such an approach suggests a lack of integrity”* (at paragraph 741); and

125.4.3 *“[t]he fact that the fee was concealed both from Mr Kirk and in the prospectus would in any event cast serious doubt as to whether it was a bona fide arrangement fee as claimed or, simply, a covert extraction of funds by Mr Kavanagh for his own benefit”* (at paragraph 742).

Such conduct indicates a propensity on Mr Kavanagh’s part to knowingly make false statements to the Council in order to secure further lending, for his own personal benefit. For the avoidance of doubt, the Council’s right to bring claims in respect of this investment (and any other investments made by the Council in relation to companies associated with Mr Kavanagh) is expressly reserved.

125.5 The Council has sent a number of letters to Mr Kavanagh since 18 July 2023. These letters alleged that the Valuation Representations were made, and that they were false to Mr Kavanagh’s, and therefore Rockfire Capital’s, knowledge. To date Mr Kavanagh has not engaged with the evidential basis for these allegations, but rather has only made a bare assertion that he *“had a reasonably held belief as to the validity of the assumptions used”*. In particular, he has made no attempt to advance an innocent explanation for the 8 and 9 January 2020 emails pleaded in paragraphs 100 to 101 above. The Council infers that this is because there is no such explanation.



(c) Defendant knew the representation was false

126. In the premises Mr Kavanagh, and therefore Rockfire Capital, knew that the Valuation Representations were false. The subject matter of the representations was Rockfire Capital's, and thus Mr Kavanagh's, state of mind. The representations therefore cannot have been false without Mr Kavanagh, and thus Rockfire Capital, knowing they were false.

(d) Defendant intended that the claimant should act in reliance on the representation

127. Mr Kavanagh and Rockfire Capital intended that the Council should rely on the Valuation Representations. The Council infers this from the fact that the only reason Rockfire Capital sought the valuation reports from APSE was that the Council was to use them to decide whether or not to make the additional investments. Ahead of the 2018 Tranche, Mr Clark specifically asked for a new valuation by APSE in his email to Mr Williams on or about 13 November 2018 (pleaded at paragraph 72 above).

128. The Council also relies on the presumption that, where a representor makes a fraudulent misrepresentation capable of founding a deceit claim, they intend the representee to rely on it.

(e) Claimant acted in reliance on the representation and in consequence suffered loss

129. The Valuation Representations induced the Council to invest the Additional Tranches. On each occasion the relevant Valuation Representation was actively present in the minds of Mr Clark and Mr Buckley when the Council made the decision to invest. The valuations were provided in relation to each tranche by Rockfire Capital and both Mr Clark and Mr Buckley relied on Rockfire Capital's (implicit) representation that it believed it had provided assumptions and information to APSE appropriate for the purposes of preparing the valuations.

130. The Council also relies on:

130.1 The presumption that a representee will have been induced by a fraudulent misrepresentation intended to cause them to enter into a contract.

130.2 The presumption of materiality, given that the Valuation Representations were of such a nature that they would be likely to have played a part in the decision of a reasonable person to advance the Additional Tranches.

131. If the Valuation Representations had not been made, the Council would not have invested the Additional Tranches and would not have entered into the 2018 Bond Instrument Contract,



the 2019 Bond Instrument Contract, or the 2020 Bond Instrument Contract. The Council claims damages for all losses caused by these misrepresentations.

132. In February 2024, the solar assets comprising the Miramar Portfolio, together with other solar assets owned by the Rockfire/Toucan Group, were sold. The Council will, where appropriate, give credit for any net recoveries made as a result of the sale of the underlying solar assets, to the extent that these recoveries reduce the losses caused by the misrepresentations set out above.

133. The Council will quantify its final losses in due course, but at present the Council avers that it has sustained loss equivalent to the entirety of the Additional Tranches, i.e. £130 million. That loss arises in the following way:

133.1 The Council loaned money to a number of bond issuers connected with the Defendants and the Rockfire/Toucan Group. The bonds other than the Issue 8 Solar Bonds were known as the “Issue 9 Solar Bonds”, the “Issue 10 Solar Bonds”, the “Issue 11 Solar Bonds”, and the “Issue 12 Solar Bonds” (all five sets of bonds are together referred to as the “**Rockfire/Toucan Solar Bonds**”). Each of the bond issuers is now insolvent.

133.2 Taking into account the proceeds of the sales of the solar assets of the Rockfire/Toucan Group (including but not limited to the solar assets comprising the Miramar Portfolio), the Council expects a shortfall in recovery across the Rockfire/Toucan Solar Bonds of about £157 million. This comprises a shortfall of about £42 million on the Issue 8 Solar Bonds and a shortfall of about £115 million on the other bonds.

133.3 If the Valuation Representations had not been made, the Council would not have invested the Additional Tranches and the Council’s shortfall on the Rockfire/Toucan Solar Bonds would have been reduced by an equivalent amount. In this counterfactual the Council would have retained the amount of the Additional Tranches, and the sale proceeds of the solar assets of the Rockfire/Toucan Group would have been available to repay the Issue 8 Bonds in their entirety and to substantially reduce the shortfall on the other bonds set out above, instead of being used to repay part of the additional borrowing attributable to the Additional Tranches.

G2. Inducing breach of contract (claims against Mr Kavanagh)

134. In failing to apply the money comprising the 2018 Tranche, the 2019 Tranche, and the 2020 Tranche to the Permitted Purpose, Rockfire Investment Finance breached:



134.1 in respect of the 2018 Tranche, the 2018 Bond Instrument Contract which incorporated clause 6 of the 2017 Bond Instrument;

134.2 in respect of the 2019 Tranche, the 2019 Bond Instrument Contract which incorporated clause 6 of the 2017 Bond Instrument; and

134.3 in respect of the 2020 Tranche, the 2020 Bond Instrument Contract which incorporated clause 6 of the 2017 Bond Instrument.

135. The Council infers that:

135.1 Mr Kavanagh caused or encouraged Rockfire Investment Finance to commit the breaches of contract pleaded in paragraph 134 above.

135.2 Mr Kavanagh did so with knowledge that he was causing or encouraging it to act in breach of contract.

135.3 Mr Kavanagh thereby intended to induce breaches of contract by Rockfire Investment Finance.

136. The Council infers these matters from the following circumstances:

136.1 Mr Kavanagh was, at all material times, a director and the CEO of Rockfire Capital and a director of Rockfire Investment Finance.

136.2 Mr Kavanagh led the negotiations on behalf of Rockfire Capital for the investment of the 2017 Tranches, the 2018 Tranche, the 2019 Tranche, and the 2020 Tranche.

136.3 Mr Kavanagh signed the 2017 Bond Instrument on behalf of Rockfire Investment Finance.

136.4 Paragraph 43.4 above is repeated. Recital A also recorded that Rockfire Investment Finance had “*committed to lend the future proceeds of any further issue*” of bonds to RFE Gen Co. Recital B also recorded that RFE Gen Co would “*use the proceeds of the loan granted pursuant to any further issue of Bonds to refinance any existing debt of [RFE Gen Co] incurred in respect of the acquisition of [PP Holdings] or to make further loans to [PP Holdings]*”. Recitals A and B therefore stated that the proceeds of any further bond issues would be applied to the Permitted Purpose.

136.5 In light of these facts:



136.5.1 Mr Kavanagh must have read the 2017 Bond Instrument and been aware of the restrictions in it and that it applied to all the Additional Tranches. Alternatively, if he did not have actual knowledge of its terms then he must have made a conscious decision not to enquire as to those terms (and this is sufficient to constitute knowledge of those terms, for the purposes of this claim).

136.5.2 Rockfire Investment Finance would not have caused the money comprising the 2018 Tranche, the 2019 Tranche, and the 2020 Tranche to be applied for purposes other than the Permitted Purpose unless Mr Kavanagh had either given an instruction for the money to be applied in that way or (at least) encouraged that the money be applied in that way.

136.6 Mr Kavanagh ultimately received all or a substantial part of the money that comprised the 2018 Tranche, the 2019 Tranche and the 2020 Tranche, either directly, via the purchase of assets of which he was the ultimate beneficial owner, or via the purchase of assets by companies of which he was the ultimate beneficial owner.

136.7 So far as the Council is aware, Mr Kavanagh accepted those funds and/or assets and used them for his own benefit.

137. In causing or encouraging Rockfire Investment Finance to act in breach of contract, Mr Kavanagh was not acting in good faith or within the scope of his authority as director of Rockfire Investment Finance. Paragraphs 134 to 136 above are repeated. In the circumstances:

137.1 Mr Kavanagh's conduct breached his directors' duties to Rockfire Investment Finance in that it (a) did not promote the success or best interests of Rockfire Investment Finance and (b) gave rise to a conflict between his duties as director and self-interest as recipient of the funds.

137.2 Such conduct was not properly authorised by Rockfire Investment Finance.

137.3 In either case, Mr Kavanagh would have known that his conduct breached his directors' duties and lacked proper authorisation. Such conduct was therefore undertaken in bad faith.

138. In the premises, Mr Kavanagh is liable for inducing the breaches of contract by Rockfire Investment Finance pleaded in paragraph 134 above.

139. The Council is entitled to damages from Mr Kavanagh for the loss it has suffered as a result of that wrong.



140. Paragraph 47 above is repeated in respect of the breaches of contract pleaded in paragraph 134 above.

141. Paragraph 132 above is repeated.

142. The Council will quantify its final losses in due course, but at present the Council avers that it has sustained loss equivalent to at least the entirety of the Additional Tranches, i.e. £130 million. That loss arises in the following way:

142.1 Paragraphs 133.1 and 133.2 above are repeated.

142.2 Had Rockfire Investment Finance not committed the breaches of contract pleaded above, all or a substantial part of the Council's shortfall on the Rockfire/Toucan Solar Bonds would have been eliminated. This is because (i) the money comprising the Additional Tranches would have been used to repay part of the Issue 8 Bonds early, or otherwise applied to reduce the debts owed under the other bonds, and (ii) more of the sale proceeds of the Rockfire/Toucan Group solar assets would therefore have been available to eliminate or reduce the shortfall on the Rockfire/Toucan Solar Bonds.

G3. Knowing receipt (claims against Mr Kavanagh and Rockfire Capital)

143. Further and in any event, in the premises of paragraphs 30 to 36, 85, 95, and 113 above:

143.1 Rockfire Investment Finance held the Additional Tranches on trust for the Council, subject to a power to apply it to the Permitted Purpose; and

143.2 in applying the Additional Tranches for purposes other than the Permitted Purpose, including transferring much of that money to Mr Kavanagh for his personal benefit, Rockfire Investment Finance breached that trust.

144. In the premises of paragraphs 88, 98, and 118 above, Mr Kavanagh received all of the 2018 Tranche and the 2020 Tranche and a substantial part of the 2019 Tranche for his own use and benefit.

145. The Council infers from the circumstances set out in paragraph 136 above that Mr Kavanagh knew that:

145.1 The Additional Tranches were trust money (alternatively, he knew the facts that meant that the money was trust money).

145.2 Any use of the Additional Tranches which did not involve applying the money to the Permitted Purpose would be in breach of trust and that the transfer of such money to



Mr Kavanagh was therefore carried out in breach of trust (alternatively, he knew the facts that meant that such use of the money would be a breach of trust).

146. In the premises, Mr Kavanagh's knowledge was such as to render his receipt of money from the Additional Tranches unconscionable.
147. The Council is therefore entitled, at its election, to equitable compensation or an account of profits from Mr Kavanagh, in at least the amount of the misapplied funds received by Mr Kavanagh.
148. In the premises of paragraph 99 above, Rockfire Capital received money from the 2019 Tranche for its own use and benefit.
149. The Council infers from the fact that Mr Kavanagh was a director of Rockfire Capital, Rockfire Investment Finance, and other companies within the Rockfire/Toucan Group that:
 - 149.1 Rockfire Capital knew that the money comprising the 2019 Tranche was trust money (in the alternative, it knew the facts that meant that the money was trust money).
 - 149.2 Rockfire Capital knew that the use of the money other than for the Permitted Purpose would be a breach of trust and that the transfer of such money to Rockfire Capital was therefore carried out in breach of trust (alternatively it knew the facts that meant such use of the money would be breach of trust).
150. In the premises, Rockfire Capital's knowledge was such as to render its receipt of money from the 2019 Tranche unconscionable.
151. The Council is therefore entitled, at its election, to equitable compensation or an account of profits Rockfire Capital, in at least the amount of the misapplied funds received by Rockfire Capital.

G4. Dishonest assistance (claims against Mr Kavanagh and Rockfire Capital)

152. Paragraphs 134 to 136 and 143 to 145 above are repeated.
153. In the premises:
 - 153.1 Mr Kavanagh caused, encouraged, or assisted Rockfire Investment Finance to breach its trusts by applying the money comprising the 2018 Tranche, the 2019 Tranche, and the 2020 Tranche to purposes other than the Permitted Purpose.



153.2 Such conduct was carried out dishonestly. In light of Mr Kavanagh's knowledge of the facts, as pleaded above, his conduct would have been regarded as dishonest by the objective standards of ordinary decent people.

154. Mr Kavanagh is therefore liable for dishonest assistance of this breach of trust.

155. The Council is therefore entitled, at its election, to equitable compensation or an account of profits from Mr Kavanagh, in at least the amount of the misapplied funds.

156. Paragraphs 134 to 136 and 148 to 149 above are repeated.

157. The Council infers from the matters pleaded in paragraphs 87 to 88 and 97 to 100 above that Rockfire Capital applied some or all of the 2018 Tranche and the 2019 Tranche other than by (i) transferring the money to Rockfire Investment Finance or (ii) applying the money to the Permitted Purpose as Rockfire Investment Finance's agent.

158. In the premises:

158.1 Rockfire Capital caused, encouraged, or assisted Rockfire Investment Finance to breach its trusts by applying some or all of the 2018 Tranche and the 2019 Tranche other than the Permitted Purpose, including by transferring funds to Mr Kavanagh for his personal benefit.

158.2 Such conduct was carried out dishonestly. In light of Rockfire Capital's knowledge of the facts (via Mr Kavanagh), as pleaded above, its conduct would have been regarded as dishonest by the objective standards of ordinary decent people.

159. Rockfire Capital is therefore liable for dishonest assistance of these breaches of trust.

160. The Council is therefore entitled, at its election, to equitable compensation or an account of profits from Rockfire Capital, in at least the amount of the misapplied funds.

G5. Equitable proprietary claim (claims against Mr Kavanagh and Rockfire Capital)

161. In the premises, to the extent that Mr Kavanagh retains any part of the Additional Tranches transferred to him in breach of trust, or traceable proceeds of any part of those sums, he holds that money or those proceeds on trust for the Council.

162. In the premises, to the extent that Rockfire Capital retains any part of the 2018 Tranche or the 2019 Tranche, or traceable proceeds of any part of those sums, it holds that money or those proceeds on trust for the Council.



G6. Unlawful means conspiracy (claims against Rockfire Capital and Mr Kavanagh)

163. Mr Kavanagh, Rockfire Capital, and Rockfire Investment Finance combined to achieve the common end of procuring the investment of the Additional Tranches by the Council and/or transferring that money out of Rockfire Investment Finance and/or Rockfire Capital (at least in substantial part) for Mr Kavanagh's personal benefit, by unlawful means.
164. The Council infers that combination from the following circumstances:
- 164.1 Mr Kavanagh led the negotiations with the Council that led to the Additional Tranches being invested.
- 164.2 Mr Kavanagh's activities vis-à-vis the Council were facilitated by, and carried out through, Rockfire Capital and Rockfire Investment Finance. As to this:
- 164.2.1 He used Rockfire Capital to market the additional investments to the Council and make the Valuation Representations. It was also the entity through which he received the investments and from which he transferred some of the money comprising the Additional Tranches out of the Rockfire/Toucan Group to himself for his personal benefit.
- 164.2.2 Rockfire Investment Finance was the entity he used to issue the bonds. It was the entity that was party to the 2017 Bond Instrument and which held the money comprising the Additional Tranches subject to the terms in that instrument. It was also the entity from which he transferred much of the money comprising the Additional Tranches to himself for his personal benefit.
- 164.3 Rockfire Capital received each of the Additional Tranches as Rockfire Investment Finance's agent, and cooperated with Rockfire Investment Finance to distribute those sums contrary to the Permitted Purpose and (at least in substantial part) for Mr Kavanagh's personal benefit.
165. Mr Kavanagh, Rockfire Capital, and Rockfire Investment Finance took concerted action consequent on that combination, as set out above.
166. Mr Kavanagh, Rockfire Capital, and Rockfire Investment Finance intended to injure the Council. Such intention is inferred from the fact that Mr Kavanagh and (through at least Mr Kavanagh) Rockfire Capital and Rockfire Investment Finance must have known that procuring the investment of the Additional Tranches and then the misapplication of those funds would inevitably harm the Council, by:



- 166.1 Preventing such funds from being applied for the ~~Permitted Purpose~~, or otherwise preventing them from being returned to the Council, which would have benefited the Council. Paragraph 47 above is repeated.
- 166.2 Instead, allowing Mr Kavanagh to dissipate such funds or otherwise deal with them so as to render it more difficult for the Council to recover them at a later date.
167. The unlawful means used by Mr Kavanagh, Rockfire Capital, and Rockfire Investment Finance comprised:
- 167.1 Mr Kavanagh and Rockfire Capital's fraudulent misrepresentations (pleaded in paragraphs 119 to 139 above);
- 167.2 Rockfire Investment Finance's breaches of contract (pleaded in paragraph 134 above);
- 167.3 Mr Kavanagh's inducement of Rockfire Investment Finance's breaches of contract (pleaded in paragraphs 134 to 138 above);
- 167.4 Rockfire Investment Finance's breaches of trust (pleaded in paragraph 143 above);
- 167.5 Mr Kavanagh and Rockfire Capital's knowing receipt of money from Rockfire Investment Finance transferred in breach of trust (pleaded in paragraphs 143 to 151 above);
- 167.6 Mr Kavanagh and Rockfire Capital's dishonest assistance in Rockfire Investment Finance's breaches of trust (pleaded in paragraphs 152 to 160 above); and
- 167.7 Mr Kavanagh's breaches of directors' duties to Rockfire Investment Finance (pleaded in paragraph 137 above).
168. The Council has suffered loss as a result of the conspiracy. Paragraphs 131 to 133 and 140 to 142 above are repeated.
169. To the extent relevant, Mr Kavanagh, Rockfire Capital, and Rockfire Investment Finance knew that that the means pleaded in paragraph 167 above were unlawful or did not believe that the means used were lawful.
170. In entering into and carrying out the conspiracy as alleged above, Mr Kavanagh was not acting in good faith or within the scope of his authority as director of Rockfire Investment Finance or Rockfire Capital. Paragraphs 137.1 to 137.3 are repeated as regards Rockfire Investment Finance and the same matters are also alleged in respect of Mr Kavanagh's duties as director of Rockfire Capital.



171. In the premises, Mr Kavanagh and Rockfire Capital are liable in the tort of unlawful means conspiracy for the loss caused to the Council.

AND THE CLAIMANT CLAIMS:

1. damages for the tort of deceit and the tort of unlawful means conspiracy and, as against Mr Kavanagh only, the tort of inducing breach of contract;
2. equitable compensation or an account of profits, at the Council's election, for knowing receipt and dishonest assistance;
3. a declaration that, to the extent that:
 - a. Mr Kavanagh retains any part of the 2017 Tranches or the Additional Tranches, or their traceable proceeds, and
 - b. Rockfire Capital retains any part of the 2018 Tranche or the 2019 Tranche, or their traceable proceeds,Mr Kavanagh and/or Rockfire Capital (as applicable) hold that money or those proceeds on trust for the Council;
4. compound interest pursuant to the Court's equitable jurisdiction (alternatively, simple interest under s 35A of the Senior Courts Act 1981) on such sums as may be found to be due to the Council at such rate and for such period as the Court sees fit;
5. such further or other relief as the Court in its discretion thinks fit; and
6. costs.

CRAIG MORRISON KC

MOHAMMUD JAAMAE HAFEEZ-BAIG

Statement of Truth

The Claimant believes that the facts stated in this Particulars of Claim are true. The Claimant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

Date: 6 March 2024

Name: Daniel Fenwick

Position: Executive Director of Corporate Services and Monitoring Officer