

ENGLAND AND WALES / JUDGMENT

Quest Fund Placement Limited v FSI SGR SpA

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Neutral Citation Number: [2026] EWHC 15 (Comm) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES LONDON CIRCUIT COMMERCIAL COURT (KBD) Case No: LM-2025-000059 Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 12/01/2026 Before : THOMAS RAPHAEL KC, SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- ----- Between : QUEST FUND PLACEMENT LIMITED
- and - FSI SGR SPA Claimant Defendant
- -----
- ----- Laurence Page (instructed by Farrer & Co LLP) for the Claimant
Christopher Langley (instructed by Hogan Lovells International LLP) for the Defendant
Hearing date: 2 December 2025
- ----- Approved Judgment This judgment was handed down remotely at
10.30am on 12 January 2026 by circulation to the parties or their representatives by e-mail
and by release to the National Archives. Approved Judgment

Introduction

QUEST FUND V. FSI 1. 2. 3. 4. 5. 6. 7. 8. 9. This case concerns a contract between a private equity investment firm and a placement agent. The dispute is about the fees the agent should receive. Private equity firms seek investors to obtain capital to form funds to invest in targets. They can secure investors by their own efforts. Yet that may not be enough, and so they may also use placement agents. The Defendant, FSI SGR S.p. A. (“FSI”) is an Italian private equity firm. The Claimant, Quest Fund Placement Limited (“Quest”), is a placement agent. By its application of 1 May 2025, Quest seeks summary judgment against FSI for sums of Placement Fee which Quest says are and will shortly be due. The background is in part contested. But this paragraph is common ground for present purposes. In July 2017, FSI launched a new private equity fund called FSI Mid-Market Growth Equity Fund (“FSI I”), which was focused exclusively on Italian mid-market companies in various sectors. FSI I closed in 2019 with a fund size of about €1.4 billion. In 2022 FSI started marketing a new fund (the “FSI II Fund” or “Fund”) with a target size of around €1.5bn. By the end of May 2023, FSI had raised a substantial part of the target amount.

On 1 June 2023 Quest and FSI concluded a contract (the “Contract”) for the provision of placement agent services by Quest to FSI, on the terms of an Engagement Letter from Quest signed by (i) Quest, (ii) BA Securities LLC (“BAS”), a Quest affiliate, and (iii) FSI. BAS are not relevant to this dispute. Quest went on to provide services under the Contract, although the evidence does not give clear nor uncontested details of what services were provided. The FSI II Fund finally closed in February 2025. FSI has provided a list of investors (the “Investor List”) which Quest accepts for present purposes. The Contract provided for fees to be paid by FSI to Quest, in four parts: a Retainer Fee of €0.5m; an Additional Retainer Fee ranging up to €0.5m, linked to performance of certain Key Performance Indicators (“KPIs”) by Quest; a Placement Fee linked to investments in the Fund by investors; and a Co-Investment Fee linked to co-investments in the Fund.

10. The Retainer Fee, and the Additional Retainer Fee, have both been paid in full, although Quest says the Additional Retainer Fee was paid slightly late.
11. By clause 8 the Placement Fee is “in an amount equal to 2% of the aggregate principal amount of interests subscribed by Prospective Investors”.
12. The central dispute is between Quest’s case that the Placement Fee should be charged on 2% of all investments by all investors who invested after the Contract, subject only to defined exclusions in Schedules A and B; and FSI’s case that the Placement Fee should only be charged on investments of investors introduced by Quest. Approved Judgment QUEST FUND V. FSI
13. According to the Investor List, 16 investors subscribed after the Contract. On Quest’s case, it is entitled to a Placement Fee of 2% of all their investments, subject to a secondary dispute about the effect of Schedules A and B.
14. On FSI’s construction a requirement of “introducing” in some sense must be satisfied. FSI defined introducing as “putting FSI in contact with a new investor for the purposes of securing a potential investment in the Fund”.
15. Applying this, FSI says Quest only “introduced” one investor, Clipway 101 SCSp (“Clipway”). So the Placement Fee should be calculated only with regard to the investment of Clipway. 16. FSI said it was common ground that only Clipway was “introduced” in this sense. Quest never contended clearly that any investor other than Clipway satisfies this or any similar concept of “introducing”, but I do not think that Quest conceded that Clipway was the only possible candidate. Quest argued that the meaning of “introduced” would be unclear, and that if introducing was found to be a condition, Quest should have a chance to evaluate whether it meets the test. This links to Quest’s alternative “Active Role” point, below.
17. There is a secondary dispute about the exclusions in Schedules A and B. The 2nd last paragraph of clause 3 (the “Exclusion Term”) provides that investors listed in those schedules do not fall within the definition of “Prospective Investors”, so their investments are therefore excluded from calculation of the Placement Fee. Schedule A lists “Existing

Investors” and Schedule B is entitled “Other Potential Investors carved out”. Schedule A includes “65 Equity Partners” and Schedule B includes “Generali”. 18. FSI contends that, from the investors recorded in the Investor List, Lion River I N. V (“Lion River”) and Secondary Co-Investment 1 LP (“Secondary Co-Investment”) fall within the reference to “Generali”; and the investment of Bernina Investments Pte Ltd (“Bernina”) falls within the reference to “65 Equity Partners”. This is because it says the listings by name include all companies within the same group or under common ownership or control. Quest says these investors (the “Three Investors”) fall outside Schedules B and A respectively. I call this the “Schedule A and B Issue”.

19. The Schedule A and B Issue only arises, for summary judgment purposes, if FSI is clearly wrong about “introducing”, because it is not said for summary judgment purposes by Quest that Quest “introduced” the Three Investors.
20. There is also, potentially, a tertiary dispute on an alternative argument run by Quest in its Reply that even if “introducing” is a condition, it should be interpreted widely to cover investors as to whom Quest played “an active role” “in assisting [FSI] with securing commitments”, even if it was not Quest that first put that investor in contact with FSI. If so, Quest contends it could or might satisfy the criterion for more investors than just Clipway. But Quest does not pursue summary judgment on this basis. FSI says this is a hopeless reading of “introduce”, and takes pleading Approved Judgment QUEST FUND V. FSI points on whether this is an argument open to Quest. I call this the “Active Role” issue.
21. Clause 8 provides that the Placement Fee is payable in three equal instalments, the first on the date of the relevant “closing” (not the final closing of the Fund, but the completion of a group of investments); the second 7 days thereafter; and the third one year after the final closing of the Fund. Since the Fund finally closed on 12 February 2025, the third instalment is due on 12 February 2026. 22. 23. 24. If Quest is right on the construction of the Placement Fee, then applying 2% to the investments of all investors who (from the Investor List) subscribed after the Contract, Quest says it should have been paid as Placement Fee the sum of €2,226,666.66 to date and will be entitled to a further €1,113,333.33 on 12 February 2026, for a total of €3,339,999.99. If Quest is right on the main issue, but wrong on the Schedule A and B Issue, then excluding the Three Investors would reduce the total sum to €1,020,506.66. These calculations are common ground for the purposes of summary judgment. In contrast, if FSI is right as to introducing, FSI says that counting only Clipway, it was only obliged to pay €209,093.33 to date, which it has paid, and will be obliged to pay €104,546.67 on 12 February 2026, which it will do. In the circumstances, Quest’s application for summary judgment in respect of the Placement Fee seeks judgment for €2,017,573.52 (€2,226,666.66 minus €209,093.33) allegedly due now, plus contractual interest, and for a future liability of an extra €1,113,333.33 to be paid on 12 February 2026.

25. Quest's pleaded claim does not confine itself to those sums, because if the matter goes to trial, it may probe the accuracy of FSI's Investor List. But for the purposes of summary judgment those are the sums claimed.
26. Quest also has a subsidiary claim for interest on the alleged late payment of the Additional Retainer Fee. However, it accepts that factual disputes arise on that and it does not seek summary judgment in this regard. If summary judgment is refused, it will pursue this interest claim. But if summary judgment is granted, it will not do so. 27. FSI has not applied for defendant's summary judgment. However, it says in a witness statement from its solicitor ("Mirchandani 1"), that (i) the Court should prefer its construction, and (ii) if so the claim is bound to fail, because (iii) there is no dispute that Quest did not introduce any investors apart from Clipway. Consequently, (iv) if Quest's summary judgment application fails, the claim should be dismissed. This argument neglected that Quest did not concede the position applying "introducing". Mr Langley for FSI did not strongly pursue the request for dismissal of the claim, saying it only followed if the Court was definitively deciding the issue of construction in FSI's favour. Test for Summary Judgment
28. Under CPR Rule 24.3 summary judgment may be given without a trial if the Court
- (a) "considers that the party has no real prospect of succeeding on the claim, Approved Judgment QUEST FUND V. FSI defence or issue" and (b) "there is no other compelling reason why the case or issue should be disposed of at a trial".
29. A well-known summary of the relevant principles was set out by Lewison J in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch), [15]: i) ii) iii) iv) v) vi) vii) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 2 All ER 91; A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8] In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman* This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10] However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550; Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR

63; On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in Approved Judgment QUEST FUND V. FSI law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725. 30. In International Private Equity Ltd v ABN Amro Bank [2009] EWHC 2523 (Ch) (the "IPEL" case), Warren J decided an application for summary judgment in a somewhat similar case.

31. The Claimant ("IPEL") was a placement agent, and the defendant ("ABN") and a related entity ("AAC") were acting for a private equity fund. Under the contract, IPEL would assist AAC to seek investors for the fund. It provided for a "Success Fee" calculated (abbreviating somewhat) as "a fee of 2% of the total Commitments accepted by the Manager from IPEL Investors", defined as "Investors other than excluded Investors" [9]. There were specific exclusions. IPEL said "IPEL Investors" included all investors not specifically excluded, and the Success Fee was calculated accordingly. ABN said words should also be read into the definition to exclude investors not introduced by IPEL and where IPEL was not an effective cause of the investment: [10].
32. ABN relied on County Homeseach v Cowham [2008] EWCA Civ 26, supporting the idea that there will normally be implied terms in commission agency contracts, at least for more standard commission agents like estate agents, that commission should not be earned in respect of a transaction unless the agent was "the" (or possibly "an") "effective cause" of the transaction, save where the terms of the contract indicate to the contrary.
33. There were conflicting cases of factual matrix. IPEL said it was standard practice, in the case of an exclusive mandate, for a placement agent to be paid a success fee not dependent on the agent having introduced the investor nor upon it being an effective cause of the commitment. ABN said it would be highly unusual for a placement agent to receive a success fee if it was not responsible for seeking or obtaining the commitments in question, or where the placement agent has not identified or sought the relevant investor. Both dealt with the private equity market as it was over 15 years ago. Warren J could not resolve those competing views at the summary judgment stage. However, IPEL said it was willing to proceed for the purposes of summary judgment on the basis that market practice was as

ABN said it was ([4]). 34. For summary judgment, Warren J had formed the preliminary view that ABN's case on construction was "weak", even if right on market practice. He considered whether he should "grasp the nettle and decide the point" [13]. But he thought ABN's matrix case was not common ground, and incomplete, so he did not have the Approved Judgment QUEST FUND V. FSI detail necessary to understand fully how the alleged market practice interacted with the terms of the contract [14]. In the circumstances, he was unwilling to decide a difficult point of construction on assumed facts. Consequently, summary judgment was refused. 35. I note that Warren J thought that incompleteness in the matrix evidence of the party resisting summary judgment, but accepted by the applicant, could justify refusing summary judgment. Further, IPEL shows that is not the first conflict whether placement agent "success fees" should be automatic subject to exclusions, or dependent on the work done by the placement agent. Initial Summary of Decision 36. I have concluded this is not an appropriate case for summary judgment and Quest's application should be dismissed. But Quest's claim should not be dismissed now either. My core reasoning, which I expand on below, is:

- a. First, my preliminary view, on the matrix that can now be assumed, is that the parties objectively intended to limit the Placement Fee to the investments of investors introduced by Quest in some sense of "introduced". Consequently, I am not persuaded that FSI's defence has no real prospects of success.
 - b. However, I do not decide the question of construction in FSI's favour either. The question of construction is difficult, and I do not think the Court is in a satisfactory position to decide it definitively at this stage, on a summary basis, on assumed facts as to matrix.
 - c. Second, the Court is not in a satisfactory position to decide the question of construction because of problems with the factual matrix which can be assumed at this stage. Even though Quest in the end said it was conceding FSI's pleaded matrix case, the matrix position was incomplete, unsatisfactory, and in parts subject to continued dispute. d. It follows that it is not necessary to decide either the Schedule A and B Issue, or the Active Role Issue. I will however indicate the Court's preliminary reasoning on the Schedule A and B Issue.
 - e. Third, since the question of construction will not be decided at this stage, FSI's request to dismiss the claim does not arise. In any event I would not have granted it, for reasons explained below. The Law on Contractual Construction
37. There was no dispute as to the principles of contractual interpretation or "construction" of contracts, which have been frequently discussed. They can be taken from Lord Hodge's speech in *Wood v Capita* [2017] AC 1173:
10. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, Approved Judgment QUEST FUND V. FSI depending on the nature, formality and quality of drafting of the contract, give more or less

weight to elements of the wider context in reaching its view as to that objective meaning. In *Prenn v Simmonds* [1971] 1 WLR 1381, 1383H-1385D and in *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* (trading as HE Hansen- Tangen) [1976] 1 WLR 989, 997, Lord Wilberforce affirmed the potential relevance to the task of interpreting the parties' contract of the factual background known to the parties at or before the date of the contract, excluding evidence of the prior negotiations. When in his celebrated judgment in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912-913 Lord Hoffmann reformulated the principles of contractual interpretation, some saw his second principle, which allowed consideration of the whole relevant factual background available to the parties at the time of the contract, as signalling a break with the past. But Lord Bingham of Cornhill in an extrajudicial writing, "A New Thing Under the Sun? The Interpretation of Contracts and the ICS decision" (2008) 12 Edin LR 374, persuasively demonstrated that the idea of the court putting itself in the shoes of the contracting parties had a long pedigree.

11. Lord Clarke of Stone-cum-Ebony JSC elegantly summarised the approach to construction in the *Rainy Sky* case [2011] 1 WLR 2900, para 21f. In the *Arnold* case [2015] AC1619 all of the judgments confirmed the approach in the *Rainy Sky* case: Lord Neuberger of Abbotsbury PSC, paras 13-14; Lord Hodge JSC, para 76 and Lord Carnwath JSC, para 108. Interpretation is, as Lord Clarke JSC stated in the *Rainy Sky* case (para 21), a unitary exercise; where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense. But, in striking a balance between the indications given by the language and the implications of the competing constructions the court must consider the quality of drafting of the clause (the *Rainy Sky* case, para 26, citing *Mance LJ in Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd (No 2)* [2001] 2 All ER (Comm) 299, paras 13, 16); and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest: the *Arnold* case, paras 20, 77. Similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms.
12. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated: the *Arnold* case, para 77 citing *In re Sigma Finance Corp*n [2010] 1 All ER 571, para 12, per Lord Mance JSC. To my mind once one has read the language in dispute and the relevant parts of the contract that provide its context, it does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each.
13. Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express Approved Judgment QUEST FUND V. FSI

their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. The iterative process, of which Lord Mance JSC spoke in *Sigma Finance Corpn*

[2010] 1 All ER 571, para 12, assists the lawyer or judge to ascertain the objective meaning of disputed provisions.

38. As I will explain, this is a case where the drafting is poor on key issues, and the Contract is apparently not always internally coherent. So factual matrix may matter more, and textual analysis less, than in some other contexts. 39. In identifying the objective meaning of the words, the Court will be guided by the objective intention of the parties, as ascertainable from the words understood in context. See *Arnold v Britton* [2015] AC 1619, [15]: “When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”. See also *ABC Electrification v Network Rail*

[2020] EWCA Civ 1645, [18]-[19]. The Principles of Admissibility of Background Material

40. The basic principles of admissibility of background material for the construction of contracts are well known, and were not disputed:
- a. The relevant objective factual and legal background to a contract, which is known to or reasonably available to the parties at the time of contracting, is admissible for construction, save for negotiations and statements of subjective intent. See *Prenn v Simmonds* [1971] 1 WLR 1381, 1384E; *Wood v Capita*, [10], *Chartbrook v Persimmon* [2009] AC 1101, [28], [35]. This is sometimes called the “factual matrix”.

- b. Subsequent conduct is inadmissible for construction. (This basic proposition was not disputed; it is made good by many authorities, including *Schuler v Wickman Machine Tools Sales* [1974] AC 235, although that was not cited before me; in the authorities bundle it was recorded in, for example, *Blackstar Advisors v Cheyne Capital International* [2018] EWHC 3496 (Comm), [36].) Approved Judgment *QUEST FUND V. FSI*
- 41. However, these principles were not respected by much of the material that Quest relied on at various stages. FSI also adduced some inadmissible material, although this was more limited, and done reactively.
- 42. As part of the admissible factual matrix, evidence of “the ‘genesis’ and objectively the ‘aim’ of the transaction” (Prenn 1385H) is admissible, if known to or reasonably available to both parties. “[T]he commercial or business object of the transaction, objectively ascertained, may be a surrounding fact”: Prenn, 1385A. This can include evidence of the genesis and aim of a particular provision, if sufficiently important to qualify as part of the genesis and aim of the transaction: *Merthyr (South Wales) v Merthyr Tydfil* [2020] EWCA Civ 1645, [50].
- 43. There are qualifications to the exclusion of negotiations, and its reconciliation with the admissibility of evidence of genesis and aim requires care.
- 44. Communications in negotiations are admissible to prove objective matrix facts, including as to genesis and aim, or common knowledge of them or their reasonable availability: *Oceanbulk v TMT* [2011] 1 AC 662; [38]-[40]; *Merthyr* at [54]. But the line must be drawn carefully: “what is not permissible ... is to seek to rely on evidence of what was said in pre-contractual negotiations for the purposes of what the contract should be understood to mean” which excludes “not only statements reflecting one party’s intentions or aspirations ... but also communications which are a capable of showing that the parties reached a consensus on a particular point or used words in a particular sense.”: *Merthyr*, [54].
- 45. We get further assistance on how to draw the line from *Scottish Widows Fund v BGC* [2012] EWCA Civ 607, *Northrop Grumman v BAE Systems* [2015] EWCA Civ 844, and *Schofield v Smith* [2022] EWCA Civ 824:
 - a. Such material is only admissible to identify objective facts as to genesis or aim, or other relevant objective background facts: *Scottish Widows* at [16]; *Schofield* at [38(ii)]. But “statements made in the course of negotiations are often no more than statements of a negotiating position”: *Scottish Widows* [34]. Thus, an admissible matrix fact is “something other than a mere negotiating position taken by one of the parties.”: *Northrop* [32]. Further, evidence of genesis or aim derived from negotiations “could not be used to support detailed points of interpretation”: *Scottish Widows* [33].
 - b. “Judges should exercise considerable caution before treating as admissible communications in the course of pre-contractual negotiations relied as evidencing the parties’ objective aim”: *Scottish Widows* at [35].

46. Commercial Court Guide C1.3(h) requires that each feature of the matrix which is alleged to be relevant must be pleaded. The Contract
 47. The Contract is in the form of an Engagement Letter from Quest. It is relatively short and I can set out the main relevant provisions.
1. Proposed Fund Placement Advisory Services Approved Judgment QUEST FUND V. FSI Thank you for appointing Quest Fund Placement Limited (the “Company, “we”, “us”, “our”) as your sole fund placement advisers in connection with the fund described below. ...
 2. The Fund We understand that FSI SGR S.p. A. (the “Principal”, “you”) is raising a fund FSI II (the “Fund”), in respect of which you will act as management company. The Fund will have a target of €1.5 billion and marketing to prospective investors is expected to end on May 2024. ...
 3. Our Services We will act as your fund placement adviser to raise investment for the Fund except for the following jurisdictions: Italy and Middle East (the “Excluded Jurisdictions”). It being understood that we will be able to contact potential investors also in the Excluded Jurisdictions with prior written authorisation of the Principal. We will refer to this fundraising activity as the “Transaction”. Our services (the “Services”) We will work with you to suggest any documentation that might be useful for fundraising (the “Transaction Documentation”): This could include “Quest Bespoke Documents” which we will be responsible for preparing, but which must be approved by you before distribution to any prospective investors. It will also include your “Marketing Documents” We shall not distribute any Marketing Documents unless they have been approved by you. For the avoidance of doubt, we shall NOT distribute any subscription documents to Investors. ... We will aid and assist the fundraising process. Our work will comprise:
 1. Advising you in regard to fundraising strategy;
 2. Introducing you to prospective investors (subject to any limitations we might agree in the light of the specific circumstances applicable to the Transaction, including, but not limited to, the target size of the Fund, the investment sectors the Fund will be targeting and any geographic limitations imposed with regard to the marketing of the Fund) (the “Prospective Investors”);
 3. Advising you on the approach to, and communications with, Prospective Investors;
 4. Assisting you in the completion of responses to due diligence requests received from Prospective Investors;
 5. Assisting you in any other matters arising in connection with your relations with Prospective Investors on an ad hoc basis (including, without limitation, attending meetings with prospective investors, to the extent that you believe that this is appropriate in the circumstances); and

6. Liaising with Prospective Investors as reasonably required. We are not responsible for providing investment advice and/or making a personal recommendation to prospective investors on the merits of subscribing for an interest in Approved Judgment QUEST FUND V. FSI the Fund, carrying out due diligence on behalf of prospective investors, or for providing specialist or technical advice (such as legal, accounting or tax advice). If we agree to provide services not listed above, we will either enter into a separate agreement, or agree amendments to this Agreement, in relation to them. ... We acknowledge that you have former and ongoing relationships with certain professional investors which are (i) existing investors in prior funds managed by you as identified on Schedule A ("Schedule A Investors") or (ii) other potential investors of the Fund as identified on Schedule B ("Schedule B Investors"). We agree that the Schedule A Investors and the Schedule B Investors do not fall within the definition of and do not qualify as "Prospective Investors" for the purposes of the Services. ... We further acknowledge that you may reject any offer to subscribe units in the Fund in whole or in part at your absolute discretion.
5. Responsibilities and Liability The Company's obligations and responsibilities shall be limited to those set forth under paragraph 3 above above1. In particular, the Company shall not be responsible for the preparation of the Marketing Documentation or any other documentation in connection with the Fund except as expressly stated therein and shall not be responsible for the acceptance or admission of investors into the Fund. Accordingly, the Company's liability shall be limited as set forth in section 9 of our Terms of Business and, for these purposes, the liability cap will be €500,000.
6. Client Obligations You are responsible at your own cost for: ... Project Assumptions: The Service description, our Charges and the indicative timetable set out in this Agreement are based upon the following assumptions, representations and information supplied by you (the "Assumptions"):
 1. the following senior individuals will remain actively involved with the management of the Fund throughout the Transaction: Maurizio Tamagnini, Barnaba Ravanne,
 2. You will comply with all of your obligations as regards Input Materials; and
 3. You will use your best efforts to ensure the availability of your senior management to attend meetings with prospective investors. You agree to tell us if you believe any of these Assumptions are (or become) unrealistic for any reason. ...
8. Charges Fees and expenses (together "Charges") will be charged as follows: Fees Our fees will comprise: 1 Sic. Approved Judgment QUEST FUND V. FSI (i) A retainer of € 500,000.00 payable on 31st July 2023 (the "Retainer Fee"); (ii) An additional retainer fee of € 500,000.00 that will become due where we, acting reasonably and having consulted with the Principal, determine that the KPIs set out in Schedule C have been completed. It is agreed that this will accrue and will be paid by the Principal upon the earlier of (a) the final closing of the Fund; (b) a year from the signing of this Agreement; or the termination of this Agreement (the "Additional Retainer Fee"). At the final closing of the Fund, if we, acting reasonably and

having consulted with the Principal, determine that the KPIs set out in Schedule C have not been completed in full, it is agreed that a proportion of the Additional Retainer Fee will become due and payable. The partial Additional Retainer Fee will be calculated by us to reflect the progress made towards the completion of the KPIs as at the final closing. (iii) A placement fee (the "Placement Fee") in an amount equal to 2% of the aggregate principal amount of interests subscribed by Prospective Investors. The Placement Fee shall be due and payable by the Principal to the Company in three (3) equal instalments, with the first payment due on the date of the relevant closing of the Fund, the second payment due within seven (7) business days after the final closing of the Fund and the last payment due the first business day of the twelfth month after the final closing of the Fund. Interest on the third instalment at an interest rate equal to three percent (3.0%) per annum will be payable. Interest will be calculated on a 365-day year basis and will accrue from the date on which the Placement Fee became due and payable. The Placement Fee can be prepaid at any time without penalty. (iv) A co-investment fee (the "Co-investment Fee") of 1% of the aggregate principal amount of interests subscribed by investors introduced by the Company on which there is either fees or carry. The Co-investment Fee shall be due and payable in full on the closing of the co-investment. Expenses In addition to our fees, whether or not the Transaction is successful, you will reimburse us for all out of pocket expenses properly incurred by us in the performance of the Services (including travelling expenses and the fees and expenses of our legal and other advisers reasonably incurred in connection with the Services to be provided) up to an aggregate amount of €60,000 Expenses will be invoiced monthly in arrears. We will not incur any single expense of €5,000 or above without your prior consent. Alternative Fund Fee We will be entitled to a fee (the "Alternative Fund Fee") if, during the term of this Agreement or within the period of 18 months after it ends, you or any entity owned or controlled by you, or under common ownership or control with you, sells limited partnership interests or equity interests in any fund, excluding "FSI I", or other entity substantially similar to the Fund to any person with whom we have had substantive discussions and who have engaged in due diligence regarding the purchase of interests in the Fund (a "Prospect") during the term of this Agreement. The Alternative Fund Fee will be calculated in the same manner as the Placement Fee. You agree that, other than the provision of the aforementioned invoices, we will not be obliged to provide you will any further information on costs. Approved Judgment QUEST FUND V. FSI

9. Payments on termination On termination of this Agreement, we will invoice you as follows:
 1. A Break Fee of a maximum of € 500,000 (reduced by the amount of initial Retainer Fee already paid at the date of Termination; and 2. If one or more closings of the Fund has occurred before the date of termination, the Placement Fee or Co-Investment Fee with respect to Prospective Investors whose commitments have been accepted at the date of termination. In addition, if we terminate this Agreement because you are in Default or due to Assumption 1 becoming incorrect, or you terminate it other than for a Default by us, then you also agree to pay immediately;

1. Any Additional Retainer Fee that has become due in accordance with Section 8. At the date of termination, if we reasonably determine that the KPIs set out in Schedule C have not been completed in full, it is agreed that a proportion of the Additional Retainer Fee will become due and payable. This partial Additional Retainer Fee will be determined by us, acting reasonably and having consulted with the Principal, to reflect the progress made towards the completion of the KPIs as at the date of termination;
2. The Placement Fee with respect to all persons with whom we have had substantive discussions and who have engaged in due diligence regarding an interest in the Fund (which for the purposes of this Agreement is defined as any person with whom we have had substantive discussions and who had engaged in due diligence regarding the purchase of interests in the Fund) whose commitments have not yet been accepted at the date of termination, but are later completed by final closing. Such Placement Fee will be payable in full on the relevant closing of the Fund in which the relevant investor makes its commitment to invest in the Fund; and
3. Any Alternative Fund Fee that is or may become payable. We will send you a list of all Prospects promptly after the termination of this Agreement. The Alternative Fund Fee will be invoiced if and when it becomes payable. Under no circumstances will we be required to repay any amounts already paid to us under this Agreement and termination of this Agreement will not relieve you of the obligation to pay any deferred instalment of the Placement Fee with respect to any investors admitted on or prior to the date of termination.
...
11. Further rights to invest / advise You agree that during the term of this Agreement no new placement agent or adviser will, at your request, contact any Prospective Investor in relation to the Fund (whether or not such prospective investor has commenced conducting due diligence with regard to the Fund) on your behalf, unless agreed between us in advance. Such provision excludes any agreements in place at the time of signing. If you plan to raise another fund after the Fund, you agree to consider us as your fund placement adviser in relation to such fund, on terms to be agreed between us in writing at the relevant time. ... 48. Schedule A is titled "Schedule A – Existing Investors" and lists 22 investors. Some of these have specific corporate identities such as "Ergeny Management S. A. M". Approved Judgment QUEST FUND V. FSI Others are expressed more broadly, such as "Fininvest". Schedule B is titled "Schedule B – Other potential Investors carved out". It excludes:
 - "Specific Investors in Europe", under which 4 names are listed. Again, one is identified with specificity ("Intesa Sanpaolo SpA") but others are expressed broadly, like "Generali".
 - "Middle East"
 - "Italy"
 - "Specific Investors in France" listing 5 names. They are expressed broadly, for example "Groupe Caisse des Depots". 49. Schedule C provides:

50. The Engagement Letter also incorporated Quest's "Terms of Business For Fund Placement Services" (the "ToB"). In case of any conflict or inconsistency the Engagement Letter would prevail. The Main Disputes of Construction 51. I will identify the central disputes before addressing the factual matrix evidence. After that I will return to analyse the issues of construction.
52. The core of Quest's argument is:
- a. The Placement Fee is 2% of the amount subscribed by "Prospective Investors". There is no qualification.
 - b. The definition of "Prospective Investors" in clause 3, Services §2 is not limited by whether those investors were introduced by Quest. Instead, Prospective Investors covers all investors in the Fund, with the exception of those excluded by Schedules A and B. c. "Introducing you to" in Services §2 identifies only a service to be provided in relation to "Prospective Investors" and does not qualify its definition.
 - d. "Introducing" would be a vague criterion to impose, liable to lead to disputes, and is unlikely to be a condition the parties would have agreed on the scope of Approved Judgment QUEST FUND V. FSI the Placement Fee. Interpreting the Contract as calculating the Placement Fee by reference to any investor produces a simple result, which incentivises Quest to secure the maximum number of investors not only by introduction but also by the rest of the Services in §§1-6.
 - e. There is no need for a criterion of introducing, where Quest was the exclusive placement agent and there was no risk of double commission.
 - f. Prospective Investors cannot be limited to those introduced by Quest ("Introduced Investors") because the rest of Services §§3-6 are to be provided with regard to "Prospective Investors" and the Contract anticipates they should be done not only towards Introduced Investors but also investors not introduced by Quest ("Non-Introduced Investors"). This is demonstrated by the KPIs, which overlap with Services §3-6, and envisage work towards Non- Introduced Investors. A contract which restricted the Services to Introduced Investors would be an unsatisfactory contract for FSI.
 - g. But if "Prospective Investors" in Services §§3-6 includes Non-Introduced Investors, the definition in Services §2 needs to be read consistently with that, again showing that "Introducing you to" in Services §2 are not part of the definition of "Prospective Investors".
 - h. Further, Schedules A and B occupy the field with regard to all investors to be excluded from "Prospective Investors". There is no room to add an additional qualification that they have to be "introduced" by Quest. An "introduction" qualification would cut across Schedule B.
53. The core of FSI's argument to the contrary is:

- a. The definition of “Prospective Investors” has been added to Services §2 to show it and the Placement Fee is limited to those introduced by Quest.
 - b. This is reinforced by the parallel Co-Investment Fee in clause 8(iv). This is payable only for investors introduced by Quest. But naturally it should work in parallel with the Placement Fee. This is also illustrated by clause 9 saying that on early termination Quest is entitled to “the Placement Fee or Co-Investment Fee with respect to Prospective Investors whose commitments have been accepted at the date of termination.”
 - c. “Introducing” is not difficult to understand and is a workable condition.
 - d. Quest was starting work when fundraising was well underway, and it would be strange if Quest would receive a placement fee from investors the work in relation to whom had already been largely done by FSI.
 - e. The concept of “Prospective Investors” in Services §3-6 has to be understood in the light of the true reading of Services §2 which makes clear the parties’ intentions. Thus, it is limited to Introduced Investors in Services §§3-6 as well. There is consequently no tension between this and reading “Prospective Approved Judgment QUEST FUND V. FSI Investors” in Services §2, and in the Placement Fee term in clause 8, as conditioned on introducing.
 - f. Even if some of the KPIs involved or could have involved work towards Non- Introduced Investors, that does not mean work on the KPIs had to involve the performance of the Services in §§3-6. The KPIs work separately and work on them is paid for by the separate Additional Retainer Fee, which depends on the performance of the KPIs.
 - g. The Retainer and Additional Retainer Fee cover work that Quest may do with regard to Non- Introduced Investors and so it makes sense that the Placement Fee is calculated only by reference to Introduced Investors.
 - h. Schedules A and B exclude certain existing investors and other potential investors with whom FSI has a relationship. But they are not exhaustive of all relevant limitations on investors for the Placement Fee. They could not deal with investors whom FSI had not yet contacted, but who later might be first contacted by FSI. Even for investors FSI already knew, they perform the useful functions of making clear there could be no argument as their exclusion from the Placement Fee. Thus, an “introducing” condition does not cut across Schedules A and B.
54. Quest’s responses included:
- a. The Co-Investment Fee term’s reference to “introduced” reinforces Quest’s case, as these words are deliberately not used for the Placement Fee. The two fees can work differently for commercial purposes.

- b. Clause 9 does not show the Placement and Co-Investment Fees must work in parallel. It is consistent with the Co-Investment Fee being subject to an additional restriction, of introducing. c. In response to FSI's point that it was unlikely the Placement Fee would include investors on whom work had already been done by FSI, Quest said Schedule A and B would be understood to cover all such investors, or in any event, all the investors FSI wanted to exclude.
55. Both parties initially proceeded as if the interpretation of the Contract was straightforward in their respective directions. But by the end of the hearing it had become apparent that in truth the construction problem was difficult. Factual Background
56. The factual background on which the Court was asked to proceed by Quest for the purposes of summary judgment was a shifting target and incomplete. 57. Initially, Quest sought to rely on inadmissible material, and disputed material, and disputed the matrix relied on by FSI. But it was not said that FSI had no real prospects of making good its factual case on matrix. This presented a problem for summary judgment. Confronted with this, in oral submissions Quest engaged in a process of purification, conceding FSI's matrix and discarding disputed matrix, for Approved Judgment QUEST FUND V. FSI the purposes of summary judgment. However, in the end this process was imperfect. Further, important aspects of matrix remained incomplete and unclear. Factual Matrix Material Relied on by FSI
58. As well as the common ground at paragraph 5 above, FSI relied on factual matrix pleaded at Defence §§3-7, the main points of which were:
- a. FSI had completed three closings (here "closings" mean an investment round, not the final closing), through which c. €800m were raised from existing investors in FSI I and other investors known to FSI.
- b. FSI was already in advanced negotiations with potential new investors for additional commitments of c. €250m and in periodical discussions with several Italian and international investors. 59. In Mirchandani §§16(a)-(e) (I deal with 16(f) below) FSI added additional details of factual matrix, based on discussions with FSI, in summary:
- a. FSI is one of the largest private equity general partners focussed exclusively on Italy with access to a wide base of investors.
- b. FSI had done extensive work to secure the three prior closings but needed assistance to expand its network of investors. Final closing was due 21 May 2024 and time was short and the Defendant needed to attract new capital in a final push to meet the target fund size.
- c. FSI was in final negotiations with several limited partners to confirm investments representing over two thirds of the target capital.
60. All this centrally related to the engagement FSI had with investors before the Contract and what further assistance might be needed from Quest. FSI relied on it to contend it was unlikely that the Placement Fee would have been agreed to include investors not introduced

by Quest. 61. 62. In the Reply, Quest stated that while it knew FSI had carried out some marketing, it did not know the details of investors with whom FSI was already in contact, apart from those in Schedules A and B. Otherwise the facts pleaded in the Defence were not admitted and it was denied that they constituted “the factual matrix, alternatively the complete factual matrix”. In Mr Connell’s Third Witness Statement (“Connell 3”) a similar approach was taken to Mirchandani 1, §§16(a)-(e). But Quest did not suggest that FSI had no real prospects of success of proving these facts at trial. In response to questions by the Court, in its oral submissions Quest stated that it now accepted, for the purposes of summary judgment (but not FSI’s reverse request for dismissal) the factual matrix pleaded in the Defence. It said its construction of the Contract was sufficiently clear that it was unaffected by FSI’s pleaded matrix. The same level of clarity was not quite achieved for Mirchandani 1 §§16(a)-(e), but they do not add a great deal to Defence §§3-7 for present purposes. In any event, Quest did not suggest FSI had no real prospect of proving those facts. So it is Approved Judgment QUEST FUND V. FSI appropriate to assume them also against Quest for the purposes of summary

judgment.

63. Yet despite these concessions, it became apparent that there continued to be underlying disagreements or uncertainty as to detailed aspects of FSI’s matrix, and how it would interrelate with the provisions of the Contract.
64. Thus, one issue is whether Schedules A and B would be understood to deal exhaustively with all investors to be excluded from the Placement Fee because of their prior contact with FSI. This is not clear from the wording of the Exclusion Term (see paragraph 95 below). In oral reply Mr Page argued it was a “straightforward inference” that Schedule B showed all “warm contacts”. Yet this amounted to going outside the clause and drawing inferences about the background to support construction. But the matrix in Defence §§3-7 and Mirchandani §16, and which can be assumed for summary judgment, does not show clearly that all relevant prior contacts would be known to be covered by the Schedules. While there is likely to be overlap, the exact degree of any match, as it would have been known or reasonably available to the parties, is unclear.
65. Another significant issue relates to Mirchandani 1 §16(f), which said: “the Defendant did not need to delegate the fundraising effort as a whole to the Claimant, rather, the Defendant needed the Claimant to work on attracting capital through any additional contacts the Claimant had, while the Defendant continued to do the same through investors already known to the Defendant.” The thrust was to support arguments that Quest’s assistance was not needed towards Non- Introduced Investors, to support the claim that Placement Fee should not count them. In Connell 3, §11 Mr Connell generally disagreed with §16(f) and gave evidence that “the Defendant had been marketing the fund for over 18 months but had failed to persuade many of its existing contacts to invest”, which FSI would disagree with, at least in terms of emphasis, as it is in tension with the thrust of FSI’s matrix. Yet the

concessions it made orally, Quest did not make clear to what extent §16(f) was accepted, but did not rely on Connell 3, §11.

66. While Quest's eventual general tactical approach was to accept FSI's matrix for summary judgment purposes, I am doubtful that Quest could really be accepting §16(f) in full as it stands. Its case was that Services §§3-6 were needed towards Non-Introduced Investors, and that Services §3-6 covered them. But on the other hand I doubt §16(f) identifies with sufficient clarity concrete evidence of alleged admissible factual matrix facts. It may be no more than argument about FSI's needs, although it is realistic that there could be admissible matrix facts buried within it. Thus it might be possible to discount §16(f) as it stands. Yet, for summary judgment purposes, its presence shows that at trial FSI would likely rely on more concrete and potentially admissible matrix facts, extracted from material underlying §16(f), to illuminate the extent to which Quest's services were or were not needed. Factual Matrix Material relied on by Quest
67. Quest did not plead any factual matrix on which it positively relied. However, in Connell 3, and Quest's skeleton, a factual matrix case was advanced, a narrowed version of which was advanced in oral argument. This suffered from numerous difficulties: the material relied on was either inadmissible, or fragmentary snapshots Approved Judgment QUEST FUND V. FSI from the negotiations, relating to facts on which FSI had a different but arguable case; or anyway of no or little assistance. Further, it was problematic to expect FSI to respond to an unpleaded case. 68. In a letter of 16 October 2025, FSI objected to the admissibility of the material in Connell 3 (also referring to some inadmissible negotiation material in response); and said that to the extent admissible, the material was incomplete and the picture created disputed, and so not capable of supporting summary judgment. Following further objections from FSI, and questions from the Court, Mr Page then: (i) in oral opening narrowed the matrix evidence relied on; and (ii) in reply, abandoned it, stating Quest was content to proceed for summary judgment solely on the basis of the matrix pleaded by FSI. 69. I will nevertheless summarise the main material previously relied on. Doing so illustrates the shifting nature of Quest's case; and the incomplete nature of the assumed matrix on which the court is asked to give summary judgment.
- a. First, Mr Connell and Quest's skeleton relied on statements in negotiations to illustrate how the Placement Fee and the scope of the services were proposed by Quest (e.g. in a memorandum of 8 April 2023, a term sheet of mid-April 2023, and an email 19 May 2023 addressing the purpose of the fee structures). But these were inadmissible evidence of negotiations relied on to show intended meaning. Further, (i) the first two were early pitches by Quest, using words different to those later finally agreed, and (ii) the comments in the email of 19 May 2023 were fragmentary statements in the negotiations by Quest alone (a responsive email of 19 May 2023 at 11:25 from FSI said little), and the comments actually discussed the purpose of the Retainer Fees.

- b. Second, Mr Connell and Quest's Skeleton relied on moments in the negotiations in which Quest discussed the services it might provide, and existing contacts with whom (it was alleged) Quest's help was envisaged (e.g. 8 April 2023 Memo, Connell 3 §11(b) first sentence, emails of 31 March, 5, 9 and 10 May 2023). A principal thrust of this was to support the idea that the parties envisaged Quest would be providing services as to Non- Introduced Investors. But as currently presented this all appeared (for present purposes) to be inadmissible evidence of negotiations relied on to show intended meaning. Further, it consisted of fragmentary statements by Quest early in negotiations, mostly in Quest pitches, without clear corresponding acceptances by FSI, and touching on facts which Quest has not pleaded (and the email of 5 May is an internal Quest report of an oral discussion with FSI, whose terms could be disputed). Similar points apply to the inconsequential discussion of KPIs in the email of 3 May 2023.
- c. Further, the case this material sought to build was in tension with Mirchandani 1, §16(f) to the effect that Quest's help was needed with regard to Introduced Investors, but not Non- Introduced Investors.
- d. Third, Mr Connell and Quest's Skeleton relied on some discussion in negotiations on the proposed carve outs in what became Schedules A and B Approved Judgment QUEST FUND V. FSI (emails of 17, 18, 22 May 2023). Yet all this was, again, relied on inadmissibly to show intended meaning. No relevant objective fact as to aim, genesis, or background was concretely identified.
- e. The only matrix fact that Mr Connell expressly sought to draw from the above matters was that "the parties actively considered the interplay between
 - (i) the scope of the services being provided and (ii) the categories of investor for which [Quest] would be entitled to a commission" (Connell 3, §8). But this is an attempt to rely on negotiations to get at intentions. It is also vague and inconsequential. As Mr Langley says, it is unsurprising that the parties would have been thinking about such matters. It does not identify the sort of objective fact as to aim or genesis admissible under Merthyr.
- f. Fourth, Connell 3, §§10-12 contained evidence of subsequent conduct, subjective belief, and argument, all of which was inadmissible.
- g. There was a potentially admissible statement in Connell 3 §11(a), first sentence, that whenever Quest is appointed, there are always "warm contacts" known to both Quest and investors with multiple contact points. But this was not conceded by FSI as matrix, and indeed, Mr Connell did not say it was a matter that FSI would know or was reasonably available to FSI. It is also rather inconsequential and not capable of changing the dial in this case.
- h. Fifth, both parties relied on assertions in Quest's presentation of 8 April 2023 as to Quest's standard fee demands (its "usual economics"), and extrapolated arguments as to what would make sense for the Placement. Again, this was reliance on negotiations. Further, these were

assertions as to Quest's fees in different contractual situations, which could well also have been slanted for negotiating purposes. Admissible objective facts were not clearly extracted from them by either party, and anyway little weight could be given to them. I do not preclude that significant admissible material might exist, which could illuminate the economics of the Contract's fee structure in ways that could intersect helpfully with the issues of construction. But this was not it. See further paragraphs 129.c to 129.d below. i. Sixth, a further assertion was made orally, when to support his case that Quest would be working towards Non-Introduced Investors, Mr Page argued the parties would have known the universe of potential investors was limited, relying on references in the 8 April 2023 Memo to a universe of 200 investors. But this was positing an unpleaded matrix fact, not addressed in witness evidence, by reliance on one comment in negotiations which FSI might deny or contextualise.

- j. Thus, none of this material, at least as handled so far, established useful concrete objective facts as to genesis, aim, or background, which could be assumed for summary judgment purposes, in ways that FSI could not realistically dispute or at least qualify and contextualise. Approved Judgment QUEST FUND V. FSI
- 70. Mr Page was therefore correct to abandon reliance on this material for summary judgment purposes by Quest. However, I do not think the genie can entirely be put back in the bottle. The story illustrates the incompleteness of the matrix the Court is asked to assume at this stage and indicates that there are good prospects that at trial there would be a more developed case of relevant factual matrix on some of the

issues.

Incompleteness of Factual Matrix Evidence to be Assumed

- 71. Taking matters in the round, I consider that in significant respects the factual matrix facts I am asked to assume for summary judgment is incomplete, in parts unclear, and in part subject to actual or likely disputes as to the detail, in ways that make it difficult to interrelate it with the provisions of the contract. It was unsatisfactory in three dimensions in particular:
 - a. First, there was lack of sufficiently clear and precise matrix that could be assumed for summary judgment purposes, to assist in understanding (i) whether Schedules A and B were intended to be exhaustive of excluded investors and (ii) whether Services §§3-6 and the KPIs would be expected to be performed towards Non-Introduced Investors: see below paragraphs 93 to 96 and 101 to 107 respectively. As part of this, as discussed above, the position as to the match of prior known contacts to Schedule A and B was unclear, as was the position in relation to the need for work towards Non- Introduced Investors.

- b. Second, there were no matrix facts which could assist understanding of the Co-Investment Fee provisions, but without this, it is difficult to know how those provisions were intended to work. For example, there is no matrix to illuminate whether Co-Investment Fees would normally operate in parallel with Placement Fees (see paragraph 85 below).
- c. Third, there were no useful matrix facts which could be assumed at this stage to contextualise the issues as to whether an “introducing” condition would be workable, or surprising. (Indeed, there is no matrix case to illustrate which result would be common or uncommon or more common, as in IPEL. It may be that there are just different approaches in the market, but in itself that would be useful to know.) 72. I am conscious that in a number of ways, these issues with matrix go beyond those objected to by FSI in writing; nor did FSI advance evidence to say further matrix would be available on the points above. Yet this appears, at least in part, to be a result of the absolutist stances on construction with which both parties initially proceeded, and the deficiencies in the presentation of matrix by both sides. In addition, the case against FSI was constantly shifting with Quest’s matrix case being a work in progress right until oral reply. The incompleteness of and deficiencies in the matrix case, then became apparent at the hearing, when the full complexity of the issues on construction also became apparent. That having occurred the Court cannot ignore it when being asked to give summary judgment. Further, this is not speculation that something may turn up. Now that the gaps are identified, it is evident from the deficiencies, as a practical matter, that there are real prospects that relevant matrix could be available on some and perhaps all of these topics, either Approved Judgment QUEST FUND V. FSI from outside the negotiations, or of matrix drawn from negotiations but in the form of admissible concrete objective facts, capable of satisfying the conditions in the case law for exceptions to the negotiations. Indeed, at points (see e.g. paragraphs 66, 69.b and 69.i above) the deficient nature of the material relied on, itself indicated that relevant admissible matrix evidence could well exist. 73. In the light of the above, it seems to me that there is a real prospect that relevant matrix evidence, or as appropriate a clearer matrix case, on a number and maybe all of the points above would be available at trial and could affect construction in material ways, in favour of FSI (or Quest). That is not to say that it must exist or needs to be obtained. Yet taken together the situation creates a problem with summary judgment on assumed facts at this stage. This is of particular importance where, as I will explain, the issues of construction are difficult, and the contract is badly drafted. The issue of construction should not be resolved against either Quest or FSI
74. The incomplete and unsatisfactory nature of the matrix the Court is asked to assume mean that there are compelling reasons not to decide the question of construction on a summary basis without a trial; and is an additional reason why FSI has real prospects of success. 75. I am conscious of the dangers of allowing assertions of factual matrix to block summary judgment on sufficiently clear contractual wording. The Court should often be able to “grasp the nettle” on construction at a summary stage irrespective of disputed assertions of factual matrix. But this is not always possible. In *EasyAir*, Lewison J explained at (vii) that the Court should decide a point of construction on a summary basis “if the Court has satisfied it has

before it all the evidence necessary for the proper determination of the question”. That is not the case here. 76. It follows that I will not be deciding the questions of construction in either direction. Another reason not to decide the issues of construction against Quest, is that while Quest accepted FSI’s matrix for the purposes of Quest’s application, it did not concede it for FSI’s reverse request for dismissal. How far should the construction arguments be addressed? 77. In the circumstances, the conclusions of construction below are preliminary. They will not be binding on any later trial. In IPEL, Warren J decided it was best not to set out his reasoning on construction at length, as he did not wish to be seen as prejudging the issue before evidence of market practice, especially when it was likely he would hear the trial. He confined himself to observing he had concluded that ABN’s construction was “weak”.

78. Here it seems appropriate to explain my preliminary reasoning on construction in more detail, while making clear it is not final, and is subject to further matrix, because: (i) a central reason for refusing summary judgment is my preliminary view that FSI, the respondent, has the better case (in contrast to IPEL); (ii) I have formed the view that I can explain my reasoning in ways that do not unduly predetermine the trial; (iii) I anticipate this will be of assistance going forward, including when formulating matrix evidence. Approved Judgment The Construction of the Contract QUEST FUND V. FSI
79. My preliminary views on the construction of the Contract are as follows. 80. I address them for the purposes of Quest’s application for summary judgment, and so I assume as matrix, so far as I can (but not forgetting the uncertainties identified), the matters relied on by FSI which Quest accepted, namely §5 above; Defence §§3- 7, and Mirchandani §§16(a)-(e). (I return to §16(f) below.)
81. The key question is how to understand the definition of Prospective Investors in clause 3, Services, §2: “Introducing you to prospective investors (subject to any limitations we might agree in the light of the specific circumstances applicable to the Transaction, including, but not limited to, the target size of the Fund, the investment sectors the Fund will be targeting and any geographic limitations imposed with regard to the marketing of the Fund) (the “Prospective Investors”)”; and how it connects to the definition of the Placement Fee in clause 8(iii): “an amount equal to 2% of the aggregate principal amount of interests subscribed by Prospective Investors.”
82. This is poorly drafted but it seems most likely that “Prospective Investors” has been jammed onto the provision of the Services clause which relates to “introducing”, to show the parties intend “Prospective Investors”, at least for the Placement Fee, are confined to investors introduced by Quest. Thus, my preliminary view is that in the words “Introducing you to prospective Investors ... (the “Prospective Investors”)”, the “prospective investors” (lower case) and thus the “Prospective Investors” (capitalised), are meant to be those introduced. This is reinforced by the parenthesis, which focusses on limitations on introducing, such as limits to “marketing”. So the words “Introducing you to prospective investors [subject to agreed limits on who can be introduced] (the “Prospective Investors”)” indicate again that

the “prospective investors”, lower case and then capitalised, are those introduced.

83. This is a cackhanded way to achieve the intended result. There would be clearer ways to spell it out. It could be argued that “Introducing you to” does not qualify “prospective investors”, so the obligation to introduce is disconnected from the definition. If so the clause just defines any “prospective investors”, subject to limitations agreed under the parenthesis, as “Prospective Investors”. Yet the difficulty with this is it fails to explain why the definition of Prospective Investors is added on to Services §2, and so why the Placement Fee is directly linked to Services §2. This is not the first moment when “prospective investors” appear in the Contract. Indeed, if Quest were right it is not clear why a defined term is required at all.
84. In addition, the fee is a “Placement” Fee, which provides some indication that it is intended to be linked to placing investors with the Fund.
85. Thus despite the poor drafting (and subject to the rest of the Contract and further matrix), my preliminary view is that Services §2 sufficiently indicates that the parties objectively intended to confine “Prospective Investors” to those introduced by Quest, at least for the Placement Fee. That is reinforced by the Co-Investment Fee term in clause 8, read together with clause 9: Approved Judgment QUEST FUND V. FSI
- a. The Placement Fee is “an amount equal to 2% of the aggregate principal amount of interests subscribed by Prospective Investors”. In parallel terms, the Co-Investment Fee is: “A co-investment fee (the “Co-Investment Fee”) of 1% of the aggregate principal amount of interests subscribed by investors introduced by the Company on which there is either fees or carry”. b. I have no matrix to explain co-investment, but in the light of the submissions I understand it is not disputed that its general operation is broadly as follows in the next two sentences. The standard situation for general investments is that they go blind into a common pool, and the fund can invest them as it chooses. In contrast, in co-investment an investor invests alongside the fund in a specific agreed target. Further, in relation to the proviso which requires the co-investment must be one “on which there is either fees or carry”, I understand generally that “Carry” is carried interest (a share of profits from an investment, paid to the private equity fund), while “fees” are presumably fees earned by the Fund on the co-investment. So the proviso seems to limit the Co-Investment Fee to co-investments on which the Fund earns a return.
- c. The Co-Investment Fee is expressly payable only on the co-investments of investors “introduced” by Quest. Doing the best I can without matrix, my preliminary view is it would be surprising if the Co-Investment Fee was chargeable on investors defined in a different way to the Placement Fee. The same investor might invest both generally and by way of co-investment. In turn this reinforces the idea that “Prospective Investors” in the Placement Fee is also intended to be confined to investors introduced by Quest.
- d. Against this Mr Page argued that the Contract intended to draw a contrast, with introduction being a condition of a co-investment fee only, and that the parties deliberately did not use the same words for the Placement Fee. To explain why it might make commercial sense to

treat co-investment differently, he observed that (a) co-investment was a more bespoke arrangement for which the role of a placement agent was different, and (b) in the co-investment case there would be extensive documentation defining how people were introduced, so problems with applying an introduction condition would be less. But absent matrix evidence, I am as yet unpersuaded that these rather intangible considerations make sense of different treatment. Indeed, it would seem that any concluded investment is likely to be documented.

- e. Quest's reliance on the contrast of phrasing is a stronger point. But its force diminishes given the poor and casual drafting of the Contract on key issues. Services §2 is one example of that, as is the internal tension discussed below. There are other places where the logic of the drafting is not consistently followed through. For example, it seems Quest's terms originally provided for a Bonus Fee, which has been replaced by the Placement Fee. Yet its removal has not been fully worked through and on p. 7 there is an inoperative reference to a Bonus Fee.
- f. Another example of poor drafting relates to the Schedule A and B exclusions, in terms that are telling. The Co-Investment Fee term does not use the term Approved Judgment QUEST FUND V. FSI "Prospective Investors" and so is not expressly limited by the exclusion of the investors named in Schedule A and B by the Exclusion Term. Yet clause 9 first sub-clause 2 (below) envisages the Co-Investment Fee is only payable for "Prospective Investors", and it would be odd if that Fee were payable on co-investments by an investor excluded by Schedules A and B, which are meant to exclude investors altogether "for the purpose of the Services". So it seems the Co-Investment Fee must be understood to be limited by Schedules A and B, just as if the Co-Investment Fee term was expressly defined by reference to "Prospective Investors". Yet in turn that gives another indication that (1) the parties generally understood the limitations of the Co-Investment Fee, including the restriction to investors "introduced" by Quest, to be congruent with the limitations in the definition of Prospective Investors for the Placement Fee, but (2) have drafted their implementation of this intention imprecisely.
- g. A further indication that the Placement Fee is intended to work in parallel to the Co-Investment Fee is provided by clause 9, first sub-clause 2. This provides that on termination of the Contract, if there have been prior closings, Quest is entitled to "the Placement Fee or Co-Investment Fee with respect to Prospective Investors whose commitments have been accepted at the date of termination." This again indicates the Co-Investment Fee is understood to be payable with regards to Prospective Investors in parallel to those relevant to the Placement Fee. It could be argued that all it shows is that "Prospective Investors" poses an outer limit on both fees, with the Co-Investment term adding a distinct inner precondition of introduction, but for co-investment only. That is a possible literal reading. But my preliminary view is it understates the commercial indication of the objective intention of the parties which the sub-clause 2 conveys.

86. There are, however, significant points to the contrary, I have summarised Quest's arguments above, and focus on five points here. 87. 88. First, it could be argued that even if Services §2 gives some indication of a possible intention to link the definition of "Prospective Investors" to introducing, it was for FSI to spell this out, and the words have not achieved this with sufficient clarity. The definition of Placement Fee in clause 8(iii) has no limitation, although that would be the easiest place to limit it. However, this is an argument based on the literal reading of words, and English contractual construction is not confined to the literal as Lord Hodge observed in *Wood v Capita*. It is necessary to read the contract commercially, and if that is done, my preliminary view is that a sufficiently clear indication of the parties' objective intention and thus the meaning is conveyed by Services §2. Further, although it is not necessary to resolve this, I am not convinced any burden of clarity is on FSI. Quest was the placement agent proposing terms on which it is willing to work. At least absent matrix evidence, my initial perception is that calculating a Placement Fee with regards to any eventual investor, irrespective of the agent's work, is a strong result, which would need to be brought home clearly to a Fund by the agent. So it is perhaps the better view that if anyone has to achieve greater clarity, it is for Quest to ensure its result is spelled out in clear words. Approved Judgment QUEST FUND V. FSI
89. These points are susceptible to being affected by factual matrix, for example as to how common or uncommon Quest's or FSI's proposed results are respectively in the market (as in the IPEL case). No such case is pleaded here.
90. Nevertheless, the above reasoning does gain some support from the legal context that, unless the terms of the particular contract indicate the contrary, the default position under English law is that it is normally appropriate to imply terms into contracts with commission agents that commission should only be due if the agent was the (or perhaps "a") "effective cause" of the transaction. That is particularly so where two agents might be employed (not the case here) but can arise even in an exclusive agency situation. See *County Homesearch v Cowham* [7]-[16] and *Foxtons v Pelkey Bicknell* [2008] EWCA Civ 419, [17]-[20]. Mr Page said the house sale context in those cases was different. But there are some analogies. So this legal context is capable of giving some support for the idea that clear words are required for a result which imposes a Placement Fee independent of the agent's work. However, again this is an additional point which is not necessary to my main reasoning. 91. Second, Mr Page argued that a condition of "introducing" would be a vague unhelpful condition to impose. He argued: (1) Provisions regulating the Placement Fee should be straightforward. (2) "Introducing" is a vague term which could be interpreted differently; there would be situations where its application would be uncertain, such as distributing marketing material. (3) So if this were a condition one would expect to see it formally defined. (4) An introducing term, uncertain in its operation, where Quest might not know FSI's prior contacts, would make it hard for Quest to know towards whom it should direct its efforts; it might not even know whether it was earning a Placement Fee as to an investor until after. Finally, (5) he noted that while an introducing condition might be necessary in a multiple agent situation, to avoid double commission, that did not apply in a case of exclusive agency.

92. On the matrix I can assume, I am at present unpersuaded that “introducing” conditions are either impractical, or unusual, in contracts like this: a. It can make sense to use simple open-textured words to deal with fluid relationships.
- b. While the case for an introducing or similar condition is stronger in a multiple agency case, to avoid double commission, that does not mean it has no useful function in an exclusive agency, especially where, as Defence §§3- 7 and Mirchandani §§16(a)-(e) show, it was known and expected that the Fund had been and would be securing investors itself. A fund may reasonably prefer to gear fees to work by the agent.
- c. Although I have no matrix case or evidence to illuminate either the workability or the frequency of introducing conditions in private equity placement agent contracts, cases like County Homeseach shows introducing conditions exist in other commission agency situations. Further, the bundle of authorities included cases concerning private equity placement agent Approved Judgment QUEST FUND V. FSI contracts which contain introducing conditions: Blackstar v Cheyne Capital

[2018] EWHC 3496 (Comm) [71]-[77]; Musst v Astra [2021] EWHC 3432 (Ch), [245]-[249].

- d. The Contract here uses similarly open terms for related concepts: clause 8 uses “introduced” for the Co-Investment Fee; and clause 3.9 of the TOB would limit any Bonus Fee to clients “solicited” by BAS (the Bonus Fee concept was not actively deployed by the Contract). 93. Fourth, Quest relied on the Exclusion Term, which to recap says: “We acknowledge that you have former and ongoing relationships with certain professional investors which are (i) existing investors in prior funds managed by you as identified on Schedule A (“Schedule A Investors”) or (ii) other potential investors of the Fund as identified on Schedule B (“Schedule B Investors”). We agree that the Schedule A Investors and the Schedule B Investors do not fall within the definition of and do not qualify as “Prospective Investors” for the purposes of the Services. ...”. Quest’s core case can be captured as follows. This term occupies the field for investors to be excluded from the Placement Fee. If there was an extra precondition of introducing, Schedules A and B would be mostly duplicative and unnecessary. Thus the Exclusion Term’s presence shows the parties have identified exhaustively those investors who should be excluded. It leaves no room for an extra exclusion by reference to a lack of introducing by Quest. Alternatively, it indicates that were such an additional exclusion intended it would have been defined with precision, in the definition of the Placement Fee or here, rather than slipped in by unclear wording in Services §2.
94. This has real force. Yet my present perception is that it does not capture the objective intentions of the parties apparent from the Contract as a whole. The better reading appears to be that the parties have identified one set of defined exclusions, chiefly by reference to prior relationships of FSIs, but added on top a further requirement of “introducing”. This has been done in a poorly drafted fashion by addition to Services §2. But it displays a sufficiently clear objective intention. While it produces some duplication, because many of

investors excluded by Schedules A and B will also not be introduced by Quest, the two provisions have different functions. The introducing condition deals at least with future contacts, who Schedules A and B do not address. And having Schedules A and B as well as “introducing” is not wholly duplicative for prior contacts. It ensures that for prior contacts named in those schedules, there can be no argument that it was Quest who had introduced them.

95. With regard to prior contacts not named in those schedules, the position is less certain. Quest argued the exclusions in Schedules A and B were intended to capture any relevant prior contact. The clause says Quest “acknowledges” that FSI have “former and ongoing relationships” with listed investors and so excludes them. Yet FSI’s position was these words did not make clear that the exclusions were exhaustive of relevant prior contacts, and so an introduction condition additionally ensured that no prior contact on whom FSI had already done significant initial work, but which for whatever reason was not listed, could earn Placement Fee for Quest, which would be an uncommercial result. My preliminary reading is FSI’s argument Approved Judgment QUEST FUND V. FSI is verbally tenable – “acknowledging” the prior relationship is not the same as saying it is exhaustive, and “relationships” may be narrower than contacts.
96. Quest therefore sought to shore up the position by saying it was a “straightforward inference” that Schedules A and B would have been understood to cover all relevant “warm” contacts. However, as discussed at paragraph 64 above, (1) this argument goes outside the words to draw on alleged matrix to reinforce Quest’s construction,
- (2) the matrix which can be assumed against FSI does not give sufficient detail for that point to be made good with clarity. So this argument instead illustrates that, for present purposes, there are uncertainties as to how the matrix interrelates with the terms of the Contract, capable of affecting the force of the parties’ respective arguments as to the allegedly exhaustive effect of Schedules A and B. Internal tensions 97. 98. 99. Finally, Quest also had an argument that FSI’s construction led to an internal tension within the Contract and the concept of “Prospective Investors”. Quest argued that while clause 3 Services §1 was general, the other Services §§3-6 were intended to operate with regard to Non-Introduced as well as Introduced Investors, but the same defined term “Prospective Investors” is used in §§3-6. In particular assisting with “your relations” with investors (§5) would be understood to include helping to ensure the completion of a subscription, even if the investor was first contacted by FSI. Quest argued that a contract under which Quest was obliged only to assist with the Services towards Introduced Investors would be odd, and unsatisfactory for FSI itself. It would mean that the only work to be done towards Non-Introduced Investors would be the work on the documentation referred to in the first part of clause 3, and the advisory work in Services §1. The distinction would be odd – it would mean that under §1, strategy advice was being given generally, but under §§3-6 the advice would be confined only to introduced investors; and it would be difficult to operate in practice. Consider the example of a roadshow to a range of potential investors, some introduced by Quest and some not. In

addition, the KPIs in Schedule C seem to envisage that Quest's work is done towards all investors whether introduced or not; they do not distinguish between introduced or non-introduced investors, and some, in particular "support with your relationships" in KPI #3, seem directly to envisage Non-Introduced Investors. It would be odd if the KPIs measured work towards Non-Introduced Investors towards whom Quest did not need to provide Services. So Quest argued that, reading the Contract as a whole, Services §2 must be understood together with the other Services, and that once it is understood that "Prospective Investors" in Services §§3-6 means all investors whether or not introduced, this shows that "Introducing you to" in Services §2 is not meant to qualify the definition of "Prospective Investors". FSI argued, primarily, that there was no tension, as "Prospective Investors" in Services §§3-6 just deals with Introduced Investors. In contrast to Quest's reverse logic, the reasonable reader would work out first what Prospective Investors means from Services §2, where the specific wording used shows it was intended to be confined to Introduced Investors, and then use that to understand what it means in Services §§3-6 and elsewhere. While that meant that Quest is not obliged to provide Approved Judgment QUEST FUND V. FSI Services §§3-6 for Non-Introduced Investors, it could do so voluntarily, for example to satisfy KPIs.

100. As to the KPIs, FSI said they need not apply to Non-Introduced Investors, and worked just as well for Introduced Investors. Even if the KPIs were capable of covering Non-Introduced Investors, they could operate separately to the Services. The Additional Retainer Fee was geared to the KPIs, so Quest could choose to perform the KPI services towards Non-Introduced Investors, and earn additional retainer in that way, even if it was not obliged to by the corresponding Services §§3- 6, if confined to Introduced Investors.
101. But, contrary to FSI's case, I have problems with reading §§3-6 as confined to Introduced Investors. First, clause 3 leads in to Services §§1-6 by saying: "We will aid and assist the fundraising process. Our work will comprise ...". Yet FSI's fundraising process includes work to secure investors initially contacted by FSI. Second, if read on their own (and ignoring the definition of "Prospective Investors" in Service §2) Services §§3-6 naturally seem to include work towards investors whoever introduced them. They focus on work to convert contacts into secured investments, after introduction.
102. Third, it seems to me, at least on a preliminary basis, that there is real force in Quest's argument that the Contract would be relatively unsatisfactory for FSI if Quest did not have to assist FSI at all with regard to investors who Quest had not introduced, apart from the general advisory work in Services §1, and the documentary work set out at the start of clause 3, neither of which are restricted by "Prospective Investors".
103. Quest's argument on this point may be supported by the terms of the KPIs, although absent useful matrix it is hard to be sure. The starting point is I have difficulty with FSI's argument that work towards Non-Introduced Investors for KPIs could operate outside the Services (if confined to Introduced Investors). The second paragraph of clause 1 says the Contract defines "the details of the services we have agreed to provide". The words leading into the

Services are “Our work shall comprise ...” introducing an apparently comprehensive list of Services. All this suggests the Services cover all the work that Quest does under the Contract including work towards the KPIs.

104. So if the KPIs cover work towards Non-Introduced Investors, that may be an indication that Services §§3-6 should also. But do they?
- a. The parties’ submissions did not assist me greatly with the details of the KPIs, nor do I have matrix material that go to contextualise what they are concerned with, and it is difficult to assess them in abstract. b. It seems possible that KPIs ##1-2, about prequalifying and pitching, could be concerned with and overlapping with introducing by Quest. But it is not clear that this restricts them to investors introduced by Quest: for example Quest might pitch to investors known to FSI. Approved Judgment QUEST FUND V. FSI c. It is KPIs ##3-4 that are most likely to cover Non-Introduced Investors. In particular #3, “Support with your relationships” might on its face be focussed on FSI’s prior relationships. But it is not entirely clear this is so (although FSI was at points inclined to accept it). 18 investors are covered by KPI #3, so possibly the “relationships” are a subset of the 40 under “pitching”, which might suggest this is considering relationships with investors introduced by Quest. But it is difficult to assess the significance of the numbers in a vacuum.
105. Thus reading the terms of the Contract, and on the matrix currently assumed, the most persuasive view presently appears to be that the KPIs should be read as allowing and even in part focussing on work towards Non-Introduced Investors. But the point is not wholly clear absent fuller matrix.
106. The arguments on Services §§3-6 and the KPIs are, however, capable of being affected by matrix as to FSI’s needs with regard to Non-Introduced Investors:
- a. FSI relied on Defence §6 and Mirchandani §16(e), addressing the amount of work it had already done towards its own contacts, to support the idea that the Services were not needed towards Non-Introduced Investors. But that was inconclusive, and of relatively little assistance here, because the fact that FSI had done initial work towards its own contacts is not strongly determinative in assessing whether the Contract envisages that Quest should help to secure the investment by further work to get them over the line. b. Importantly, I found the matrix incomplete in these regards. The present matrix I can assume tells me little about these issues: for example it does not really contextualise Quest’s point that a contract under which Services would be provided only towards Introduced Investors would be unsatisfactory. Yet it seems realistic that more detailed concrete admissible matrix would exist, that might assist. Thus, admissible concrete matrix facts corresponding to the unpleaded fragmentary material discussed at paragraph 69.b above could illuminate these aspects. Similarly, admissible matrix supporting the assertions at Mirchandani 1 §16(f) that FSI only needed work to be done towards “additional contacts” and not toward existing prior contacts, could illuminate whether Services §§3-6 relate only to Introduced Investors. Yet as explained, §16(f) is problematic: on the one hand, it is presented in a way which make it

difficult at present to identify concrete matrix within it, yet on the other hand it is pregnant with the possibility of matrix, and is not clearly conceded by Quest.

107. Where I am left, is that on the face of the Contract the initially more persuasive reading is that Services §§3-6 were intended to include investors not introduced by Quest. If so then there is a direct tension between the meaning of Prospective Investors in Services §§3-6 and FSI's reading of Services §2. Yet the point is not clear. It is possible that the meaning of Prospective Investor throughout should be driven by Services §2. The issue is also capable of being affected by aspects of the matrix which are presently incomplete. Approved Judgment QUEST FUND V. FSI
 108. I note that a similar possible tension may arise out of clause 11. This was not closely considered in the parties' arguments, so I only touch on it in passing. Clause 11 provides FSI agrees that "no new placement agent or advisor will, at your request, contact any Prospective Investor in relation to the Fund (whether or not such prospective investor has commenced conducting due diligence with regard to your Fund) on your behalf". This clause may read oddly if "Prospective Investors" refers only to investors introduced by Quest. It may more naturally convey that no other agent will contact any investor for FSI, but if so "Prospective Investors" is not confined by "introducing" here. If so, a parallel tension with FSI's reading may exist in this clause as well. Reconciling Tensions
 109. These possible tensions create a challenge for FSI's interpretation. Contracts should where possible be read coherently as a whole. So if Services §§3-6 apply also to Non-Introduced Investors, and given that any introduction condition is not spelled out in unshakeably clear terms, then unless there is a way of reconciling the two aspects of the Contract, this provides a reason to read "Prospective Investors" in Services #2 as not confined by introducing.
 110. Both sides initially started from the position that the Contract spoke with one voice, in their different directions, and contained no internal tension. However, in response to questions from the Court, both parties addressed the possibility of internal tension and how it might be resolved, first orally and then in helpful short supplementary notes.
 111. Two ways of reconciling internally inconsistent contracts were discussed. First, the doctrine of "correction by interpretation", explored in *Chartbrook v Persimmon*
- [2009] 1 AC 1101, [22]-[25], that if on the true construction of the contract as a whole there is a clear mistake as to part, and it is clear what correction should be made to cure it, the correction can be made as a matter of interpretation. There is no limit to the amount of "red ink or verbal rearrangement or correction which the court is allowed", provided that it is clear "what a reasonable person would have understood the parties to have meant". But it takes a "strong case" to persuade a court that "something has gone wrong with the language": *Chartbrook* at [14].

112. The principle cannot apply where there are different possible solutions but it is not obvious which one the parties intended: *International Entertainment Holdings v Allianz Insurance* [2024] EWCA Civ 1281 at [55]–[56]. But it does not matter if there is more than one possible version of the replacement or more than one explanation of the change. The court just needs to be satisfied about the gist of the correction: *KPMG v Network Rail Infrastructure* [2007] EWCA Civ 363 at [64].
113. One example of where the doctrine can operate is “if the provision in question is inconsistent with some other provision which it is clear must have precedence.”: *Scottish Widows* at [23].
114. Second, Mr Langley relied on the principles articulated by Popplewell J in *Europa Plus v Anthracite Investments* [2016] EWHC 437 (Comm) about the reconciliation of inconsistent uses of defined terms. Having cited classic authorities on contractual Approved Judgment *QUEST FUND V. FSI construction*, and *Chartbrook* [14] which touches on correction by interpretation, Popplewell J continued:
30. These principles apply to the interpretation of contractual provisions using defined terms. As is well known, the use of defined terms in commercial contracts is a commonplace; they are a convenient drafting technique as shorthand labels to express a concept or meaning more fully set out in the defined term (cf *Chartbrook* at [17]). Where the Court is interpreting a contractual provision which uses a defined term, the starting point for a textual analysis will often be the defined meaning, because the fact that the parties have chosen to use it in the provision being interpreted is often an indication that they intended it to bear its defined meaning when so used. Often, but not always. It is a common experience that defined terms are not always used consistently by contractual draftsmen throughout a commercial contract. Where a defined term is used inconsistently within a contract, so as sometimes to bear the defined meaning and sometimes a different meaning, the potency of the inference that the parties intended it to bear its defined meaning in a particular provision is much diminished. The question becomes whether they intended to use it in its defined meaning, as in some other clauses, or as meaning something other than its defined meaning, as in different other clauses. Even where there is no inconsistency of use within the contract outside the provision being interpreted, it does not follow that effect must always be given to the defined meaning. If, as is well known, parties sometimes use defined terms inappropriately, it follows that they may have done so only once, in the provision which is being interpreted. The process of interpretation remains the iterative process in which the language used must be tested against the commercial consequences and the background facts reasonably available to the parties at the time of contracting. Such an exercise may lead to the conclusion that the parties did not intend the defined term to bear the defined meaning in the provision in question. That is no different from the Court concluding that the parties intended a word or phrase to have a different meaning from what would at first sight seem to be its ordinary or natural meaning. For a recent example of such a case see *LBG Capital No 1 PLC v BNY Mellon Corporate Trustee Services Ltd* [2015] EWCA Civ 1257.

31. This is no less so in contracts drafted by or with the assistance of lawyers. Indeed it is in such contracts that defined terms are most commonly encountered. As Gloster LJ said in the LBG case: “89. Moreover, the fact that this was a substantial transaction with the involvement of lawyers did not mean that any infelicity in the drafting was “extremely unlikely”, as Mr Dicker suggested. As Lord Collins recognised in *In Re Sigma Finance Corporation* [2009] UKSC 2, at para 37, in complex documents of this kind, “there are bound to be ambiguities, infelicities and inconsistencies. An over-literal interpretation of one provision without regard to the whole may distort or frustrate the commercial purpose.” Approved Judgment QUEST FUND V. FSI
32. I would therefore respectfully agree with the observations of Flaux J in *Starlight Shipping Company v Allianz Marine and Aviation Versicherungs AG* [2014] EWHC 3068 (Comm) at [45]-[50] that the dictum of Jacob LJ in *City Inn Jersey Ltd v 10 Trinity Square Ltd* [2008] EWCA Civ 156 at [8], to the effect that the court will only fail to give effect to the use of a defined term if absurdity is established, is not consistent with the reasoning of the Supreme Court in *Rainy Sky* (or indeed subsequent authority) and is not the law.
115. Mr Page did not suggest that Popplewell J was wrong. However, he did argue that there was no distinct Europa principle, contending it was just an emanation of the Chartbrook principles for correction by interpretation, and had to satisfy the same conditions. Although the point does not matter to the result here, I am unpersuaded. While there is obviously overlap, Popplewell J’s reasoning is derived from general principles of interpretation without necessarily involving correction. That is sound in principle. A reconciling interpretation of defined terms used inconsistently is a less strong step than a correction of words, and may not involve any correction at all. So it may not be necessary to apply the Chartbrook principles.
116. Both parties said primarily that there was no tension to reconcile but, in the alternative, proposed a reconciliation.
117. Quest argued that, if there was a tension between Services §2 as it stands and the rest of the Contract, then including the definition of Prospective Investors in Services §2 was an obvious mistake, and should be corrected applying Chartbrook by moving the definition to the first mention of prospective investors, in the second paragraph of clause 1, where there is no reference to introducing. However, on my preliminary reading of Services §2, I do not think this is an available fall back for Quest. If Quest succeeds, it would be because reading the contract as a whole leads to the conclusion that there was not intended to be an introducing condition on the definition in Services §2 at all, and so there is no need to correct by interpretation. But if notwithstanding Services §§3-6, Services §2 imposes an introducing condition, it is because it is understood to convey a deliberate objective intention to limit the concept of Prospective Investors at least for the purposes of the Placement Fee. If so, there is no mistake in Services §2, and no room to apply the Chartbrook principle as Quest seeks.

118. It is therefore more relevant to consider whether any tension can be reconciled while maintaining an introducing condition within the definition “Prospective Investors” in Services §2, at least for the purposes of the Placement Fee.
119. FSI argued that applying Europa, the defined term “Prospective Investors” in Services §§3-6, should be understood differently to its meaning in Services #2, specifically to mean any prospective investors in an unrestricted sense, and without an introducing condition, but “crucially, this approach ... would still retain the defined meaning of Prospective Investors for the purposes of the Placement Fee”. FSI touched on the possibility that same answer could be achieved by correction under Chartbrook, but relied principally on Europa.
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120. Mr Page pointed out that FSI’s reconciliation would create problems if only Services §§3-6 were interpreted this way and “Prospective Investors” at all other points remained subject to the introducing condition. If the definition of Prospective Investors in the Exclusion Term remained consistent with Services §2, this could mean Services §§3-6 would still need to be performed towards Non-Introduced Investors even if listed in Schedules A and B, which would make little sense, as the Exclusion Term was meant to exclude the listed investors from Quest’s work altogether: they are excluded from the definition “for the purposes of the Services”. So the Exclusion Term may also need to be understood on the basis that “Prospective Investors” within it is unconfined by “introducing”. A similar problem could apply to Clause 11.
121. However, the substance of FSI’s point is that the definition of “Prospective Investors” in Services §2 and the Placement Fee (and presumably, by parity of reasoning, in clause 9) should be understood differently there, to where it is found elsewhere in the Contract. While Mr Langley’s Note did not directly consider the other occasions of the defined term, in the Exclusion Term and in clause 11 (and also clause 7), the logic of FSI’s case extends naturally to those other instances as well, and in the same way.
122. My preliminary view, on the matrix I can assume, is that FSI’s reconciliation is the correct reading:
- a. Quest’s argument centrally derived from the operation of Services §§3-6, saying that if they are understood to be concerned with Non-Introduced Investors, this shows that the defined term of “Prospective Investors” there and so in turn also in Services §2 is not confined by introducing. But this is a technical lawyer’s argument. It is the sort of issue that a commercial reader might not see at all. The same applies to parallel arguments derived from the other uses of the definition. b. In contrast, on my preliminary assessment, Services §2 and the Placement Fee, read together with the Co-Investment Fee and clause 9 shows an objective commercial intention to link the Placement Fee to introducing, effected by jamming the definition of “Prospective Investors” on top of Services §2. If that is so, but if the proper operation of Services §§3-6 and clause 11 requires “Prospective Investors” in those clauses to be understood to cover any prospective investors introduced by Quest or

not, what seems to have happened is that the drafter has not worked through the consequences of the definition of Prospective Investors as intended in Services §2 and the Placement Fee, into the drafting of the other clauses.

- c. That engages the operation of Europa: when read in the context of the respective clauses, the parties' objective intention is to use the defined term differently in the two different sets of clauses. They intended "Prospective Investors" to be conditioned by "introducing" in Services §2 and the Placement Fee and clause 9; but not in Services §§3-6 or the Exclusion Term (and perhaps clause 11), where instead they objectively had in mind any prospective investors who eventually subscribe. Approved Judgment QUEST FUND V. FSI
 - d. Further, if necessary, this satisfies the Chartbrook conditions, and could justify correction by interpretation: (1) If those are the correct respective interpretations of the two sides of the Contract, then given the objective intention of the parties apparent from the words when drafting Services §2 and the Placement Fee, there has been a clear mistake in the use of the same defined term without redefinition in Services §§3-6 and the Exclusion Term (and perhaps also clause 11). Applying the logic of *Scottish Widows* [23], the intention conveyed by Services §2 to limit the Placement Fee, takes precedence. (2) The gist of the correct interpretation or correction is clear, that is, the Court should read or rewrite the definition of Prospective Investors in the later clauses so that it is not confined by introducing.
123. Mr Page argued that there is no indication that the parties intended the Core Services to be provided to different groups, or the concept of Prospective Investors to be different within them. But there is, if the definition in Services §2 is understood from its terms to be intended to be restricted to Introduced Investors, but Services §§3-6 are understood from their terms to be intended to be provided to Non-Introduced Investors as well. He also argued that the end result was unclear because the Prospective Investors in Services §§3-6 would be undefined. But my preliminary view is that the end result is clear enough: in Services §§3-6 the concept of Prospective Investors is the concept that Quest itself proposes for the term throughout the Contract, that is, any potential investor without restriction.
- Business Commonsense and Economics
124. The parties also argued their constructions (a) made more business commonsense and, as part of this, (b) made more sense of the economics of the fees provisions.
125. First, as to business commonsense, on top of the points already addressed:
- a. Quest argued that applying the Placement Fee to all investors who subscribe subject to defined exclusions would be simpler and easier to operate, and would incentivise Quest to perform all the Services so as to maximise subscription by Investors. It would make the fundraising effort collaborative rather than competitive and make the contract one where the parties shared the fruits of Quest's endeavours under all Services. FSI's solution in contrast would lead to a race to contact investors. Further, the hard task is not the introduction, but the follow up and securing of the investor, so it would make less sense to link the Placement Fee to introducing. b. In contrast, FSI argued that an interpretation

which awarded a placement fee on all investors whatever Quest's role in relation to securing them would be surprising in the context of a Contract where Quest was brought in late in an already advanced fundraising exercise to supplement FSI's own efforts, where FSI had already secured many investors and done extensive work towards others (relying on the matrix in Defence §§3-6 and Mirchandani 1 §16), and where Quest was also paid substantial retainer fees. In that context, it makes obvious commercial sense that Quest would earn Placement Fee only for those investors it actually introduced. Approved Judgment QUEST FUND V. FSI

126. However, at least in the absence of further matrix, my preliminary assessment was that these considerations did not point strongly in either direction, and specifically, were not capable of making Quest's solution prevail at this stage. Either solution seems a possible one and neither seems to contrary business commonsense. Absent further matrix evidence it is not possible to know how common or uncommon the respective solutions might be, as already noted. (I have already addressed Quest's points on the workability of introducing terms, above.) In addition, FSI's matrix case did provide a basis to suggest that in FSI's situation reasonable parties might be less likely to agree a Placement Fee for investors who were contacts of FSI's, on whom FSI might already have done, or in might in the future do, substantial work. (That point would be reinforced if Mirchandani 1 16(f) was treated as, or might contain, admissible matrix to the effect that FSI did not need Quest's assistance as to Non-Introduced Investors.)
127. On some of the specific points made: (1) I am not persuaded by Quest's point that FSI's solution would lead to a race to contact; that would seem to involve the commission tail wagging the investment dog. (2) The argument that the hard task is the follow up rather than introduction is more solid. But it is difficult for me to assess how weighty it is in abstract. In any event, I do not think it can here outweigh the indication of the parties' objective intentions given by the words. Whether or not later work may be more important, it seems plausible on the material available that the parties may have chosen to focus on introduction as the criterion. Further, Quest's construction produces a result unlinked to any specific work at all on the investor in question.
128. Consequently, in the unitary and iterative process of assessing business commonsense together with the words (Wood v Capita, §10), my preliminary view is that the considerations of business commonsense identified by Quest at the least do not outweigh FSI's, and are not capable of displacing the indication of the parties' objective intention given by the words of Services §2 read together with clause 9.
129. With regards to the economics of the Contract:
 - a. Quest argued it was wrong to describe the Retainer and Additional Retainer as "substantial" in the sense of "generous". Implicit within this was an argument that conditioning the Placement Fee on introducing would lead to Quest being undercompensated.

- b. FSI argued, in contrast, that the Contract is one where Quest is rewarded by a basic Retainer Fee and Additional Retainer Fee for its work generally, with a success fee for introductions which end up securing investors in the form of the Placement Fee. Thus, the two Retainer Fees, which are said to be “substantial” (Mirchandani 1, §21), can fairly cover all work done towards Non-Introduced Investors. Indeed insofar as the KPIs covered Non- Introduced Investors, the Additional Retainer Fee would be geared to their performance. In that context, it makes sense that the Placement Fee is conditioned on introducing. Approved Judgment QUEST FUND V. FSI
- c. Both parties also sought to get something from the assertions as to Quest’s normal fees which Quest made in its pitch of 8 April. Quest argued that its overall Charges, as now claimed, are in line with what it called its original “fee estimate” (Quest Skeleton, §11). But the Memorandum does not contain a fee estimate but an (unverified) assertion that Quest’s “average” fee for transactions of a different length (18 months compared to 12), and likely of varying characteristics, was £3.6m. FSI for its part engaged in an inferential argument which argued that a pro rata fee of £2.4m for 12 months would mean a retainer fee of €1m was over a third of Quest’s normal fee, so only small numbers of introductions would be required to make up the remainder of its “typical” revenue (FSI Skeleton, §43). The point was to suggest a Placement Fee conditioned on introducing would not undercompensate Quest, but an unconstrained Fee might overcompensate it. Yet as already stated at paragraph 69.h above this was not admissible matrix; nor could it provide reliable guidance. The fragmentary information obtained from this assertion in Quest’s pitch could say little about the actual economics of this transaction or how a reasonable Fund in FSI’s position would regard matters; and the inferences FSI sought to draw were speculative. The point does again indicate the incompleteness of the matrix available now. d. It seems to me that, at least absent further matrix, I can draw little from these economic arguments. I cannot assess to what extent the Retainer Fees are substantial or sufficient or the converse. It is not possible to say which overall result is clearly more economically sensible. It is sufficient to say that FSI’s construction does not appear obviously to make the economics of the contract unbalanced nor can it clearly be said to undercompensate Quest. Consequently, these considerations are insufficient as matters stand to displace my preliminary assessment of the indication of the parties’ intentions obtained from the words. Conclusions on Construction
130. My preliminary assessment is that FSI’s construction is to be preferred on the main “introducing” issue. In any event, I conclude that FSI has real prospects of success on this at trial. Schedule A and B Issue
131. The Schedule A and B Issue only arises for summary judgment purposes if FSI is wrong on “introducing”. So it is not necessary to decide it now. But since I have reached a clear conclusion, it will be helpful to state it.

132. The Exclusion Term, quoted above, excludes the investors in Schedules A and B from the scope of “Prospective Investors” and therefore the Placement Fee.
133. The listed investors are not always listed by corporate name. They are often listed in general terms: “Credit Agricole”, or “Fininvest”. They include “Generali” in Schedule B, and “65 Equity Partners” in Schedule A.
134. FSI argued that listing a name in the Schedules brought with it an exclusion of all companies under common ownership or control or in the same corporate group. It Approved Judgment QUEST FUND V. FSI produced evidence to show this applied to the Three Investors.
135. In support of that construction, FSI relied on matrix evidence at Mirchandani §30(a) (pleaded Defence §19C.3.3(c)) that the parties would have known that “it is routine (or at the very least not uncommon) for an investment firm or corporate group to use different entities within the same group – whether under common ownership and/or control – to make a given investment. This often involves setting up special purpose vehicles or sub-funds for that purpose. The specific entity making the investment may have been chosen for various reasons, such as tax planning or regulatory reasons.” This seems right. It was not formally admitted but Quest never disputed it.
136. As to the Three Investors, FSI relied on the following primary facts which were not disputed, and which I assume are correct for present purposes: a. b. “Generali” is not a legal entity in itself. There is a Generali group of companies, of which the main holding company is Generali Investments Holding S.p. A., a well-known Italian investment business. Lion River and Secondary Co-Investment are entities within the Generali group. Specifically: (1) Lion River is a Dutch company ultimately owned by Assicurazioni Generali S.p. A, a company in the Generali group. A corporate report obtained by FSI states that Assicurazioni Generali S.p. A is Lion River’s Global Ultimate Owner (“GUO”). I add that Lion River’s shareholder register states it was previously named “GENERALI beleggingsfondsen N. V”. Secondary Co-Investment is a Guernsey limited partnership whose sole limited partner is Lion River. This is recorded in its shareholder register. “65 Equity Partners” is not a legal entity in itself. 65EP Investment II PTE Ltd (“65 EP”) is a Singaporean Company that subscribed to the Fund in November 2022. 65 EP is an entity within the Temasek group of companies, a global investment group with headquarters in Singapore. It is majority owned by Thomson Capital Pte Ltd which is ultimately wholly owned by Temasek Holdings (Private) Ltd. Bernina, in turn, is ultimately wholly owned by Temasek Capital (EMEA) Holdings Pte Ltd. (There is no information as to the ownership chain above these two Temasek companies.) Mr Mirchandani therefore says, plausibly, that Bernina is also part of the Temasek group as well, and I assume he is correct about that.
- c. FSI and Bernina agreed a side letter dated 19 December 2024 which provides (amongst other things) that Bernina’s and 65EP’s commitments to the Fund were to be aggregated for the purposes of calculating FSI’s management fee (clause 2). Mr Connell does not say that is untrue, but does say that Quest did not know about it.

137. If FSI's construction is correct, then its factual case would sufficiently show that the Three Investors are covered by the Schedules for summary judgment purposes, on the basis that they are, or at any rate are likely to be, part of the same corporate group as the respective named investors. Approved Judgment QUEST FUND V. FSI
138. Quest disagreed with FSI's construction. It did not advance a clear positive construction, saying only the Three Investors "are not included in the list" and that naming of an investor cannot include an investor which "does not share the same name" and "corporate entities matter". If the parties had intended to include affiliates and not just the named entity, they could have so provided with precision. I found it difficult to make sense of this. If the argument is that the listed names each only refer to one corporate entity, that cannot be right. Sometimes the Schedules use precise corporate names, but where not, they are in general terms which do not appear to refer to one single corporate entity: e.g. "Credit Agricole". In the assumed context, where it is understood that companies often use group entities for investment, I do not think it is realistic that the names would be understood to refer only to (for example) the parent company. If Quest's case is that the listed names only cover companies whose corporate names include the listed name, such as a Credit Agricole subsidiary with "Credit Agricole" in its corporate name, that seems arbitrary.
139. Instead, my preliminary view (without any matrix to illuminate how such schedules work) is that the names in the schedule, or at least the generally phrased ones, include all associated entities to which the name refers commercially; that is, all associated entities which a reasonable person in the industry would understand to be commercially referred to by the listed name.
140. If, for example, it was known that Credit Agricole did all its finance investing through a single subsidiary called Credit Agricole Finance SA, that would likely be covered by "Credit Agricole". But further, if Credit Agricole Finance SA did its relevant investing through an SPV with a name which did not include the words Credit Agricole, that seems likely to be covered as well.
141. It follows also that on my preliminary view, FSI's interpretation is both too rigid and too broad. That entity A is in the same group as entity B or under common ownership does not make them the same referent from a commercial perspective. It is possible for a corporate group to have different investment arms that may even compete consider a London merchant bank A owned by a foreign universal bank B but with separate presences in the market. I doubt that a reference in the Schedules to A would cover B. Formal corporate connection is not sufficient. Instead the touchstone is commercial identity.
142. The consequence is that neither party has approximated to or addressed what on my preliminary view is the right test.
143. It follows that Quest has not shown that there are no real prospects of FSI showing that the Three Investors are within Schedules A and B.

144. FSI's evidence does not show that "Generali" would commercially be understood to refer to Lion River or Secondary Co-Investment, but that is because it focusses only on formal corporate connections, not commercial realities. Possibly Lion River is really from a commercial perspective "Generali" and would so be understood in the market. But possibly not. The material available does not make that clear. But Quest did not assert that there would not be commercial identity. Further, since FSI's material does show the formal corporate connection, it suggests that, at least until Approved Judgment QUEST FUND V. FSI the question of commercial identity is further investigated, there is a real prospect of FSI showing that such a test is made out. The fact that Lion River previously had a "Generali" name may be indicative. Essentially the same applies mutatis mutandis to Bernina (apart from the previous name point).
145. It would not have been appropriate to grant summary judgment on the basis that FSI's evidence has not yet addressed the correct test. Neither party's evidence addressed this middle position which was discussed for the first time in argument. It would, therefore, have been appropriate to give FSI the opportunity to make out a case applying the correct test.
146. Consequently, even if I had concluded that summary judgment should otherwise be granted, I would not have granted summary judgment in respect of the part of the claimed Placement Fee which relates to the Three Investors. FSI's Reverse Request for Dismissal
147. I do not grant FSI's reverse request for dismissal of the claim. This does not arise as I am not deciding the question of construction. In addition, (i) there was no application for summary judgment by FSI; (ii) Quest did not concede FSI's matrix for this purposes; (iii) Quest did not concede it would fail to satisfy an introducing condition for investors other than Clipway; (iv) Quest also advanced its Active Role point, which could potentially if successful defeat reverse summary judgment on an undefined number of investors.
148. FSI said the Active Role point was hopeless, but it was not really explored in submissions, in a context where there had been no application for reverse summary judgment, so I do not think I should seek to resolve it. Further, FSI argued that the point was not open to Quest because it was an alternative claim pleaded in the Reply not the Particulars of Claim. I was not attracted by this formalism for summary judgment purposes. If the point had force then permission to amend the Particulars would have been granted as necessary.

Conclusion

149. Quest's application for summary judgment should be dismissed. I will hear the parties on consequential matters.

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