Neutral Citation Number: [2023] EWHC 2036 (KB)

Case No: QB-2019-003400

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
CIVIL

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/08/2023

Before :

MR JUSTICE COTTER

- -

Between :

Aspinall's Club Limited	**Claimant**
- and -	
Mr Lester Hui Chun Mo	**Defendant**

- -
- -

Alexander Robson (instructed by **BlackLion Law LLP**) for the **Claimant**
Lawrence Power (instructed by **Direct Access**) for the **Defendant**

Hearing dates: 8, 9, 13, 14, 15, 16 March 2023, 19 April 2023 & 4, 5, 10 May 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 04 August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE COTTER

Mr Justice Cotter:

Introduction

1. The Claimant owns and operates a gaming Club known as Aspinall's Club ("the Club") situated on Curzon Street in Mayfair. The Club is licensed for gambling under the Gaming Act 1968 and Gambling Act 2005 (the "2005 Act").

2. The Club is based in a Georgian building. In 2016 the restaurant was on the first floor, the bar was on the ground floor and the gambling floors were on the first and second floor. There are also a number of private salons where members who prefer privacy can play in private.

3. The Club, like all casinos and gambling institutions, is subject to statutory and regulatory requirements. The 2005 Act requires the Club to have, and maintain, an operating licence and for individuals involved in management to have personal licences. The Club, and all personal licence holders, must comply with the Licencing Conditions and Codes of Practice ("LCCP") in force from time to time. The Gambling Commission also issues specific guidance on matters such as responsible gambling. In addition to the operating licence the Club is required to have and maintain a premises licence through Westminster Council to permit the service of alcohol (and other activities).

4. The Club offers different types of membership, including dining only and full membership (which entitles a member to game). Members are allowed to bring guests. As Mr Branson, the current managing director explained:

> "as an exclusive Club we have a small membership of approximately 15,000, of whom a few thousand would typically be active at any one time. This means that we can offer a very luxurious service and typically when players come into the Club there will only be a small number of other players so they can have their preference of gaming location and we pride ourselves on the level of service in our restaurant and throughout the property."

5. Importantly, as was repeatedly stated during the trial, gambling in London through exclusive Clubs is an intensely competitive arena, with various Clubs vying for the "big players".

6. From August 1998 onwards the Defendant, Mr Hui had been a member of the Club and a participant in gambling. The Club allocated a "tier" or "grade" depending on a person's value to the Club. Grade A were the highest value players, who regularly play at £1 million plus. Grade D was the lowest value players. Mr Hui was a Grade B. He was allocated this grading based on his promises to bring in new players to the Club.

7. Part of the service to customers, particularly those in Grade A or Grade B is the "concierge" type of service. This would provide tickets to exclusive sporting and other events and making arrangements for travel, restaurant bookings etc. When players at the higher grades are at the Club they are usually provided with complimentary food and drink which appears to be an expectation amongst players at this level and is a similar service to that offered by other high-end casinos. The intended system was that the junior marketing staff would develop

> "strong relationships with the players so that the players saw them as a go-between, between them and the Club rather than just a member of the Club staff."[1]

8. The majority of the Club's members are based overseas and typically visit London for periods of several weeks, or months, at a time and therefore gambling for all members was organised by "gaming trip". Mr Branson explained that at the start of the trip a programme is set up for the player and any cheque clearing facility details are confirmed. At the conclusion of the trip the programme is closed. With local players such as Mr Hui they would typically come in for occasional nights and therefore trips may last 1-2 months, depending on what they discussed with the marketing team. The particular trip which this case centres on commenced on 10th December 2015 and concluded on 13th February 2016.

9. During the night of 9th – 10th February 2016 Mr Hui attended a special meal at the Club for Chinese New Year. He was able to invite guests. The food and drink were complimentary. After introductory drinks at the bar Mr Hui's group sat at a central round table in the dining room and had a "Chinese Banquet" meal with champagne and wine. Eventually Mr Hui left the dining table with two of his guests to gamble, which he did at a table in a private room.

10. During the evening Mr Hui signed a number of "scripts" and was provided with gambling chips. He initially won but then began to lose heavily. When his losses reached £500,000 he asked for a £300,000 credit extension. He was granted £100,000 extension and he also lost this money. He then left the Club and drove home.

11. From the £600,000 which he lost Mr Hui was credited with commission payments of £10,276, resulting in a gaming debt of £589,724. He has failed to pay the debt or any part of it. By this claim the Claimant seeks payment of that sum plus interest. The claim is brought under sections 47 and 57 of the Bills of Exchange Act 1883 ("BOE Act") and as a common law claim for breach of contract.

12. Mr Hui 's principal defence, is that during the visit on 9th/10th February he was, or became, "*blackout drunk*" by reason of alcohol served by the Claimant's employees and that as a result he was legally incapable of signing a negotiable instrument under the BOE Act or of entering into any legally binding loan agreement. He also alleges that the Claimant's employees knew that he was incapacitated by reason of being drunk, and deliberately failed to intervene so as to stop him from gambling;

[1] Witness statement of Mr Branson paragraph 24

> "so that through intoxication the Defendant would gamble large sums and lose to the financial benefit of the Claimant."

Mr Hui alleges that, as result of this deliberate conduct, the Claimant, through its employees, knowingly breached its conditions of its licence by failing to comply with the statutory Licence Conditions and Codes of Practice dated February 2015.

13. The Claimant denies that the Defendant was drunk and/or known to be drunk and that it breached any regulatory requirement.

Preliminary issues

14. The trial was beset by difficulties at the outset. Given potential relevance to issues of costs it is necessary to set them out in some detail.

15. The first issue concerned a witness summons issued on behalf of the Defendant for Ms Mey Soo and also the Defendant's delay in serving a skeleton. These led to my order of 3rd March 2023 and an application filed by the Defendant on 4th March 2023 to rely on a witness summary. These issues were quickly and satisfactorily resolved.

16. Complaints when then raised by the Claimant within a letter of 6th March 2023 that the Defendant's skeleton (which had been received on 3rd March 2023) made several references to section 81 Gambling Act 2005 and the provision by the Claimant, to the Defendant, on 9th/10th February 2016 of impermissible/illegal credit. This despite the fact that these matters were not pleaded (or indeed referred to in Mr Hui's witness statement). The request was that the relevant sections of the skeleton be struck through. On behalf of Mr Hui Mr Power responded by a letter of 7th March 2023 arguing that the lawful provision of finance by the Claimant was a matter for the Claimant to prove and had been raised in the Defence, so that, in effect, the issue of compliance with section 81 had been raised.

17. A further issue was the Defendant's objection to the insertion into the bundle of documents received from the Claimant on 6th March; specifically

    (a) The responsible gaming review marketing 2014.

    (b) Signed declarations of three of the Claimant's witnesses that they had read and understood the Claimant's "Responsible Gaming Policy".

    (c) Records kept by a Claimant's witness (Mr Heenan) about year-on-year training.

    (d) An unredacted copy of an e-mail dated 17th May regarding a visit made by the Defendant to the Claimant's premises (a redacted copy had previously been supplied to the Defendant after a request under the Data Protection Act.

18. At the start of the hearing on 8th March Mr Power indicated that yet another document, this one being a "very highly relevant one", had now been provided at 8.11am that morning. This was a document which had been referred to at paragraph 5(e) of the reply; a form authorising a temporary increase in Mr Hui's cheque clearing facility from £500,000-£600,000 which was said to have been signed by Mr Hui.

19. I heard argument on these issues. The history of disclosure was obviously unsatisfactory and I required a statement to be served on behalf of the Claimant explaining the disclosure failures.

20. I also indicated my preliminary view that there were issues raised in the Defendant's skeleton which had not been pleaded or covered in Mr Hui's witness statement. Paragraph 3 of the Particulars of Claim referred to a "common understanding" between the parties that a signed blank cheque which had been provided by the Defendant would be retained by the Claimant and, if a balance was owed at the end of a gaming trip, the total would be written on the cheque by the Claimant and banked. In response paragraph 3 of the Defence pleaded that the Claimant had failed to identify the parties to the common understanding, denied the Defendant was on a gambling trip (having been invited to come to the Club to celebrate Chinese New Year), averred that he had set a gambling limit of £30,000 and denied that on that night he had provided a blank cheque. It was noteworthy that the Defence

    (a) contained an admission that the Defendant had signed five "script cheques", which it was said were merely "internal Club chits" and not loans, but only when he was, and was known by the Claimant's employees to be, heavily intoxicated.

    (b) Denied that the Defendant authorised and/or executed the personal cheque on 10th February or at any time for the sum the Claimant has claimed.

21. The primary case set out in the defence appeared to be that Mr Hui was drunk and that in allowing him to continue to gamble the Claimant breached the social responsibility code (which sets out conditions of the operating licence). As a result any cheque provided by the Defendant was unenforceable as it was provided for illegal consideration and any debt is unenforceable. Alternatively that a person who is intoxicated lacks capacity to enter a contract (so any script cheques were void). The witness statement of Mr Hui set out his recollection of the night in question and that he became "black-out" drunk. It did not cover the provision of a blank cheque.

22. I stated that it was my preliminary view that there was no express or explicit reference to section 81 in the Defence and/or to the provision of impermissible credit. I noted that:

    (a) It was argued in the skeleton argument that the completion of the cheque must be within a reasonable time (skeleton paragraph 36) and in accordance with the authority given. This despite the fact that Mr Hui did not refer to this issue in his statement and it was not pleaded.

    (b) It was denied in the skeleton argument that the blank cheque provided by Mr Hui in June 2015 was still valid due to the passage of time because the authority had been used up. Again Mr Hui did not refer to this issue in his

statement (he did not refer to the provision of a cheque in June 2015) at all and it was not pleaded;

(c) It was set out in the skeleton argument that as the cheque had been provided in June 2015 it could not have been governed by the 10th December 2015 agreement and/or the true "common understanding" was that the cheque was only provided in relation to the June 2015. This was a positive case as to the "common understanding" which had not been pleaded.

(d) The following specific factual averments within the skeleton had not been pleaded or set out in Mr Hui's witness statement:

(i) A cheque can only be used once and the blank cheque was completed for the first time on 20th July 2015, so after this the authority was exhausted.

(ii) After first use of the cheque copies of it were used and the authority was only for the original cheque.

(iii) The only authority for a cheque is evidenced by the letters of authority of 25th May 2014 which refer to a single specific cheque.

(iv) The Claimant had previously provided illegitimate credit to Mr Hui in September 2014.

23. I raised with Mr Power that regard must be had to the requirement under CPR 16.5 (2) that if an allegation is denied (such as here the assertion that there was a common understanding) a Defendant must state his reasons for doing so. Further that even if the pleading somehow impliedly covered these issues there was no evidence in relation to these matters and the purpose of a witness statement was to indicate what evidence a person would give. Trial by ambush was a thing of the past.

24. Mr Robson then indicated that the content of the skeleton (and in particular the reference to the provision of a blank cheque in June 2015) had caused one of the Claimant's witnesses, Mr Branson, to reconsider the accuracy of part of the content of his witness statement. Specially I was informed that it was now acknowledged that the statement (at paragraph 31) that;

> "Mr Hui was very familiar with this process from his previous trips and he provided a signed personal cheque dated 10th December 2015 at the time of signing the Premium Player Agreement";

was wrong. Mr Robson indicated that he wished to seek leave to deal with this at the outset of his evidence i.e. to set out what the correct position was.

25. I stated that I would not allow evidence on a vital issue in this claim (in which the Claimant seeks £1.2million in damages and interest) to be given without advance notice of the details in a witness statement.

26. The result of the matters set out above was that I adjourned the hearing at lunchtime on 8th March 2023 for the Claimant to prepare and serve a witness statement (concerning disclosure and Mr Branson's error) and for Mr Power to then have the opportunity to consider the content before indicating whether he wished to apply to amend the pleadings and/or serve a further statement from Mr Hui.

27. The further witness statement of Mr Branson stated that after he had seen the Defendant's skeleton argument with the reference to the provision of a blank cheque in June 2015.

> "Which was different from my previous understanding" he "investigated the position in more detail."

He stated that he now appreciated that his statement was incorrect and that the "physical personal cheque" was indeed provided on 9th June 2015 and not as he had stated the 10th December 2015. He then set out what had happened on Mr Hui's visits in June 2015 and July 2015, describing the use of copies of the cheque which were eventually not relied upon as Mr Hui had won. Further that the original cheque supplied in June 2015 was used for the purposes of the December 2015 agreement as there was no point seeking a fresh cheque as it had not been banked. I observe that given the content of the Defendant's skeleton most of what was set out by Mr Branson will not have come as a surprise.

28. A witness statement was also provided by Lara Robson in relation to disclosure. It explained how the documents came to be disclosed late, including human error in relation to the Temporary Increase Form. It also stated the following;

> "22. I have this afternoon asked Mr Jenkin to check the folder for this trip again to be sure that no other relevant documents were inadvertently missed. I attach 3 further documents from the folder: a colour of (sic) the personal cheque with a stamp on it; a copy a (sic) script cheque with the word "Void" written across it; and account copies of script cheques. These were also uploaded and I had not seen them before today. It is not clear that these documents help or harm either party's case in view of the pleaded issues but I am disclosing them in any event.
>
> I apologise to the court that these documents have been disclosed late due to human error."

29. On its face when I viewed the script cheque it appeared to be a cheque for £500,000 prepared by a person and then signed by Mr Hui.

30. Mr Power made the following points;

    (a) Mr Hui's instructions were that he had not signed this script cheque and had no knowledge of it.

    (b) It was remarkable that such an important document was being produced on the second day of the trial despite two Data Protection Act requests and a disclosure exercise.

(c) There was no explanation as to how/why it had not been disclosed given that it was sitting in the relevant file.

(d) That a creation of a cheque for the full value of Mr Hui's cheque clearing facility without his knowledge was also remarkable.

(e) He wanted to inspect the original documents and them needed time to take instructions and consider the position.

31. At this juncture I could see the spectre of a handwriting expert. If Mr Hui had signed a £500,000 script cheque at the beginning of the evening it could, to say the least, seriously undermine his evidence that at the beginning of the evening that he only wanted to bet up to £30,000 (together with £20,000 for his friends) and as a result signed a cheque for £50,000. As a result I asked Mr Robson whether it was the Claimant's case that Mr Hui had signed the cheque.

32. After time to take instructions Mr Robson indicated that it was not the Claimant's case that the signature on the cheque was that of Mr Hui. He gave an explanation as to how it came to be signed but indicated that it was not the Claimant's intention to provide evidence on the issue. Of course, Counsel's explanation as to the creation of a document is not evidence. However, the spectre of a handwriting expert left the stage.

33. Mr Power then raised a number of questions about the creation of the document, seemingly prepared without his client's knowledge and on its face bearing a signature where the other scripts were signed. I indicated that I could not order a witness statement to set out its provenance (as opposed to its late disclosure) and that Mr Power would be free to use it in cross-examination. He stated that he still wanted to see the original and also the original (previously blank) cheque and the temporary increase from also said to have been signed by Mr Hui. He also wanted to consider his position as to amendment to the defence and/or further witness statements. Despite a degree of despair that it was now lunchtime on the second day of the trial and no evidence had been called it was clear to me that the case could not fairly progress until it was clear what the issues were; which required consideration of the pleadings in their final form and also witness evidence to be adduced. Before reaching this conclusion I had been reminded by Mr Robson of my own analysis in **Charles Russell Speechly LLP-v-Benefical House** [2021] EWHC 3458 with respect to the importance of identifying the scope of the case at the outset of a trial given the pleaded cases.

> "62. As Richards LJ observed in **UK Learning Academy Ltd v Secretary of State for Education [2020] EWCA Civ 370 ,** a Judge may in appropriate circumstances allow a party to depart from its pleaded case where it is just to do so, although it is always good practice to amend pleadings, even at trial. However, I accept Mr Barclay's submission, set out above, that the prejudice threshold is a low one and a party need only show that a departure from the pleaded case "might" cause prejudice before an application to amend is required. If that threshold is met, it would ordinarily not be just to allow a party to depart from the pleaded case advanced up to trial. Context is important. A party who has prepared for trial not anticipating that a particular point will arise may not have the ability at the outset of the trial to fully

> assess the implications of a point, whether evidential or in terms of applicable law, without time, something that an adequately pleaded case would have afforded him. What Mummery LJ referred to as the orderly progress of the case in **Boake Allen** has been disrupted and too require more than the potential for prejudice would be unfair.
>
> …..
>
> 64. Mr Raffin submitted that Mr Stockler did not force the issue of an amendment. However, this submission fails to recognise the primary importance of pleadings and the entitlement to have the case adequately set out. In any event he made his view plain; that a secondary argument was not in issue on the basis of the pleadings.
>
> 65. It was incumbent on the Judge to address the issue and given that Mr Raffin did not apply to amend he should have considered whether the case could be advanced without an amendment. To do so, he had to address whether there was the risk of prejudice to the Defendant."

34. I gave further time to Mr Power to analyse, take instructions on, and if appropriate respond to, the late disclosure and new evidence and prepare any application. As Mr Robson would then need time to consider Mr Power's response (in whatever form it was); the effect was that whilst I would be available to hear any applications/issues during the afternoon if the parties were ready (and it became necessary) another day would be lost.

35. Given that this case had a pre-trial review hearing, at which all remaining issues before the trial should have been raised and determined, the history set out above (with consequential waste of costs and court time) was deeply regrettable. However matters were then to get worse from the perspective of trial management.

36. On the next working day (Monday morning) for a 10.00 start I was faced with

    (i) An application for;

        (a) Permission to amend the defence and plead a counterclaim (with an accompanying draft)

        (b) Permission to rely on expert evidence

        (c) An application for specific disclosure

    (ii) A witness statement from Mr Hui with a large exhibit

    (iii) A Defence skeleton citing a number of authorities (neither side had produced a relevant authorities bundle)

    (iv) Two statements from the Claimant with exhibits in response

(v) A skeleton argument for the Claimant also citing authority

(vi) A part 18 request.

37. The various issues raised in these documents were far from straightforward and arose, in the main, in my judgment from two failures; by each party;

(a) The disclosure failures of the Claimant

(b) The failure of the Defendant to fully plead his defence on the facts known to him.

38. After extensive further argument I delivered an extempore judgment concerning the progression of the trial. In effect the trial was to progress with the Defendant providing a witness statement as to any positive case as to the agreement in December 2015 (and specifically the provision of a blank cheque). There would be no further amendments to the pleadings, with consequential further delay, as several issues had now been clarified such that amendments were not necessary and/or lacked merit. Having heard Mr Robson on the issue of the Claimant's system and the additional documentation I left the door ajar for the Defendant to raise at a later stage the issue (if positive evidence emerged to support the averment) that there had been an attempt to forge Mr Hui's signature on the void £500,000 script cheque. In the meantime the Claimant's witnesses could be asked questions on the issue. The matters raised in the Part 18 request could also be explored through cross-examination. Having had regard to the overriding objective I refused to adjourn the case and required it to progress. As I stated in the judgment there were clear factual issues at the heart of the claim; most obviously the extent to which Mr Hui was inebriated and whether the Claimant's employees induced, and/or were aware that he was in, that state. These issues needed to be determined and the case could no longer be bogged down in procedural issues. If the counterclaim was to be pursued it would be considered after the matters before the Court i.e. after judgment on the substantive claim.

39. The case then progressed and evidence was called.

40. On 19th April 2023 within a witness statement reference was made to the application to amend being "outstanding". I questioned this given the matters set out above. On 28th April 2023 Mr Power made a further application to amend the defence and to add the counterclaim. On the 4th May 2023 at the outset of the hearing of the application I raised the fact that I had already given judgment on an application to amend covering much of the same ground now raised (and expressed some surprise that there had been no reference to my earlier judgment). There was then further argument and I refused the application to amend the defence as the allegations were either already pleaded or without merit (indeed I struggled to understand some of the arguments advanced) and in any event too late given that the Claimant's witnesses had given evidence.

41. I granted permission to amend to bring a counterclaim (with directions to be given after judgment on the substantive claim).

Issues

42. At the heart of this case is a factual dispute as to whether, and to what extent, Mr Hui was drunk on the evening of 9 February and morning of 10 February. Also whether his drunkenness was, or should have been, appreciated by the Claimant's staff and action taken to preventing him gambling (or gambling any further).

43. It is Mr Hui's case that this was a Chinese New Year celebration and he drank copious amounts of complimentary alcohol in full view of, and to an extent encouraged by the Claimant's staff, including specifically Mr De Lima. He became what he describes as "blackout" drunk, exceeded the personal limit which he had indicated that he wished to impose upon himself of £30,000, and began to gamble aggressively leading to very significant losses. He argues that it became obvious as the evening wore on that he was drunk and it was wrong of the Claimant's staff to allow him to continue to gamble in that condition. It was his case that the claim should be dismissed for the following reasons:

    a. He was under the influence of alcohol on the evening of 9th/10th February while he was gambling between 23:03 and 02:41 and the Claimant's employees were aware, or ought to have been aware, that he had drunk too much which impaired his ability to gamble;

    b. The Claimant failed to ensure that his gambling on 9th/10th February 2016 was lawful pursuant to the 2005 Act ("the Gambling Act") and/or the Licence Conditions and Code of Practice ("LCCP");

    c. The Claimant had failed to properly set out its case as to the existence of a loan agreement, oral or otherwise between the parties and/or what the terms were; and

    d. There was no authorised cheque payment.

44. It is the case on behalf of the Claimant that Mr Hui has exaggerated how much he drank on the evening in question. It is not known exactly how much he did drink, but he was not displaying overt signs of drunkenness. Had he been doing so this would have been picked up by one of the several members of staff who interacted with him, including the dealers, the inspectors at the gaming table, Mr Heenan, Mr De Lima and the door staff. Mr Hui lost money having provided a number of "script" cheques during the evening. He asked for a further £300,000 extension on his £500,000 cheque clearing facility. This was refused but a £100,000 extension was approved. There were no concerns about his condition/ability to gamble during these transactions. Tellingly having lost a substantial amount of money Mr Hui asked for the keys of his car and drove home (a 45 minute journey across central London). This was not the act of a man who was "blackout drunk".

45. A number of issues were also raised by Mr Hui in relation to what he alleged was the unlawful provision of credit and/or the use of a blank cheque which the Claimant retained, then filled it with the amount that he had lost, and presented to the bank. The Claimant brings this action in part upon that dishonoured cheque. Mr Hui alleged that

the Claimant had no authority to retain the blank cheque (which he had provided in June 2015 in respect of an earlier period gambling) or to use it.

46. It is the Claimant's case that no credit was given to Mr Hui. He signed five script cheques during the course of the evening in question in exchange for gambling chips. These script cheques were negotiable instruments, indeed a script cheque signed by Mr Hui had been banked on a previous occasion. The Claimant could have presented the script cheques to a bank but instead, by virtue of the need to credit Mr Hui with commission that he had earned gambling (meaning that the full amount owed was less than the total value of the five script cheques), the blank cheque was filled in with the amount of £589,724 and presented to the bank on/about 11th February 2016. This cheque was dishonoured. In the alternative to the claim based upon the dishonoured cheque, the Claimant advanced a claim based on the loan agreements which arose when Mr Hui signed the script cheques and received gambling chips in line with the analysis of Henry J (and Stuart-Smith LJ) in **Crockfords Club Limited-v-Mehta** [1992] 1 WLR 355.

Evidence

47. The trial bundle contained well over 1500 pages. However there were relatively few relevant documents. Sadly, as is so often the case, no real attempt had been made to confine the bundle to documents which the Judge was possibly going to be referred to.

48. The Claimant relied upon the evidence of 4 witnesses:

    i) Mr Michael Branson, who was the Claimant's Chief Operating Officer of Gaming at the time of the 9/10 February visit. Mr Branson is now Managing Director of the Claimant

    ii) Ms Emily Chung, who was a marketing host and is now the director of sales and marketing at the Claimant

    iii) Mr Gordan Heenan, who was and is, the Claimant's casino Manager

    iv) Mr Chris De Lima, who was Vice President of International Marketing at the Claimant at the time of the Visit. Mr De Lima left the Claimant's employment in 2017; he is now resident in Singapore but travelled to London to give his evidence.

49. In addition to his own witness statement Mr Hui relied upon evidence from two witnesses who attended the Club with him on 9th/10th February 2016;

    i) Mr Johnson Yuen, a friend of Mr Hui

    ii) Ms Wendy Yuen, the wife of Mr Yuen and also a friend of Mr Hui.

50. On 13th February 2023, Mr Hui issued a witness summons in respect of Ms Mey Soo. Ms Soo was, at the time of the 9th/10th February visit, employed by the Claimant as a VIP host and she was also a family friend of Mr Hui. She had been present on the evening in question. She left the Claimant's employment in July 2016 but re-joined in January 2020 as a Marketing Executive so at the time of the hearing was employed by the Claimant.

51. Ms Soo was called by Mr Power and gave evidence.

Overview of the Evidence

52. Mr Branson provided three witness statements. He was the Claimant's Chief Operating Officer of Gaming at the time of the 9th/10th February 2016 visit and had a personal management licence. He gave no direct evidence about Mr Hui's gambling on the night in question as he had left the premises at about 10.00pm. He was challenged at length about the Claimant's procedures/systems.

53. Mr Branson first obtained a personal licence in the UK in 2012 and as at 2016 stated that he had a thorough knowledge and understanding of the compliance and regulatory issues affecting the Club. As at 2016 the Club had a compliance department dealing with all issues in relation to regulatory compliance with two full-time employees. He stated that compliance with regulatory requirements was "an absolutely fundamental part of our business" and protected both the Claimant's business and the players. The Club had a training programme for all staff when they joined and also on a refresher basis. He said there was specialist training for specific areas some of which overlapped, for example the responsible service of alcohol was covered by requirements under the premises licence and also responsible gambling protocols. He stated that at the time the Club had in place a policy in relation to responsible gaming and the service of alcohol which included guidance for staff on how to recognise potential problems and what procedures to follow if any of the staff were concerned about a player.

54. Mr Branson stated that the responsible service of alcohol was a key feature of the Claimant's operation which needs to be handled carefully and appropriately. This was done through monitoring players and then speaking to them if there were any concerns. He stated:

> "All staff look out for warning signs-for example, a person's coordination, changes in speech-getting louder or slurred, people acting differently to how they would normally behave."

55. Mr Branson described Mr Hui as

> "a player who had very expensive tastes and demanded a lot. He would make promises of bringing in new members and introducing us to new members in order to use our facilities at low cost or no cost and to obtain tickets for himself and friends to football matches. The marketing team at the time felt that Mr

> Hui may be able to bring some business our way and therefore he was given some complimentary entertainment, but he was not considered a major player and therefore the Club sometimes refused his request for complimentary tickets, but would assist him in sourcing such tickets if they were hard to get."

56. Turning to the factual issues in dispute, Mr Branson said that he knew that Mr Hui had not paid his gambling debt immediately, but this was not unusual. There was nothing that alerted him that the CCTV should be viewed and saved. Had he of known of the allegations he would have ensured that it was kept as:

> "the CCTV is there to protect us"

He confirmed that the CCTV also records sound.

57. Mr Branson said that there was a "player agreement" in place in relation to the use of blank cheques. As for a cheque cashing facility ("CCF") he stated that if there was a player agreement in place, and if it was thought the person was good for the money, there would be such a facility; there was no separate written agreement in relation to it, and;

> "There is a level of trust but we do a level of checking and due diligence."

58. The Club records show that Mr Hui had an authorisation of £600,000 in 2008[2], £800,000 in 2014[3] (he asked for, but was not granted a £1million facility[4]) and an authorisation of £500,000 on a number of occasions from 2011 onwards, including in June 2015 by Mr Branson.

59. In the present case when Mr Hui signed a Premium Player agreement on 10th December 2016,

> "We would have checked with him that we still retained a valid cheque."

And

> "He would not provide us with a cheque unless there was an agreement and he knows the amount of the CCF. Whoever took the cheque off him would advise him."

60. Mr Branson stated that Mr Hui knew that to get any chips the Club had to have a blank cheque. Mr Hui could have asked for his blank cheque back, but he would then not have received any chips. Mr Branson stated that the Club no longer accepted banker's cheques and that systems were constantly being improved. One such change was the use of script cheques. Once a person has signed a player agreement and provided a blank cheque they can sign a script cheque and get gambling chips to the value of the

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[2] Authorised by Keith Rouse
[3] Authorised by Howard Aldridge.
[4] See e-mail of 28th June 2014 from Mey Soo and responses from Mr Aldridge. Mr Hui had claimed to have an £800,000 facility at Crockfords, a competitor casino.

script cheque. Mr Branson disagreed with Mr Power's suggestion that the script cheques were not negotiable instruments. He said that they are "bankable" and that any high-end casino would have the same system. Indeed one of Mr Hui's script cheques had been banked in the past.

61. In relation to an extension to a facility e.g. during a night's gambling, Mr Branson referred to as a "This Time Only" increase ("TTOs"). In relation to Mr Hui's request on 9th/10th February 2016 for a £300,000 TTO Mr Branson stated that he would have been disappointed if Mr Heenan (the Club manager) had not spoken to Mr De Lima before he made a decision as "two minds are better than one".

62. On a really busy night the Club may have 20 people gambling and 20 – 24 gaming staff with a requirement for two per table in use. On the night in question between 7–10 people were gambling.

63. In respect of visitors driving home when intoxicated Mr Branson stated:

> "I have known quite a few cases where they have not been given the keys to drive home as we have chauffeurs."

64. Mr Branson said that a claim by an unsuccessful gambler to have been drunk rarely happens with the Claimant's members, but speaking generally it is a standard excuse;

> "They need some form of excuse (not to pay) and it's easy to make up."

65. Mr Branson was calm, confident and assured whilst giving evidence. However, that is far from surprising given that he is now the Managing Director. Of more importance was that he was consistent and measured in his answers.

66. Mr De Lima had flown over from Singapore. He had worked in the gambling industry for his whole career having started out in Tasmania in 1981. He joined the Claimant in 2001 and left in April 2017. As at 2016 his job was to build the business within the Asian market. He worked within the marketing department and was a not a decision maker in licensing terms in the UK (he was licensed in Perth) but would make recommendations and pass on information. He set out in his statement that throughout his career he has undertaken training in relation to responsible gaming and he fully understood the responsibilities which casinos (and other gaming institutions) have to protect players from harm, and it was at the forefront of his mind. He said the protection of players was "normally a matter of common sense" and

> " you observe the players and if there is anything of concern -for example a concern that a player may… be showing signs of intoxication (which may include their body language, style of play-being unclear on how many chips they have etc) then you speak with one of the casino managers and get their opinion and then one of you has a conversation with the player and appropriate steps can be decided upon, in accordance with the relevant policies and procedures."

67. He clearly considered this case important personally (despite the fact it concerned events some years ago for a former employer) principally by reason of the serious personal allegations against him that he not only knew Mr Hui was drunk that evening, but also played a drinking game with Mr Hui which involved dice and Chinese rice wine (Mao Tai) whilst Mr Hui was having breaks from his gambling. In effect the accusation levelled against him was that he encouraged and facilitated Mr Hui's drunkenness.

68. If Mr Hui's evidence was correct then it would be difficult to see how Mr De Lima was giving entirely truthful evidence. If Mr De Lima gave truthful evidence, although he conceded there are significant parts of the evening he could not remember, it is difficult to see how central elements of Mr Hui's evidence could be correct. As Mr Robson stated in his closing submissions "somebody is not telling the truth".

69. Mr De Lima stated that he did not know Mr Hui "that well" and that he was handled by a junior member of the (marketing) team. He recalled:

> "Lester as being a very nice man with a good sense of humour. Every time I encountered him he seemed pleasant. I do not recall ever seeing him intoxicated."

70. As regards the material events he stated that he did not recall when on 9th/10th Mr Hui and his group went to the gaming tables and that:

> "If I had thought at any point that Lester was in any way intoxicated (which I take to mean intoxicated or showing signs of being intoxicated let alone "highly intoxicated") I would inform the gaming management and suggested that he did not game. For many reasons it is simply not in the Club's interest to allow a player to gamble when drunk. Quite apart from the fact that it would amount to a serious breach of the Club's regulatory obligations, expose the employee (i.e. me) to serious potential sanctions, and jeopardise the Club's hard-earned and highly valued reputation, the player may simply refuse to pay the debt."

Also

> "I remember Lester asking for another £300,000 and that I thought that was too much and did not support the request. The decision to increase the cheque clearing facility is approved by gaming and not marketing staff."

71. Mr De Lima confirmed that during the dinner he would have had 2-3 glasses of wine. He did not know if other people came to visit the table and he had other guests to attend to at the banquet. He could not help with who had drunk the bottles of wine set out on the bill. He agreed with Mr Power's suggestion that "you cannot have a punter drinking two and half bottles of wine" and then gambling, but denied seeing Mr Hui intoxicated or his demeanour changing.

72. He denied hearing any reference by Mr Hui to wishing to impose on himself a gambling limit that night of £30,000.

73. He categorically denied playing a dice game or providing Mao Tai to Mr Hui and cannot recall seeing it on the night in question.

74. Mr De Lima was adamant that whatever messages may have stated he did not take the final decision to grant the £100,000 extension; rather it was Mr Heenan. He could not recall if he had spoken to Mr Hui but;

> "it's not unusual that there would be a conversation with the customer".

75. Ms Emily Chung was a marketing host at the time in question. Her job was to

> "provide the VIP customers with a complete service from start to finish."

her evidence was chiefly of assistance in relation to the messages exchanged after the night in question.

76. Ms Chung stated that it would be a serious disciplinary offence to have allowed a player to game if you believed them to be drunk. She is, and was in 2016, very familiar with the requirement to observe players and to check for any warning signs and:

> "we would rather not have any business that might allow a customer to play when they are drunk as we need to protect the customer as well as our own reputation."

77. As for Mr Hui she said that he had a number of businesses and was known for loving his drinking and collecting expensive wine and that "he does typically drink quite a lot" and can handle a lot of alcohol.

78. In relation to Mr Hui's subsequent complaints about being drunk on the night of 9th/10th February she did not think it was in his character to lie, although he had joked about being drunk in the past. She believed what he said about being drunk on this occasion was true.

79. Mr Gordon Heenan was a very important witness for the Claimant. He was, and is, the Claimant's casino manager having worked for the company for 30 years. The role of the casino manager is to take responsibility for the general running of the whole property including the casino. He stated:

> "The gaming side is obviously a major part. The duties include responsibility for monitoring the games, making sure everything is fair, monitoring customers and their behaviour, monitoring service of alcohol, interacting with customers and…everything on the gaming side. And customers. As a casino manager – I can authorise a facility up to £20,000…"

He also added that if there is a concern about a player, then that may be raised with him by any member of staff. All staff members are trained to look out for concerning signs:

> "For example, sometimes I will receive a call from reception staff if a customer has come in who they think may have had too much to drink and I, or one of the assistant managers will go and

> speak with and observe the customer to gauge whether they should be served any more alcohol and whether they should be allowed to gamble or not. If a concern is raised about player who has been playing for too long or who appears agitated or aggressive if they are losing then we will go and speak to them and suggest they take a break. Our focus is all on customers and their well-being, we look after them and ensure that they are comfortable with their play and the level of their play. As well as protecting the customer, this also protects Aspinalls and me personally (given that I hold an individual licence) in complying with our legal obligations. In my role I do sometimes have to have the difficult conversations with customers and tell them that they cannot play or need to stop playing-whether because they have had too much to drink in my judgment or they have used up their facility."

80. Mr Heenan was on duty on the night in question and was present throughout the period of time during which Mr Hui was gambling. He said that his key focus was the gaming floor. He said that Mr Hui's facility was "pre-approved". When asked about the drawing up of a £500,000 script cheque i.e. for his full facility Mr Heenan said that as a common practice they would do it in advance as part of the customer experience (to obviate the need for them to ask).

81. Importantly Mr Heenan had to deal with Mr Hui's request for additional funds after he had lost £500,000 and spoke to him. He knew him reasonably well having seen him at the Club and also having played golf with him.

82. On 4th September 2016, when it was clear that Mr Hui would not pay and had raised the issue of being allowed to gamble whilst drunk, Mr Heenan provided an internal report which stated as follows:

> "On 2nd February 2016 I started work at 22.00 and Mr Lester Hui was already in the Club having dinner with his friends Johnson Yuen XXXXXX whom he often visits the Club with, he also had a couple of guests I did not know. I went and said hello to Lester and Johnson briefly as I know both patrons well.
>
> All three patrons came to play in the Jade Room around 23.00 and Mr Hui started of playing small as he always does however started betting larger when he was behind which is his general mode of play. His result fluctuated throughout the gaming session and at one stage he was losing £200-£300,000 before making a recovery. Just after 02.00 Mr Hui had a bad run and lost almost £400,000 within 20mins.
>
> At this point Mr Hui asked to speak to me and requested I call Chris De Lima as he would like to have more monies to game with as he had lost the majority of his £500,000 CCF. Chris and myself spoke to Mr Hui in the corridor away from the table and he requested a further £300,000, Chris informed Mr Hui that we could not honour his request however he was prepared to

> increase his CCF by £100,000. Mr Hui said thank you and added he would try and get his money back with this £100,00 and if it did not work he was going home. The £100,000 was signed for and MR Hui lost the majority of this in three hands. He said goodnight to his friends and left the Club. XXXXXX played for a further 15mins approximately and also left the Club.
>
> At no time during this gaming session did Mr Hui mention that he had too much to drink or show signs of being intoxicated or lacking judgement. His friends and himself seemed to be in good spirit and he did not complain about the loss. His friends did not try to stop him playing or mention that he should not be playing.
>
> I believe this report to be accurate to the best of my recollection."

83. Mr Heenan stated within his witness statement:

> "When Mr Hui asked for an increase to his CCF I spoke with him away from the table. I did not observe any signs of concern. There was nothing in his demeanour which gave any indication that he was drunk or not capable of playing",
>
> and;
>
> "the additional amount of £300,000 that Mr Hui asked for was high and did flag a potential concern for me. However I have seen him play for reasonably large amounts before and my understanding was he was comfortable with an increase. I called Chris de Lima who was a member of senior management team who was on property (i.e. at the Club). Chris came and spoke with Mr Hui away from his guests…After they had spoken Chris told me that he had approved a "TTO" of £100,000."

He also explained during his oral evidence that he had a lot of staff on that night and nobody had brought to his attention (or to that of other managers/assistant managers) any concern that Mr Hui was intoxicated.

84. Given that Mr Hui claimed that he was "blackout" drunk when his conversation with Mr Heenan took place I asked Mr Hui during his evidence whether he thought Mr Heenan was not telling the truth or was honestly mistaken. Mr Hui thought it was the latter. However in my judgement this is simply not plausible. If Mr Hui was showing overt signs of drunkenness then Mr Heenan, whose job it was to look out for, and act upon, such signs, would surely have noticed.

85. It was Mr Hui's case that it was Mr De Lima who granted the extension and that

> "Asking for an extension to my credit after such heavy losses should have alerted Aspinalls that there was something wrong even if it had not been obvious that I was drunk. The fact that Chris de Lima approved the extension so quickly shows that he did not care that I was drunk or that I was chasing my losses, he

> simply wanted me to keep gambling regardless of the consequences for me."

And

> "I had consumed so much alcohol that it would have been obvious to anyone who saw me that I was extremely drunk. The staff at Aspinalls should have noticed this and stopped me gambling. Instead, they did nothing to stop me and towards the end of the evening Aspinalls even loaned me another £100,000 to gamble with. I should never have been loaned this money- in fact I should have been stopped from gambling long before I got to that point."

86. Although Mr Hui criticised Mr De Lima the reality is that if he was indeed as drunk as he said he was, Mr Heenan must have been, at the least, a party to a decision to allow him to gamble further. Mr Robson described Mr Heenan's evidence, if accepted as accurate, as fatal to Mr Hui's case.

87. Mr Heenan was an impressive witness who struck me as open and honest and he was unshaken by cross-examination on the central issue of whether Mr Hui appeared drunk at any stage He had held a clean licence since 1987 without any complaints or accusations. He stated during cross-examination, and I accept this evidence, that he felt that he was good at his job and had found the allegations upsetting and that he could not see what he would have to gain by letting someone play when they were intoxicated.

88. In my view it was telling that Mr Hui, who must have known Mr Heenan reasonably well through their interactions at (and away from) the Club, was unprepared to attack him as a liar, which, if Mr Hui's evidence was correct, he must surely have been.

89. Ms Mey Soo, who was a VIP host, did not have particularly good recollection of the night in question.

90. Ms Soo stated that if a person does not provide a cheque, they could not sign a programme or start to game. So they would ask Mr Hui for a cheque if informed by the cash desk that one was needed.

91. She recalled that in the past (i.e. before the night in question) Mr Hui had said that if he was drunk they should not let him gamble for more than £30,000. She recalled speaking to him about the issue "straightaway" as instructed.

92. She had a poor recollection of the dinner on 9th/10th February 2016 but believed that she drank "three glasses or more than three glasses" and went to her office as she did not feel sober and did not want to misbehave. She said that she was not usually a good drinker. She did not know how much Mr Hui drank and did not remember Mao Tai being served at any stage.

93. Mr and Mrs Yuen's witness statements were dated November 2022. As I observed during the trial this caused me some concern given that it was clear, when giving evidence before me only some months later, that they had relatively poor recollection of matters which had been addressed in far greater detail and with certainty in the

witness statements (which were signed with a statement of truth). The significance of the making a statement so long after events in question is obvious.[5]

94. Mr Power sought to address my concerns (after they had both given evidence) by an application to adduce a witness statement from Mr Hui about the statement/note taking process. I refused the application, and in so doing made the obvious point that any such earlier notes were not verified with a statement of truth and that the process would inevitably set in train an application for disclosure of all relevant records and notes touching on any interaction with Mr and Mrs Yuen (which had not been disclosed), indeed I could see Mr Robson "ready in the traps" to make it. This could potentially lead to Mr and Mrs Yuen (who by the stage this was raised were not available to be easily recalled as they had travelled abroad) being recalled and cross-examined about the process. The fact of the matter was that they had signed only one statement with a statement of truth and that was a very long time after the events in question and a few months later they had limited recollection of some of the matters covered in the statements.

95. As Mr Power described matters "Mr Yuen was an old business acquaintance of Mr Hui and the two often frequent the Claimant's Club together". There can be no doubt that Mr and Mrs Yuen were trying to support their friend and obviously had a strong feeling of loyalty to him. This exposed their memories to the potential for powerful bias[6]. I should add that, given the personal interests at stake for the Claimant's employees (and for Mr De Lima) as highlighted by Mr Robson's submissions about the potential repercussions of adverse findings, the potential for bias to be at play within the recollections of the Claimant's witnesses also needed to be borne in mind.

96. Mrs Yuen's oral evidence was uncertain in material aspects, unlike her witness statement, which set out matters without any concession to doubt. She was asked about her recollection given that her statement was signed in November 2022. She accepted that her recollection may be imperfect and said that whilst she had discussed matters

[5] See generally **Gestmin-v- Credit Suisse** [2013] EWHC 3560 (Comm); paragraphs 19- 20; "The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

[6] See **Gestmin**; ante

with her husband she had not spoken to Mr Hui about the evening in question (she said that she had known him for 10 years and would class him as a friend).

97. Mrs Yuen said that to her knowledge Mr Hui was drunk. She remembered Mr Hui leaving the dining table to gamble and later coming back when she was talking to "a few ladies and he came out and we said you should not drink anymore. He said I am very drunk". When asked about the comment in her statement that "it was obvious that he was drunk by 12pm" she could not remember why she mentioned 12pm. It also conflicted with her assertion that

> "the gambling finished about 2am. I remember because I asked the time...Lester had been gambling continually by that point for at least three hours."

In any event her recollection was incorrect as Mr Hui did not stop gambling much before 3.00 am and her husband only stopped at 3.16 am. I would have had little concern or surprise, given the general circumstances, if Mrs Yuen had stated that Mr Hui finished gambling sometime in the early hours and she could not be more exact. It is far more worrying when a witness sets out a specific recollection (the gambling finished about 2.00) and then seeks to underpin that recollection (I remember because I asked the time); yet is wrong.

98. Part of Mrs Yuen's recollection is of Mr Hui announcing that he was drunk. However, as I shall set out in due course this appears to be a pattern of behaviour i.e. Mr Hui telling people that he was drunk.

99. When directly challenged about the reference to the drinking Mao Tai in her statement she said that "I am not so sure".

100. Mr Yuen stated that he classed Mr Hui as a friend and that he had discussed the events of 9th/10th February 2016 with him on "one or two occasions". As with Mrs Yuen the statement contained errors. He stated that:

> "At around 2.15 am in the morning I left Aspinalls and used a driver to get back home."

However, the records show that his last bet was an hour later at 3.16 am.

101. Mr Yuen's statement set out that the table had two bottles of champagne "at the suggestion of the girls on the table" and in relation to the wine

> "At about 9.30 pm we switched to drinking red wine of which we had at least a bottle each among Stephen, Lester and myself."

102. So he did not set out a recollection of Mr Hui drinking twice as much as he (or Mr Chueng) drank. In oral evidence he said that he thought that they had drunk the same amount of wine, at least a bottle each, and that "he may have had one and a half".

103. During his oral evidence Mr Yuen stated that he did not think Mr Hui was initially unfit to gamble when he first left the dining table. He also said of himself that whilst he had a lot to drink

"I can still sit down and I can make a sensible decision".

104. He said that Mr Hui said "don't let me lose more than £30,000" in Cantonese, in a jovial way.

105. He also set out that Mr Hui had

"at some point…come over to see us and said that he was very drunk".

106. Mr Yuen's statement linked Mr Hui's stated drunkenness to the dice game

"…he seemed drunk and mentioned the dice game made him drunk a lot".

He confirmed that he had not seen Mr Hui playing dice or drinking Mao Tai.

107. It was his recollection (as was his wife's) that

"we told him not to gamble because he was drunk but he would not listen".

and that Mr Hui was speaking

"wobbly mumbly jumbly…not a whole sentence in Cantonese."

108. Turning to the evidence of Mr Hui, in correspondence in March 2021 it was stated on behalf of Mr Hui that

> "…for the most part my client remembers very little of the Chinese New Year celebration they had due to drink."

109. As I shall set out in due course Mr Hui also referred to the inability to remember the night in question within messages sent shortly after. The fact that he was able, at a later stage, to prepare a full witness statement describing elements of the night in detail (such as the consumption of Mao Tai which he had not mentioned earlier) is, to say the least, somewhat surprising. Mr Hui spoke of his memory "improving" after he signed his witness statement (most notably about his return to the gaming table after his first break) when he was reminded of matters. However, it is difficult to understand how this can have occurred given that there were no contemporaneous records to show some of the matters he referred to (e.g. no records in relation to Mao Tai).

110. Mr Hui produced five witness statements of 5th November 2022, 18th November 2022, 22nd February 2023, 13th March 2023 and 26th April 2023 (as limited by my order). The statements contained a significant amount of comment on disclosure and other procedural issues i.e. matters other than recollection of fact (and in part were inappropriately used by Mr Power as a vehicle for his submissions).

111. It was and is important when assessing his evidence to always bear in mind that English is Mr Hui's second language.

112. Mr Hui stated that Mr Yuen was mistaken and that his comments about restricting his gambling to £30,000 were made in English not Cantonese and that he told Mr De Lima that he was going to get drunk.

113. Mr Hui said that he could remember the first part of his gambling up to his return to the dining table. I asked him if he was "out of control" (using his words) when he went to gamble on the first occasion and his response was "not really", and that he was "starting tipsy". Initially Mr Hui did not strongly contest the suggestion that given this evidence he was not so intoxicated that he did not know what he was doing when he signed the first two script cheques for £50,000 (registered at 23.12) and £100,000 (registered at 23.30). He said that he was "starting drunk". However he then said that he had lost capacity by the time that he signed the second script cheque.

114. Mr Hui said that he thought that when he returned to the dining table he was unsteady on his feet (although this did not feature in his statements or messages).

115. He said that he thought that Mr De Lima must have ordered the Mao Tai (he did not see it ordered) as he was the only person who could order a bottle. He said that he had

> "more than five possibly more than 10 shots"

and this caused him to become "blackout"[7] drunk. He was 100% sure that he played a dice game with Mr De Lima, but he could not remember who got the dice game out; it was possible that it was someone other than Mr De Lima. Mr Hui stated during oral evidence;

> "After drinking Mao Tai I am totally gone already…totally gone of memory…out of control and (I) cannot remember anything."

116. As I shall set out in due course, although Mr Hui linked his drunkenness very heavily to the consumption of Mao Tai he made no mention of the drink in messages in the days following the 9th/10th February. When challenged about this he said that "maybe it's my mistake…its Mao Tai not champagne". His evidence on this, in the absence of any contemporaneous reference, was unconvincing.

117. Mr Hui had no recollection of the conversations with Mr Heenan and Mr De Lima about extending his facility.

118. He said that he was not in a fit state to drive (the nearly 20 miles) home.[8]

119. When asked about how he could have functioned at anything approaching a normal level if he had consumed the level of alcohol which he recollected that he had drunk, Mr Hui was at pains to stress that he drank significantly and regularly:

> "I get used to it, drinking every day"

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[7] Mr Hui said that this meant so drunk that he could not remember what he did.

[8] Mr Hui was clearly warned at both the outset of the trial and also at the outset of his evidence about the privilege against self-incriminating given the potential for him to be prosecuted for dangerous driving on the basis of his own sworn evidence.

and

> "I can drink the whole night as I own a night Club…I can keep drinking and drinking no stop and no control"
>
> And that he could
>
> "talk and walk; not totally fall down and keep drinking".

120. I have no doubt that by 2016 Mr Hui had developed an unhealthy relationship with, and very significant tolerance, for alcohol. However, in my judgment he is, and probably has for a long time been, prone to exaggerate what he has drunk.

121. Mr Hui said that he did not think that the staff recognised him as "blackout drunk", but they should have stopped him as he was not acting normally in that his gambling was abnormal. When I asked Mr Hui about the assertion in his witness statement that:

> "If I am not successful in my gambling I always stop before my losses become unmanageably large",

he first explained that over £500,000 would be unmanageably large, then changed this figure to £100,000. When asked about comments he made in messages in the past (so before the night in question) that he had lost so much money gambling that he was bankrupt he said these were jokes. Mr Hui also said that the reference he made in a message to having lost 400,000 in Malay was not to pounds sterling but Malay currency.

122. Importantly in my view when he was taken to his gambling in March 2015 when he had also risked losing very significant sums of money, he said that he was also drunk on that occasion but accepted that he would have paid the losses. He alleged that the staff encouraged him to get drunk or otherwise acted improperly on the night in question.

123. Mr Hui denied that his version of events was an attempt to avoid a legitimate gambling debt by applying pressure on the Claimant as he thought it would be too embarrassed to pursue the debt in Court given the reputational impact/publicity.

Approach to the findings of fact

124. The Claimant bears the burden of proving its case. However, as Mr Power conceded in his closing submissions as Mr Hui has alleged that he was "drunk", and as a result incapable of entering into a contract/understanding the nature and/or quality of his acts, he bears the burden of establishing the necessary facts to support his defence, including that the Claimant's employees were aware, or should have been aware, of his state of intoxication.

125. Mr Robson submitted that Mr Hui was alleging that the Claimant, and its individual employees, conducted themselves in breach of the statutory code of practice governing the operation of gaming establishments, and thereby breached the terms of its licence.

As the consequences of a breach of that code of practice are potentially penal, it was appropriate to apply a heightened standard of proof in respect of those allegations. He submitted that, there have been a range of cases where the proceedings were civil, but because of the serious potential consequences of adverse findings it was held that the standard of proof should be the criminal standard. He referred to Phipson on Evidence (20th Edn) at 6-57:

> "Where a serious allegation is made in a civil case, such as an allegation of criminal conduct, the standard of proof remains the civil standard…However, the civil standard is flexible in its application. Thus if a serious allegation is made then more cogent evidence- may be required to overcome the unlikelihood of what is alleged, in order to prove the allegation.[9] It has also been held that the more serious the consequences for an individual if allegations are proved, the stronger the evidence must be before a court will find the allegation proved.[10] Courts have for some time sought to grapple with the logical difficulty of requiring more cogent evidence, but still holding that the allegation must be proved on a balance of probabilities. The matter was explained by Lord Nicholls in H (Minors).
>
> However, as H made clear, more cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some reprehensible manner on the basis that such allegations are in most cases inherently improbable. In such cases, "careful and critical consideration must be given to the evidence relied on". [Serious Organised Crime Agency v Namli [2013] EWHC 1200 at [17].
>
> B[11] draws a clear distinction between the class of quasi-criminal civil proceedings where the seriousness of the consequences for the individual concerned has been found to require the imposition of what is sometimes referred to as a heightened standard, and other civil proceedings where the ordinary civil standard applies. Under the ordinary civil standard if an act or event alleged is inherently improbable it may require the court to look more critically or more anxiously at the evidence to satisfy itself to the requisite standard, however all reference to a sliding scale standard, or to varying degrees of probability, is now to be regarded as wrong: the civil standard is finite and unvarying.[12] Importantly, B also makes clear that, under the ordinary civil standard, the seriousness of the consequences for

[9] Dellow's Will Trusts [1964] 1 W.L.R. 455; Hornal [1957] 1 Q.B. 247. See Bater v Bater [1951] P. 55; R. (on the application of N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605; [2006] Q.B. 468; LPMG Ltd v Stapleford [2006] EWHC 3753 (Ch); B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening) [2008] UKHL 35; [2009] A.C. 11

[10] R. (on the application of N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605; [2006] Q.B. 468; Doherty [2008] UKHL 33; [2008] 1 W.L.R. 1499.

[11] Re B [2008] UKHL 35

[12] 325 Doherty [2008] UKHL 33; [2008] 1 W.L.R. 1499; Jugnauth v Ringadoo [2008] UKPC 50; Paulin v Paulin [2009] EWCA Civ 221; [2010] 1 W.L.R. 1057

> an individual is only relevant in so far as it correlates to the likelihood or unlikelihood of the allegations being unfounded.[13] The approach in B has been applied in a variety of civil contexts.[14] In Serious Organised Crime Agency v Gale the Supreme Court held that the application of the ordinary civil standard of proof in relation to allegations of criminal conduct in civil recovery proceedings is compatible with art.6(2) of the ECHR."

126. In **Re B [2008] UKHL 35** when considering the issue of the standard of proof in care proceedings, Lord Hoffman set out three categories of case, stating;

> "Some confusion has however been caused by dicta which suggest that the standard of proof may vary with the gravity of the misconduct alleged or even the seriousness of the consequences for the person concerned. The cases in which such statements have been made fall into three categories.
>
> First, there are cases in which the court has for one purpose classified the proceedings as civil (for example, for the purposes of article 6 of the European Convention) but nevertheless thought that, because of the serious consequences of the proceedings, the criminal standard of proof or something like it should be applied.
>
> Secondly, there are cases in which it has been observed that when some event is inherently improbable, strong evidence may be needed to persuade a tribunal that it more probably happened than not.
>
> Thirdly, there are cases in which judges are simply confused about whether they are talking about the standard of proof or about the role of inherent probabilities in deciding whether the burden of proving a fact to a given standard has been discharged."

Lady Hale stated in the same case;

> "…There are some proceedings, though civil in form, whose nature is such that it is appropriate to apply the criminal standard of proof. Divorce proceedings in the olden days of the matrimonial "offence" may have been another example (see Bater v Bater [1951] P 35). But care proceedings are not of that nature. They are not there to punish or to deter anyone. The consequences of breaking a care order are not penal. Care proceedings are there to protect a child from harm. The consequences for the child of getting it wrong are equally serious either way."
>
> "70. My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations

[13] Doherty [2008] UKHL 33; [2008] 1 W.L.R. 1499.
[14] e.g. Bank St Petersburg PJSC v Arkhangelsky [2020] EWCA Civ 408; [2020] 4 W.L.R. 55; Singh v Singh Jhutti [2021] EWHC 2272 (Ch) at [114]–[118].

> in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.
>
> 71. As to the seriousness of the consequences, they are serious either way. A child may find her relationship with her family seriously disrupted; or she may find herself still at risk of suffering serious harm. A parent may find his relationship with his child seriously disrupted; or he may find himself still at liberty to maltreat this or other children in the future.
>
> 72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."

127. In **Bank St Petersburg PJSC & Anor v Arkhangelsky [2020] EWCA Civ 408,** the Chancellor of the High Court observed that, although the passages from Lady Hale's judgment in **Re B (Children)** were applicable in that case to care proceedings, they are of more general application in civil proceedings. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. In commercial cases, there would be a wide spectrum of probabilities as to the occurrence of reprehensible conduct. Lord Justice Males stated:

> "[117] In general it is legitimate and conventional, and a fair starting point, that fraud and dishonesty are inherently improbable, such that cogent evidence is required for their proof. But that is because, other things being equal, people do not usually act dishonestly, and it can be no more than a starting point. Ultimately, the only question is whether it has been proved that the occurrence of the fact in issue, in this case dishonesty…, was more probable than not.
>
> 118. Dishonesty is often a matter of inference from circumstantial evidence, although the court should generally take great care when assessing whether or not inferences can properly be drawn in any particular circumstances. The court should necessarily avoid a piecemeal consideration of circumstantial

> evidence – per Rix LJ in JSC BTA Bank v Mukhtar Ablyazov & Others [2012] EWCA Civ 1411 at [52] , albeit there dealing with a committal application to which the criminal standard of proof applied."

128. Mr Robson's submission was that given the potentially serious implications of Mr Hui's allegations the present case fell within Lord Hoffman's first class of cases. These proceedings, though civil in form, were of such a nature that it was appropriate to apply the criminal standard of proof.

129. In **B v Chief Constable of the Avon and Somerset Constabulary** [2001] 1 WLR 340, the issue was the standard of proof to be applied when finding the facts needed to make a sex offender order under section 2 of the Crime and Disorder Act 1998. The Court of Appeal held that these were civil proceedings, but Lord Bingham of Cornhill CJ said this about the standard of proof:

> "30. It should, however, be clearly recognised, as the justices did expressly recognise, that the civil standard of proof does not invariably mean a bare balance of probability, and does not so mean in the present case. The civil standard is a flexible standard to be applied with greater or lesser strictness according to the seriousness of what has to be proved and the implications of proving those matters (see Bater v Bater [1951] P 35, Hornal v Neuberger Products Ltd [1957] 1 QB 247, and R v Secretary of State for the Home Department, ex parte Khawaja [1984] AC 74).
>
> 31. In a serious case such as the present the difference between the two standards is, in truth, largely illusory…"

130. In **R (McCann and others) v Crown Court at Manchester** [2002] UKHL 39, [2003] 1 AC 787, the issue was the standard of proof in finding the facts needed to make an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998. Lord Steyn said this:

> "37. Having concluded that the relevant proceedings are civil, in principle it follows that the standard of proof ordinarily applicable in civil proceedings, namely the balance of probabilities, should apply. However, I agree that, given the seriousness of matters involved, at least some reference to the heightened civil standard would usually be necessary (see Re H(minors)(sexual abuse: standard of proof) [1996] AC 563, 586D-H per Lord Nicholls of Birkenhead)…Lord Bingham of Cornhill has observed that the heightened civil standard and the criminal standard are virtually indistinguishable. I do not disagree with any of those views."

131. The House went on to hold that in anti-social behaviour order proceedings the court should apply the criminal standard of proof. This is also effectively the position in cases concerning football banning orders.[15]

132. Having reviewed these cases (and others) Baroness Hale stated in **B**:

> "It is clear, therefore, that upon a full reading of all of these judgments that there are a range of cases where the proceedings are civil, but because of the serious potential consequences of the proceedings the standard of proof should be the criminal standard. That is not by adoption of a different civil standard, but by the application of the criminal standard."

133. In my judgment this case cannot be properly categorised as quasi-criminal and I do not accept that the potential regulatory implications are such as to place the allegations within this case in Lord Hoffman's first category. Each case must turn on its facts but in my view there is not sufficient nexus between the issues in dispute and the potential consequences, beyond financial ones which ordinarily flow from any high value civil case, to mean that adoption of the criminal standard is appropriate.

134. I do accept that the fact that Mr Hui is advancing such serious allegations against the Claimant, effectively of a deliberate conspiracy to ensure that he incurred large losses, means that inherent improbability of such conduct can be taken into account. However, ultimately this case has been decided using the ordinary principles and approach to the fact finding exercise applied on a daily basis by Judges in civil cases.

The fact finding exercise

135. In **Muyepa-v-The Ministry of Defence** [2022] EWHC 2648 I took the unusual approach of setting out how I approached the fact finding exercise. This is also a case where submissions have addressed how the exercise should be approached. As a result I shall refer to my analysis in that case;

> "10. Given the polarised cases of the parties, what is at stake, the fact that at least one person took the oath and perjured themselves to advance or undermine a very large claim, the large number of people interested in the case and also the content of the closing submissions it is, unusually, necessary to briefly set out my approach to evaluation of the lay witness evidence and the determination of factual findings. I do so with some considerable hesitation as Judges up and down the land deal with

[15] In relation to football banning orders in Gough v Chief Constable of the Derbyshire Constabulary [2002] QB 1213 at paragraph 90, Lord Phillips had said it was: "an exacting standard of proof…in practice…hard to distinguish from the criminal standard."

factual issues on a daily basis and much of what I will set out are elements of very basic Judge craft.

11. In **Pomphrey v Secretary of State for Health & North Bristol NHS Trust** [2019] EWHC [2019] Med LR Plus 25 I stated as follows in respect of the determination of disputes as to the facts 4;

"[31] I start with some very general and basic propositions. When evaluating the evidence of a witness whose testimony has been challenged it should be broken down into its component parts. If one element is incorrect it may, but does not necessarily, mean that the rest of the evidence is unreliable. There are a number of reasons why an incorrect element has crept in. Apart from the obvious loss of recollection due to the passage of time, there may be a process of conscious or subconscious reconstruction or exposure to the recollection of another which has corrupted or created the recollection of an event or part of an event.

[32] The court must also have regard to the fact that there can be bias, conscious or subconscious within the recollection process. When asked to recall an event that took place some time ago within the context of criticism, people often take an initial stance that they cannot have been at fault; all the more so if the act in question was in terms of their ordinary lives; unmemorable. There is a tendency to fall back on usual practice with the tell-tale statement being "I would have" rather than "I remember that I did".

[33] The approach to the exercise of fact finding in a complex case (when faced with stark conflicts in witness evidence) as necessarily requiring all the pieces of the jigsaw to be fitted together is often both flawed and an exercise in the impossible. This is because individual pieces of the jigsaw may be wrong, distorted to a greater or lesser degree, or absent. Indeed, it is not possible to make findings if the state of the evidence or other matters mean that it is not proper to do so (see generally **Rhesa Shipping Co SA v Edmunds (The Popi (M) [1985] 1 W.L.R. 948).** However, often a sufficient number of pieces may be fitted together to allow the full picture to be seen."

and

"18. Each Judge will have his or her own approach to the factors referred to by Jackson LJ.[16] I usually take as a first step in the analysis of the veracity of a witness, establishing the relevant base of facts that cannot be in dispute; a set of foundations against which the reliability of the testimony can be assessed 7 .

[16] See B-M [2001] EWCA Civ 1371@ p23-25

Establishing such facts does not rely upon witness recall; rather on what is established by scientific fact and/or the seemingly ever increasing amount of data we produce such as documents, photographs, emails, text messages, video and other footage.

…

20. The next step I take is to consider the evidence of all of the witnesses in turn. Ms Collignon properly placed very great emphasis during her submissions upon the number of witnesses prepared to give evidence on behalf of the Claimant. It was the method used to seek to prove that the Claimant was essentially honest and Mr Lessey was a liar. However the assessment of evidence it is not purely a numbers game. It is necessary to carefully consider the evidence of each witness critically taking into account all relevant matters such as the following (this being a non-exhaustive list):

(a) Motivation. What if anything has the witness to gain or lose through their evidence being accepted and is the witness trying to help the court independently of his or her personal interests/allegiance?...

(b) Is there the potential for unconscious bias? Leggatt J (as he then was) in Gestmin v Credit Suisse [2013] EWHC 3560 (Com) referred to modern psychological thinking on frailty of memory and stated:

> "19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty…to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces."

(c) Is the extent of the recollection (or lack of it) plausible?

(d) It is internally consistent (or has the witness changed his or her mind)?

(e) To what extent is the evidence of any witness consistent, with and/or corroborated by, other evidence (lay, expert, documentary etc). This includes considering whether other witnesses broadly agree on matters (bearing

> in mind that more than one witness could be wrong but that evidence may provide cross/mutual support…
>
> (f) Ordinarily it is harder when cross examined to lie in a consistent and plausible way than it is to tell the truth. I found that to be the case with the evidence of the Claimant, Mrs Muyepa and Mr Lessey.
>
> 21. Having heard all the lay and expert witness evidence I then considered how it fitted together and whether a sufficiently clear picture emerged (even if all the available pieces of the jigsaw did not fit together to show a completed puzzle). A clear picture did emerge."

136. Both Mr Robson and Mr Power referred to the considerable importance of contemporaneous documentation and to **Re Mumtaz Properties** [2011] EWCA Civ 610 per Arden LJ at paragraph 14 and the frequently cited analysis in **Gestmin SGPS-v-Credit Suisse**. However to a large extent in this context the observations in those cases merely build on an approach which has long been used by Judges and was outlined by Robert Goff LJ (as he then was) in **The Ocean Frost** [1985] 1 Lloyds Rep 1 at 57

> "Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, references to the witness' motives and to the overall probabilities can be of very great assistance to a Judge in ascertaining the truth."

137. The events in this case took place over seven years ago. Given the inevitable deterioration in recollections over such a long period, significant assistance is obviously likely to be gained from the contemporaneous documents, together with inferences drawn from those documents. An obvious example of a document establishing a baseline of facts against which recollections can be judged is the automatically produced records of the time and amount of any bet placed on the evening in question (and other earlier occasions). However, not all contemporaneous documentation carries the same weight and it is necessary to treat with caution documentation which may have been self-serving at the time of creation and to consider carefully whether the document can be taken at face value.

138. The fact finding exercise is this case is made more difficult because central events were, and remain, capable of differing subjective analysis; specifically whether a person is drunk or not. When dealing with findings on such issues it is necessary to consider the witness' relevant experience, criteria or benchmark to judge a state of affairs. It is also necessary to consider the relevant legal test/standard as to the existence (and effect) of this state of affairs and to assess the evidence of the witnesses against that test /standard.

139. As for objective analysis a view can be taken as to the likely result of drinking a certain quantity of alcohol. However, each person has a different reaction to alcohol. So care must be taken in assessing the likely impact of a set number of units.

140. In the present case Mr Hui claims to have been "blackout drunk". There clearly comes a stage when a person is in all practical senses "incapable through drink". A graphical factual example is contained in the case of **Pile** [2020] EWHC 2472 (QB). Mr Justice Turner stated:

> "Cheryl Pile brings this appeal to establish the liberty of inebriated English subjects to be allowed to lie undisturbed overnight in their own vomit soaked clothing. Of course, such a right, although perhaps of dubious practical utility, will generally extend to all adults of sound mind who are intoxicated at home. Ms Pile, however, was not at home. She was at a police station in Liverpool having been arrested for the offence of being drunk and disorderly. She had emptied the contents of her stomach all over herself and was too insensible with drink to have much idea of either where she was or what she was doing there. Rather than leave the vulnerable claimant to marinade overnight in her own bodily fluids, four female police officers removed her outer clothing and provided her with a clean dry outfit to wear. The claimant was so drunk that she later had no recollection of these events."

141. Few would doubt that Ms Pile was in no condition to form a contract and that would have been apparent to anyone who came across her. However, many people enjoy a night out and may be considered by those with them to be "drunk" at the end of the evening. They may be less inhibited or a bit louder than usual. However they can still take rationale decisions; e.g. whether to purchase food or take a taxi home or not, and enter into the necessary contracts.

142. So the question of whether a person was drunk at a relevant time needs more careful analysis that some binary issues of fact.

143. In the present case the critical question is whether Mr Hui was sufficiently drunk to be incapable of entering into a contract for gambling or to sign a cheque.

144. In order to determine whether an individual lacks capacity in general terms, the party seeking to rely on their lack of capacity must show that (1) he/she did not know what they were doing and (2) the other party knew this to be the case (see generally **Imperial Loan Co. Ltd. v. Stone** [1892] 1 Q.B. 599 at 601).

145. It is Mr Hui's case that he had consumed so much alcohol (champagne, wine and spirit) that he was incapable of understanding what he was doing, and that this would have been obvious to the Claimant's employees. His evidence was that he was at the extreme end of a spectrum. It is the Claimant's case that it is not possible to determine at this stage where on the spectrum of alcohol consumption Mr Hui was at the material times during the night in question with any precision. However he was certainly not presenting as being at the extreme end.

Disclosure failures

146. Much was made during the course of the trial of disclosure failures.

147. As I set out the Claimant had not disclosed all relevant documents by the beginning of the trial. However the relevant documents were eventually produced and by closing Mr Power's submissions in relation to disclosure appeared to focus on the costs implications of time lost.

148. Mr Hui was criticised for failing to disclose messages stored on his mobile phone which was damaged and replaced. Mr Robson submitted that an inference could be drawn that he had deliberately deleted documents which undermined his case. I was not satisfied that Mr Hui formed any deliberate intent to conceal documents at any stage and drew no inference against him.

Findings of fact

149. I now turn to my findings of fact which I shall divide into three sections

a) Events before 9th February 2016

b) Events of 9th and 10th February 2016

c) Events after 10th February 2016.

Events before 9th February 2016

150. Mr Hui had been a member of the Claimant's Club since August 1996. In May 2014 he was granted a CCF up to £300,000. This facility allowed Mr Hui to gamble and to finance visiting friends to gamble. He received commission on the amount gambled including by his guests, and enjoyed complimentary food, drink and other services.

Drinking

151. Ms Chung described Mr Hui, in what I accept as accurate terms, as follows;

> "Lester is the sort of person who likes to have fun, particularly with groups of friends, and he is known for liking his drinking and collecting expensive wine. He is also known for entertaining friends and going out and having fun. He has a very outgoing personality, very funny, is often loud and full of stories and sometimes you do not know if he is being serious or not. He is a "larger than life" type character.

> In respect of drinking, he does typically drink quite a lot, however I have never seen him to have any problem with "blacking out" or collapsing or anything like that. I do not think he will allow himself to get so drunk that he "blacked out" in public."

And

> "Players at Lester's level tended to be quite sophisticated in their approach to using casinos to get what they wanted. He knew that he could, for example, get tickets through casinos as freebies and so he would ask for things. He would sometimes say what other casinos gave him to try and get more. Because of my relationship with him he would ask me for tickets, particularly for football matches. I would try to give them to him when I could. He always said that we didn't treat him as well as Crockfords and said that Chris de Lima was stingy and that we were his least favourite Club. He got on well with Mey, another one of the marketing hosts and liked her hospitality and way of doing things so I would often joke with him about it and use that to encourage him to come to the Club.
>
> Lester would typically drive to the Club. He would stop outside and the doormen or reception staff would deal with the car. The doormen would park the car and the car key would be locked in a box right outside the front door with the doormen. Then when he wanted his car back, he would ask reception or the doormen for the keys back. Occasionally he would choose not to drive back from the Club and then he would be driven home, or if he was going on to another Club or restaurant to there, by one of the Club's drivers."

152. In cross examination Ms Chung said that Mr Hui liked to drink a lot with his friends and could handle a significant amount of alcohol. "WeChat" messages showed that Mr Hui discussed drinking with Ms Chung and examples included advising Ms Chung of the benefits of drinking 'hangover alcohol'…really works", "People rarely drink with me it's so boring", "got a lot of nice wine in recently. I am telling you it's no fun drinking all alone" "…I don't want to watch the horse race, get drunk then go company and cause trouble again".

153. On 18th May 2015 he referred to getting drunk as follows;

> "I will play at another company. Since I have embarrassed myself at Aspinalls last week…I know I have embarrassed myself. I don't dare to come to Aspinalls anymore".

154. In relation to Mey Soo he stated:

> "I embarrassed myself in front of her…Sigh, so embarrassing .. I don't know how it got there I have never blacked out before. This is the first time in my life."

And

> "I don't remember anything at all. Everyone was so drunk. I am dead. I got escorted out. They can even see it on Youtube whatever email. Really, I won't come. I swear I don't want to come anymore. Bye.
>
> …
>
> Who said someone took photos? I only said someone sent an email, saying you came in with some friends, got very drunk, but then I don't know what happened after. They didn't mention you much, only talked about your friends.
>
> …
>
> I can't hide this, I know it's out in the public. The next day, Colin called me, the others called me. Sigh. It got so big. I won't come. I won't come. I need to hide for a while to chill. Anyway the next day I went back out to Sugar and China Town, carried on drinking. The very next day, my hands got scratches and started bleeding, and got some other injuries. I don't even know what I did. Sigh, don't start, don't start, I won't come tomorrow, won't come."

155. On 24th July 2015 he told Ms Chung;

> "…the night before last, I was drinking at the White House, and then I scratched my Bentley. I got so drunk, hit the car."

156. On 18th August 2015 (at 12.22pm) "I am still drunk".

157. On 7th September 2015 (at 16.12) "Shit I am still drink from last night".

158. On 12th February 2016 (at 22.58) "…I am really drunk right now" and at 23.52; "I am so fucking drunk".

159. Mr Hui had experience of the Club's reaction to his comments that he was drunk. On 12th March 2015 Mr Hui had bet large sums by way of individual bets between 3.54 am and 5.52am including the following fourteen individual sums each in excess of £50,000; £53,000 (three bets), £53,350, £53,075, £55,000, £57,000, £ 58,050, £62,800, £69,500, £80,000, £81,000, £81,250 and £81,500. At one stage he was down £360,185 and bet a further £34,000 and on another occasion he was £330,185 down and bet £80,000 (so if he had lost he would have been down £410,185). These are very large sums and showed that Mr Hui was prepared to countenance a loss of over £400,000, contrary to his evidence about stopping before losses became unmanageable.

160. Mr Hui's response during his evidence to his gambling on this evening was that he was drunk.

161. At 03.16 on the 13th March Mr Heenan e-mailed Mr Branson and Mr Aldridge (then the chief executive) as follows:

> "Lester came into the Club last night and in his usual jovial manner stated that he was very drunk, he then said he was only joking and asked to play. This is not the first time Lester has made comments like this and then retracted his comments stating he is fine and only joking, Tracy and myself have both spoken to him in the past and informed him that if he states that he is drunk we will not allow him to gamble however although he had been drinking last night he did not seem drunk therefore I allowed him to play. He started to play and straight away stated again that he was drunk, he said he wanted to win 3k and leave. I debated stopping him at this time but did not want to embarrass him or get into an argument with him, I therefore decided to hang around and when he was winning 3k I separated his money and asked him if he wanted to cash out, he then reiterated that he was fine and only joking and kept on playing. He got involved and got out of trouble winning 39k, when I cashed him out he said once again he was drunk. He spoke to Mey tonight and has asked to be kept to 30k if he says he is drunk, I have asked Mey to inform Lester that if he states that he is drunk when he comes to the Club going forward that we will not allow him to gamble even if he says he is okay or only joking. I strongly suggest we stick to this as knowing Lester if we do not he will continue to carry on in this manner whenever he comes in. Michael, do you wish the operations team to be aware of this in case the ACM is not around when Lester enters."

162. In my judgment Mr Heenan's statement that he had assessed Mr Hui and that "although he had been drinking he did not seem drunk" is particularly noteworthy. The note was made at a time when the full significance of the assessment could not be foreseeable. It also shows that Mr Heenan had previous experience of assessing the extent of Mr Hui's state of drunkenness.

163. In response Mr Branson was clearly concerned that claiming to be drunk was some form of plan to avoid gaming debts;

> "definitely need to be sure we are not being set up in any way…might be better for management to speak to him before he plays again."

164. Later the same day Mr Heenan sent a further e-mail to Mr Branson and Mr Aldridge as follows;

> "Mey left a message with Lester last night along the lines of what Gordon has suggested. However, speaking to her today, I think the conversation will have more impact on him, if it comes from one of us.
>
> He needs to be advised that any mention he makes of being 'drunk' will result in him not being allowed to gamble or have further alcoholic drinks that night.

> The same will apply if we believe, or have reason to suspect, he is intoxicated.
>
> As with all customers, we will monitor his behaviour at all times.
>
> Thanks
>
> Howard"

165. These are the type of contemporaneous documents that need to be very carefully considered; given that at the time they were compiled they may have been self-serving and not wholly or partly accurate. However if Mr Heenan had been aware that Mr Hui was intoxicated whilst gaming these would have been very curious e-mails indeed to have sent; recording as they did Mr Hui's claim to be drunk. However if they are an honest account of what happened they reveal that Mr Hui was prepared to allege that he was drunk and then change his mind and also to appear not to be drunk notwithstanding his claim to be so.

166. Having considered the entirety of the evidence in this case; the full canvas; I think the documents accurately record Mr Heenan's honest view at the time.

Prior gambling

167. Mr Hui stated

> "I had never gambled with such large amounts of money before, nor had I ever used such a large part of my credit limit, let alone using it all. If I am not successful in my gambling I always stop before my losses become unmanageably large. Employees of Aspinall's have in the past commented on the fact that overall, I have not tended to lose money when gambling at the casino. In addition, on this night I stated I was only gambling for £30,000.
>
> My gambling records when considered as a whole show that this is true. I have never incurred losses anywhere near this large before. It would have been obvious to everyone who saw me that I was behaving unusually in gambling so much. This should have alerted the casino staff, who would then have realised how much I had drunk and stopped me gambling."

168. During his evidence Mr Hui stated that he kept his losses within a limit such that they did not become unmanageably large. He explained that £100,000 was an unmanageable loss.

169. However, as I have already set out, Mr Hui's gambling records for 12th March show that he was prepared to lose way beyond this limit (four times this sum).

170. There was also reference to losses of 400,000 in Malaysia. Despite the messages exchanged having mentioned sums in pounds Mr Hui claimed that the 400,000 referred to Ringgit and that the losses were in the region of £30-40,000 (at current rates it would be over £70,000, but I have no evidence as to historical rates). I struggle to accept that the reference was to Ringitt, not least of the reasons being that the recipient of the message would not know this given the context. The figure would be approximately that which he was prepared to lose on 12th March 2015.

171. I respectfully agree with the decision of Mr Justice Soole refusing the Defendant's interim application for an expert about gambling patterns. Such an expert was unnecessary. The unarguable fact is that Mr Hui had been prepared to lose £400,000 on at least one, probably two previous occasions and could bet large sums in what can be objectively viewed as an aggressive manner. When Mr Heenan said of Mr Hui's betting on 9th/10th February 2016 that he had seen Mr Hui bet large sums before he was correct.

172. In my judgment the evidence proves that Mr Hui's statement that he had never gambled with such large amounts of money before, and that if he was not successful in his gambling he would always stop before his losses become unmanageably large, is neither correct nor an entirely honest account.

Prior player programs and the provision of cheques

173. Mr Power challenged the Claimant's pleaded case that there was a "common understanding". The Particulars of Claim set out that:

> "on 9th and 10th February 2016 the Defendant attended the Club for gaming purposes. The Defendant provided a signed blank personal cheque to the Claimant ("the Personal Cheque"). The Personal Cheque was provided by the Defendant on the common understanding and with the Defendant's agreement that it would be retained by the Claimant and, if there was a balance owing to the Claimant at the end of the Defendant's gaming trip , the total sum due would be written by the Claimant on the Personal Cheque and it would then be banked by the Claimant. The said common understanding and agreement was express and/or implied and arose from;
>
> (a) The Defendant having been advised by the Claimant, at the time of the signing of the personal cheque that the above procedure would be followed, and/or
>
> (b) The Defendant's agreement to the Premium Player Agreement, signed by the Defendant on or around the 10th December 2015 which provided at clause 5:

> "any cheque which has been issued to Crown Aspinalls and has not been redeemed will be banked within 10 working days of acceptance of that cheque.""

174. Mr Branson stated:

> "On 10 December 2015, at the time that the Defendant signed the Premium Player Agreement, a further copy of the original signed personal cheque numbered 020441 was completed and the Defendant's physical original personal cheque was retained to be used against any sums owing to the Claimant. There was no point requiring a new signed blank personal cheque because the existing one remained in the Club's possession and had not been used. In those circumstances, at the time of signing the Premium Player Agreement the customer is told that the existing signed blank personal cheque will be retained, and is then required to confirm their understanding of this by signing the Premium Player Agreement. No Premium Player Agreement will be signed off by the Club unless we have in our possession a signed blank cheque which can be used in respect of future gaming activity."

175. In his first witness statement Mr Branson had set out that Mr Hui provided a personal cheque on 10th December 2016. However upon reviewing Mr Power's skeleton argument Mr Branson accepted that this was an error and that the cheque (No 022401) had been provided on/around 9th June 2015. He corrected the error in his second witness statement. The cheque had been required as a previous blank cheque had been banked on/around 6th May 2021.

176. On 9th June 2015 Suzanne from the Claimant's cashdesk had e-mailed Jessica Gray (who had stated by an earlier e-mail on the same day that Mr Hui would like to bring two new members to the Club; "most likely tonight") stating that:

> "Hui Lester's programme is still open so we can associate his players to the trip. We do not hold a personal Chq from Hui. Will you be able to obtain one."

Jessica responded

> "I will remind Mr Hui to bring a personal cheque in."

177. Given all available evidence, I find as a fact that he was indeed reminded and brought a cheque in.

178. Following the visit in June 2015 Mr Hui had a positive balance so the cheque was not banked and was retained for future use. The same applied at the end of the July 2015 trip.

179. In his witness statement Mr Hui stated:

> "On or around 10th December 2015 I became a member of Aspinall's "Premium player program". This allowed me to play a game called Double Chance Baccarat (although I had been allowed to play this game at Aspinalls before this point anyway)."

And

> "I have no memory of providing a blank cheque for Aspinalls to fill in at any point that evening."

180. The agreement stated

> "….
>
> 5. I acknowledge that any cheque which has been issued to Crown Aspinalls and has not been redeemed will be banked within 10 working days of acceptance of that cheque.
>
> 6. Table Limit £100,000
>
> I acknowledge that these Special Conditions for part of the above mentioned Premium Player Programme Agreement.
>
> I have read, understood and agree to the Terms and Conditions attached.
>
> …..
>
> Front Money
>
> 10. Unless the player has a pre-arranged Cheque Cashing Facility (CCF), Front Money must be cash or cash equivalent, which must be cleared funds.
>
> …
>
> 17. For customers who have entered into a Player Programme Agreement and have gamed using a Cheque Cashing Facility, cheques will be banked in accordance with U K Gambling Commission Guidelines."

181. During cross-examination by Mr Robson, Mr Hui accepted that he knew about the system of the provision of a blank cheque and that it would be retained until he finished a gambling trip and that it would be filled in if he lost.

182. I am satisfied that when he signed the Premium Player Agreement Mr Hui knew that the Club had retained a blank cheque. I am also satisfied that he did not consider this a "big issue" at the time.

Events of 9th and 10th February 2016.

183. As I have set out it is Mr Hui's case that the debt incurred during the gambling on 9th/10th February 2016 is not enforceable because, as Mr Power put it "he was sufficiently drunk to be incapable of entering into a contract for gambling with the Claimant or to sign a cheque".

184. Mr Hui had been invited to host the table at the Chinese New Year Celebration to be held on 9th February 2016. As Mr Branson stated

> "this was the second day of Chinese new year events at the Club, such as the Chinese New Year. Typically each year the Club runs promotional events…we will have a special menu available, the Club will be decorated and it will usually be busier than normal. These events are not parties as such and refreshments (including alcoholic drinks) are only available if a customer orders them: we are a business and want people to go and play, not to stand around drinking. We do usually provide food and drinks on a complimentary basis at these events."

185. Mr Hui drove to the Club and handed his car keys over in his usual fashion.

186. The evening started with champagne in the bar at 8.00pm. I find as a fact that Mr Hui did indeed drink some champagne. He variously described in the same statement as 2-3 (125 ml) glasses and also "at least three glasses of champagne". Given that it's my general finding that Mr Hui has a tendency to exaggerate the amount that he has drunk I think that 2-3 is a more reliable estimate. Mr Yuen set out in his statement that he had two drinks before heading up to dinner.

187. Mr Hui's group then moved to the table in the restaurant. Mr Hui was sitting with eight other guests. The table consisted of;

i. Mr Hui,

ii. Mr De Lima,

iii. Ms Soo,

iv. Mr Johnson Yuen,

v. Ms Wendy Yuen,

vi. Mr Stephen Cheung, (now deceased)

vii. Mr Cheung's partner,

viii. two other female guests,

188. Mr Hui gave evidence that he set a gambling limit of £30,000, speaking in English to Mr De Lima, and that Mr De Lima acknowledged that self-imposed limit. He accepted

that he did not put the request in writing (or tell the gaming managers) and that it was only meant to relate to that evening. Mr Hui said that he had mentioned setting such limits in the past.

189. After considering the totality of the evidence, including the internal communications which I have set out, I am satisfied that Mr Hui was previously unequivocally informed that if he was drunk then he would not be allowed to gamble at all; so there would be no question of setting a £30,000 limit linked to drinking. I find as fact that Mr Hui well knew this as at the 9th/10th February 2016. So any comment made to/or in the hearing of Mey Soo or Mr De Lima to the effect of "if I am drunk don't let me gamble more than £30,000" would have been likely to have risked eliciting a clear response, and given the circumstances of having guests with him, an embarrassing one. Mr Hui would not have wanted to be prevented from gambling with his guests.

190. I am satisfied that Mr Hui did make a reference to, or in the hearing of, Mr and Mrs Yuen about not wanting to lose too much money as he did not want to spoil Chinese New Year. He may, I put it no higher, have mentioned the figure of £30,000. However the comments were neither made in English in the hearing of Mr De Lima or clearly and/or expressly linked to drink (as if Mey Soo had heard them it would have alerted her to a problem). I note that Ms Yuen stated:

> "That evening I overheard Lester saying that he did not want to gamble a lot. He said that was because he did not want to be upset by making losses on Chinese New Year. I never heard him mention a figure that he would gamble with."

And that Mr Yuen stated that the self imposed gambling limit was set in Catonese.

191. Had Mr Hui reached an agreement about a limit with Mr De Lima (not linked to drunkenness) I believe it likely that he would have reminded him about it when he began to lose money. However he did not reach any such agreement. In any event if he was not intoxicated, given that it was not a formal request he could have rescinded it/changed his mind at any time that evening.

192. Complimentary food and drinks were provided. A bill was produced (credited to Mr De Lima's account) which showed that credited to the table were;

(a) Nine special Chinese Banquets (each costing £150),

(b) Nine bottles of water,

(c) 1 bottle of La Conseillante 96 (£350),

(d) 2 bottles of Gran Puy Lacoste (£460),

(e) 6 bottles of Montrose 98 (£1,920),

(f) 2 bottles of Edouard Brun Special Brut (£108).

So 11 bottles of wine/champagne.

193. Alcoholic drinks also credited to Mr Hui's account that evening were

(i) A Bloody Mary (9th February at 23.58.15)

(ii) A bottle of Gran Puy Lacoste 98 (£230) marked as "complimentary" (10th February 2016 at 03: 29:01)

194. Mr Hui set out in his statement that with dinner he first drank a further 2-3 (125 ml) glasses of champagne at the table. Again, in my judgment through exaggeration, he increased this within the same statement to 3 glasses.

195. Mr Hui set out in his statement that the red wine was decanted and that he drank at least two and a half bottles himself. Each time he was given a glass he drank it in one go.

196. Taking the champagne that he drank before the meal into account Mr Hui stated that he drank in total 3.5 bottles of champagne/wine and also had 5-10 shots of Mao Tai (although he did not cover the amount in his statement). Mr Power also suggested that the Bloody Mary which was attributed to the bill, was probably drunk by him, although this could have been drunk by a guest.

197. In his statement Mr Hui set out that he was:

> "already somewhat drunk by the time the meal ended".

Further that after the dinner

> "Aspinalls continued to give me even more alcohol as the night went on. It would have been obvious how drunk I was by the end of the meal in any case, but Chris de Lima encouraged me to get even more drunk and Aspinalls employees enabled me to do so."

Mr Hui then alleged that

> "Chris ordered a bottle of the spirit Mao Tai…53 % the strongest available… we began to play a game of truth or lie dice at the dining table. Chris provided the dice- it was his idea that we play it…I drank a lot of shots of Mao Tai."

198. There is no evidence of Mao Tai having been ordered (it was not on the receipt as would be expected; this being confirmed by Ms Chung) although Ms Yuen says that she recollects that she drank some.

199. Mr Hui expressly portrayed Mr De Lima as someone encouraging/persuading and enabling him to drink to excess.

200. Mr Yuen set out in his witness statement that whilst he was gambling

> "Lester was playing a dice game with the others while drinking a Chinese spirit called Mao Tia the alcohol content of which ranges from 53%. At some point Lester came over to see us and said that he was very drunk…approximately 30 minutes later, I

> saw Lester again. He seemed drunk and mentioned the dice game made him drunk a lot."

And

> "(Lester)…did sign a kind of credit slip every time he got stakes from the Club but I considered it was not my business to ask what was going on and Lester was very drunk at this point and unable to speak coherently around 1.30 – 2.00 in the early morning. He was out of control."

And

> "Lester lost all his stakes back to the dealer. He then requested £100,000 from the manager and we told him not to gamble because he was drink but he would not listen. There were people at Aspinalls like Chris de Lima who were meant to supervise this sort of conduct, but I did not see them."

201. As I have set out the oral evidence of Mrs Wendy Yuen was not as certain as her statement (which was only signed in November 2022 although it appears that the process of taking a statement had commenced some years previously). Mrs Yuen set out in her witness statement that:

> "as the evening went on I had a small glass if Mao Tai. This is a strong rice wine and our one had a 53% alcohol content as I had as few bottles of the same Mao Tia at home…overall I did not have much to drink."

And

> "As the evening progressed it became obvious that Lester was drunk. His face was very red and he was drinking most of the time. As the evening went on his face became redder and redder. Lester was looked after by Chris de Lima and Emily Chung."

202. Mr Power referred to the comment in Mrs Yuen's statement that:

> "Chris and Lester spoke to each other, along with another man. They were drinking from a different bottle to the rest of us."

as probably a reference to a bottle of Mao Tai. However, I do not accept that inference can be safely made as Mrs Yuen knew what the bottle of Mao Tai looked like.

203. When challenged about her recollection about Mao Tai Mrs Yuen paused and then stated that she was not so sure. She did not seem entirely convinced herself about what she was saying.

204. Mrs Yuen stated that she had tried to get Mr Hui to stop gambling as he was drunk, and

> "it would have been obvious to Chris and Emily as it was to me."

So Mrs Yuen's evidence was that Ms Chung knew that Mr Hui was drunk. In his closing submission Mr Power appeared to accept that Ms Chung was only present briefly. Having heard her evidence I am satisfied that she did not consider Mr Hui to be drunk when she saw him.

205. The first script cheque was processed by the cashier at 23.12. This does not provide an exact time when the cheque was signed. The cheque was for £50,000. Mr Hui conceded during his evidence that he may have had capacity to sign this cheque. I have little hesitation in concluding that he did have capacity.

206. Mr Hui placed his first bet at 23.06. By 23.23 he would have exceeded any limit of £30,000. Mr Hui's oral evidence was not internally consistent, or consistent with his statement (or his pleaded case) on the issue of capacity at the outset of his gambling. He stated (during cross-examination) that he was not really "out of control" when he went to the table to gamble on the first occasion.

207. By 23.47 he had lost a bet of £53,000. Within a matter of minutes he bet £37,600 (twice), £68,100 and £61,200. All this took place before midnight.

208. A further script cheque was signed and processed at 23.30 in the sum of £100,000.

209. From 23.36 onwards (through to 03.17) Mr Hui's play was monitored. The report states:

> "Mr Hui would often leave the table for long period leaving his associates playing…patron and associates were observed to follow the screen for trends before placing bets.
>
> Nothing unusual was noted."

210. A further script cheque for £200,000 was processed at 23.57.

211. Between 00.29 and 01.01 Mr Hui placed no bets. Mr Hui alleged that it was when he returned to the dining table that he drank Mao Tai and played the dice game.

212. Mr Hui also set out in his statement that:

> "I drank more Mao Tai after my initial winnings. Mixing this spirit with the wine and the champagne caused me to become blackout drunk."

213. Mr Hui also gave a recollection of what happened when he returned to the gambling table whereas his statement set out that

> "have no memory of returning to the gambling table or being allowed to gamble far more than the £30,000 agreed? (sic) with Chris de Lima."

As set out above an indication had also been given in pre-action correspondence that he remembered little of the night in question. He had very quickly exceeded the £30,000 limit when he attended the table on the first occasion.

214. As I shall set out in detail in due course, messages sent by Mr Hui in the days and weeks following the night in question were materially inconsistent with both the content of his statement and his oral evidence as to what had occurred during the night in question. I reject Mr Power's submission that "due to issues with his English he confused (Mao Tai) with champagne from time to time" as highly implausible. English may be Mr Hui's second language but he is sufficiently proficient not to have made such an obvious mistake.

215. Turning to other witnesses, Ms Soo stated that she was not a "good drinker" and that after three glasses, "or more than three glasses" (which I find is more likely) of champagne she felt too drunk and retreated to spend the rest of the evening in the marketing office (she did not want to misbehave). She could not help with who drank what during dinner.

216. Mr Yuen set out in his statement that after at least two bottles of champagne had been ordered for the table;

> "At around 9.30 pm we switched to drinking red wine, of which we had at least a bottle each amongst Stephen, Lester and myself."

This paints a different picture to Mr Hui's recollection that he had personally drunk 2.5 bottles of red wine.

217. Mr De Lima's recollection of the evening was understandably vague as to some details but he was wholly unshakeable in his evidence that he had neither drunk (or encouraged the drinking) of Mao Tai (which he disliked). He said if it had been drunk it would have been on the receipt. He would also not accept Mr Power's suggestion that (if not ordered) someone would have been able to get a bottle from a cupboard in the marketing suite and bring it to the table.

218. Mr De Lima also said that he had never seen a dice game played at a Club restaurant table:

> "it's just not something that we would do. This is why I am here because of the personal allegations against me."

219. Having heard all the evidence before arriving at a settled analysis, I view the likelihood of Mr de Lima, a very senior employee, engaging in the conduct alleged against him in front of a room full of people, including valued guests and staff, as minimal. It is difficult to see what his motivation could possibly have been for such behaviour and it would have exposed him to very serious criticism. He struck me as a very professional and careful man who was rather outraged by what Mr Hui had said against him. When I asked Mr Hui was it possible that someone else had ordered Mao Tai he conceded that it was possible. This in stark contrast to the certainty of recollection within his statement.

220. It is also of some significance that in the email of 10th April, (pleaded within the defence as a "full explanation") it was set out that:

> "I am written to you (*sic*) regarding my outstanding in Crown Aspinalls that I shouldn't have to pay the debt because I have been served and offered so much alcohol that I was blackout on that night as I am unable to remember my gambling. On that night before I blackout I had dinner with Chris, Mey, Edwin Chiu, Steven Cheung, Mr & Mrs Johnson, Yu and three others female guests. Right after we were being served the first bottle of wine, I have told Chris I will be very drunk and make sure I can only withdrawal maximum of £30,000 from my credit facility. Chris nodded and said "Yes and everything is okay" that he was agreed my requested before I continue drinking. I am pretty sure all the members and guests were sat at the table heard and witnessed it. We had at least 8 bottles wines and Chris was trying to offering me the Chinese wine Maotai. Everyone saw I bottom up every single glass of wine with them and we started playing dice game. As I remember I have won £80,000 at the beginning and I went back to the dining table that I was offered and being served champagne, this is the only memory I could remember before I was completely blackout after mixing alcohol. I am unable to remember how did I went back to the gaming table afterwards and withdraw more than the agreed credit which is £30,000 from your staffs and continue gambling. You can review my past faming history I never had this kind of unusual aggressive gaming behaviour before which is abnormal."

221. The reference to Mr Le Lima "trying" to offer him Mao Tai (and no mention of drinking in contrast to the reference to champagne) is at clear variance to what is set out in the statement and oral evidence (that he drank 5-10 shots with Mr De Lima). It is also of some significance that, as I shall set out, there was no reference to drinking Mao Tai in the WeChat messages in the days that followed the 9th/10th February.

222. Mr Hui has not maintained a consistent account in respect of the Mao Tai.

223. In relation to the likelihood of Mr De Lima playing dice Mr Heenan stated;

> "I do not recall seeing any wine at the gaming table. I do not recall seeing Mr Hui on that night or at any other time playing any sort of drinking or dice game. Indeed I do not recall ever having seen any customers playing a drinking or dice game, it is not something that we would encourage."

224. After careful consideration I accept the evidence of Mr De Lima that he did not order or encourage the drinking of Mao Tai or play a dice game. I do not accept Mr Hui's evidence on this issue. This finding then has potential impact on the rest of his version of the events of that night. If Mr Hui has not given accurate evidence on the issue was it because of an honest but false memory or untruthfulness? I think it very likely that Mr Hui has played dice games and drunk Mao Tai before during his apparently extensive socialising, but I struggle to accept that what was set out in his statement, with certainty and clarity, was some trick of memory (given that he said that he could not remember large parts of the evening). I have taken into account the evidence of Mrs

Yuen but in my judgment Mr Hui has invented this element of his interaction with Mr De Lima that evening. He may have persuaded others this is what took place.

Further gambling

225. Mr Hui resumed gambling at 01.01 for a further ten minutes then took a break. From 01.37 – 02.21 he placed a series of large bets including,

£37,300, £31,000, £36,000, £27,720, £55,050, £50,445, £38,000, £62,000, £31,000, £38,000, £69,000, £73,000 (twice), £57,350, £62,000, £54,000, £52,300, £57,000, £59,125, £70,025, £50,000, £65,000, £40,000, £50,000 (twice).

226. The fourth script cheque for £150,000 was registered at 02.15 (and processed at 02.57).

227. Mr Power submitted that it was likely to have been between 02.21 and 02.28 that Mr Hui spoke to Mr Heenan and Mr De Lima about extending his credit. I am unable to make a precise finding.

228. A script cheque for £100,000 was processed at 02.44.

229. Mr Hui then bet again for a further twenty minutes between 02.28 – 02.48. Initially he was more restrained, then his bets were consecutively £50,000 and £38,000.

Interaction with Mr Hui

230. Mr De Lima explained that it was the Claimant's policy that marketing staff should restrict themselves to two to three glasses of wine when entertaining clients. I accept this evidence and that Mr De Lima remained (relatively speaking) sober. There was no evidence Mr Heenan drank alcohol.

231. Mr Hui stated (in effect) that he has a high tolerance for alcohol and that he drinks every day, in part by reason of his role as the owner of a nightClub which means that he drinks with customers. Shortly after the night in question Mr Hui unilaterally stated that when somebody drank with him

> "you couldn't tell how drunk I get by looking at me"

232. Mr Heenan stated:

> "At all times in the Club there is surveillance of the gaming floor by the surveillance team based elsewhere in the building observing the CCTV. I have been shown a copy of the report done by the team that night on Mr Hui's play, this shows no concerns and a normal manner of play. If the team had had any concerns generally about a player then they would have alerted me or another member of the gaming floor staff so that the player could be checked on."

233. Mr Heenan's main interaction with Mr Hui appears to have been at , or shortly before, 2.30 am. It was the evidence of Mr Yuen that Mr Hui could not speak coherently at this stage and was "out of control". Mr Heenan was clear and certain about his recollection. I do not accept Mr Power's submission that 7 minutes (assuming he was right about that the interaction was between 02.21-02.28 when Mr Hui was away from the table) was "a very short time to carry out an assessment". Even if it was of this length it would be long enough to determine if the person who was speaking to you was drunk or not.

234. It is also of some significance that the refusal to allow an extension of £300,000 protected Mr Hui from even larger losses than he ended up with. If the aim was to allow a drunk man to bet irresponsibly then only allowing a further £100,000 would be a strange step.

235. Ms Chung was also present at the Club for some of the evening (punch in/out records show her attending between 21.02.29 and 22.43.55). She recalled seeing Mr Hui and some of his friends at one of the big round tables in the restaurant and that she said hello briefly and;

> "He appeared fine to me. He certainly did not appear drunk"

This is contrary to Mrs Yuen's evidence that it must have been obvious to her that Mr Hui was drunk. I prefer the evidence of Ms Chung on this issue, she saw Mr Hui only briefly and he showed no signs of intoxication.

236. Mr Hui would also have been observed at close quarters by the dealers and inspectors at the table (there were regular changes in staff at each table throughout the night, as they were rotated), those who took the signed script cheques and the person monitoring the CCTV. In my judgment it is inconceivable that if Mr Hui was obviously drunk that this would have been missed by all these staff. I further find that a staff member observing a drunk person gambling would have known that they should alert management. No member of staff did so. In reality what Mr Hui is alleging is a conspiracy of inaction and silence on the part of Mr Heenan and numerous members of staff, and as regards Mr De Lima, the giving of dishonest evidence.

237. Matters did not stop with allowing Mr Hui to gamble whilst drunk. A member or members of staff allowed Mr Hui to dive home in his Bentley whilst, on his case, clearly drunk (and taking home a complimentary bottle of champagne). In relation to the likely actions of the doorman Ms Chung stated:

> "As described above, if a customer brings a car to the Club then the keys are left with the doormen. The doormen will not give the keys back if they have any concerns about the customer or if the customer appears in any way intoxicated. Instead they would offer the customer a driver to wherever they wanted to go. I recall an incident a few years ago where a customer got really upset when they were not allowed their keys back because of a concern like this. If Lester had appeared in any way "drunk" then he would not have been given his keys back."

238. I do not accept Mr Hui's evidence that he could simply open a key box and retrieve his own keys without interaction with a member of staff. This was implausible given the likely value of cars parked outside (Mr Hui was driving a Bentley). In my judgment Mr Hui was trying to avoid an obvious problem with his version of events; that a member of staff would have had to allow an obviously drunk person drive away from the Club; a serious irresponsible act (although not as irresponsible as driving whilst over the limit; which even if he was not showing the signs of intoxication Mr Hui clearly was and knew himself to be).

239. Mr Hui's journey from Curzon Street to his home required him to travel just short of 20 miles (taking approximately 45 minutes), proceeding up Park Lane, Edgware Road and along the Westway (A40). True it is that he somehow damaged the wing of his car. However I do not view it as likely that a person could negotiate this journey, with all that it entailed (traffic lights/junctions etc) if they had drunk 3.5 bottles of champagne/wine and had 5-10 shots of Mao Tai (at 53% proof); very approximately the equivalent of a litre bottle of whisky or vodka[17], meaning that they were "blackout drunk", without more serious mishap.

240. I have considered all the relevant evidence and how elements interact and I cannot make an accurate determination of what Mr Hui drank on the 9th/10th February. However I find as a fact that he has significantly exaggerated the amount of alcohol he consumed and I do not accept his evidence about drinking Mao Tai with Mr De Lima. I also find as a fact that Mr Hui made no reference to any member of the Claimant's staff about being drunk and that he did not want to appear drunk as he knew that if it was thought he was intoxicated he may be prevented from gambling; which would have been very embarrassing in front of his guests. He had also been guilty of embarrassing behaviour at the Club before and I am sure that he did not wish to repeat the experience.

241. The amount of units of alcohol consumed is also only one aspect of the central factual issue in this case. It is also necessary to consider the observable effects on Mr Hui of what he did drink. Many people would appear drunk (or indeed be ill) if they had consumed a bottle of wine and some champagne (over the course of an evening). However Mr Hui is a self-declared regular drinker with a high, if not very high, threshold for alcohol. I accept his evidence on this point; although I again suspect that there was a degree of exaggeration. In my judgment he could drink a significant amount over an evening without displaying overt signs of inebriation (in this regard it is significant that he is often, if not usually, a loud and lively man in company).

242. Mr Hui also has a habit of describing himself to friends as drunk. This may have been the case that evening with Mr and Mrs Yuen (which may have impacted on their recollection). His claims appear to have been part of his "larger than life" persona. Having considered the messages I accept Ms Chung's evidence that

> "He would often joke about being "drunk".

[17] A standard (750ml) bottle of wine or champagne contains nine or ten units. Single shots of spirts (25ml; 40% ABV) are one unit. Mao Tai is 53 % ABV. So 3.5 bottles of wine/Champagne and 5-10 shots would be conservatively amount to 36-45 units of alcohol. A litre bottle of whisky of vodka (ABV 40%) contains 40 units

243. I am satisfied, however, that Mr Hui painted a very different picture to the staff specifically when engaged in the "serious" business of gambling. He had previously tried saying he was drunk and then denying it to Mr Heenan and it had not gone down well, and he wanted to gamble with his guests and when he had lost significant sums he wanted to gamble on to recoup his losses. I am satisfied during his interaction with Mr Heenan he showed no sign of drunkenness.

244. In reaching these conclusions I have taken into account events after the night in question.

Events after 10th February 2016.

245. On 10th February at 5.52 pm Mr Hui (who was fully aware of the losses he had incurred) messaged Ms Chung as follows:

> "...I am still drunk. Mey told me that Chris said he wanted to see me on the phone. I can't come tonight, how about I meet him tomorrow."

And

> "I am so drunk to a point I don't even look right anymore. I don't know how I got home."

Ms Chung asked why he had got so drunk; but he did not answer. This text exchange is also significant as Ms Yuen stated that Mr Cheung knew or must have known Mr Hui was drunk at the time of the dinner the previous evening.

246. At 4.16 pm on 11th February; so, after Mr Hui had a further day to digest what had happened i.e. the implications of what he had lost, he messaged as follows:

> "Sigh, please tell Chris that please check I know there is priority in your company. The Cheque is going to bounce, it's going to bounce. I will send out 50,000 cheque to you and I will pay back little by little. Please ask him not to worry. I will pay back for sure. The Bank will ask me questions if I move such a large amount of money around. Please tell him not to worry…Don't worry, don't worry. No problem."

247. This was not a message one could expect from a man who considered himself wronged; rather it states that he will pay and that Mr De Lima should not worry.

248. Later, on 11th February (at 5.56 pm) Mr Hui sent the following message;

> "Let me tell you. I just checked my car, as you know I have a few cars. Turns out that day I drove home, I dented the front of

> my car. See how drunk I got? I must have hit something on the way home."

249. Then when Ms Chung sends a message in relation to wine/champagne Mr Hui responded

> "Don't give me that either. No red wine, no champagne, I hate it. Next time give me some wáter. I won't gamble if I'm sober. It was so unlucky that night. I trusted Chris and MeyMey. I said I would for sure be drunk, so the car stay here and don't let me gamble. Don't even let me sign a marker. Let me sign a maximum 30,000. Sigh, I don't even know how to explain. I definitely have said this. You can ask Mey or Chris. I have definitely said this."

250. It is significant that Mr Hui had mentioned not betting more than 30,000 to Mey Soo on a previous occasion. Significantly there was no mention of Mao Tai or Mr De Lima encouraging or assisting him to get drunk (including through a dice game) matters which surely would have been at the very forefront of his complaints if they had occurred.

251. Mr Hui was also not so disenchanted with the Claimant (which, on his case, through the senior management present on the evening, had allowed or encouraged him to incur very large losses) that he declined the offer of further hospitality. He went on a "Bentley on Ice" trip to Finland (which enabled him to drive the cars on a frozen lake).

252. Nine days later on 20th February 2016 Mr Hui's position about repayment changed markedly. When asked by Ms Chung about the £50,000 that he had promised Mr Hui stated;

> "Can you please tell him that I won't pay. I had a meeting with a lawyer…"

253. On 12th March 2016 Ms Chung sent a message asking if Mr Hui had been in contact with the Claimant. He responded;

> "No they have not been in contact with me. I wonder if it is because they know that they are guilty. We should speak when we see each other. But off the record, let me tell you something, 3 casinos have asked me not to pay the money. It is because I was very drunk, I was so drunk I could barely remember if I gambled or not. Also, didn't I see you when Chris and I sat together for dinner. I feel like I did. I don't remember. I said give me 30,000 pounds tonight, 30,000 to gamble. I said the car will stay here for 2 days don't tow it. He said OK OK. Mey heard it as well. The whole table heard it. That's my witness right there. And then things got blown out of all proportion and not got the bill for 80,000 for the table. 80,000[18]. And then I went back to the restaurant, they gave me champagne. After that I blackout.

[18] Ms Chung said that this was a poor translation ; he meant that he had won £80,000.

> Therefore 3 casinos have asked me not to pay. If I have to maximum 30,000."

254. This message is significant in that Mr Hui complains of having been very drunk but also:

(a) Emphasises how little he could remember

(b) Focusses on having said that he wanted a 30,000 limit on his gambling

(c) Makes no reference at all to Mao Tai; which was to become a central part of his complaint about the provision of alcohol to get him drunk;

(d) Alleges that it was champagne that was given to him when he returned to the table (i.e. not Mao Tai)

(e) Mentions having said that the car would stay at the Club for two days, which did not feature in his evidence and also did not occur (he drove home).

255. In the following messages he stated

> "Also I wasn't fully conscious"

And

> "When I saw you having dinner I haven't even started drinking that much. Do you know we ordered 10 or 8 bottles of red wine, 2 or 3 bottles of champagne, But I have made it very clear before, I would only take 30,000. You can ask him, ask Mey. Mey agrees with me. Chris also agrees. So by the law, this is not right. I won't sue if I don't have to pay the money back. HaHaHa. Let's talk when we meet up. I won't pay. Really its impossible."

256. Again the focus is on the 30,000 limit and there is no reference to Mao Tai. He also stated

> "Do you know? Drank 10 or 8 bottles of red wine, and then don't know, 3 bottles of Champagne. You know how drunk I get mixing Champagne with red wine. When I drove back, I scratched the car again. I got so drunk to a point I didn't even realize. When you drink with me, you couldn't tell how drunk I get by looking at me. Don't know who ordered the Champagne. Also someone got some dice out to play. How crazy.
>
> I left right at 60,000. 600. I was counting it. Did I even lose that much? Go to hell.
>
> Isn't that right? Is that fair? Do you remember I have scolded them about this once. One time, I was losing but I was able to chase it back up. And then the next day, I told Mey, don't ever give me money to gamble. And then there were two occasions

> where I go so drunk and came up, Mey and everyone didn't let me gamble. Not even a little. That's why I was very good. It has always been giving me a maximum 30,000, we talked about this. I set it. But that night, things happened. Now tell me, would you pay? If you said pay, I will pay them. It doesn't matter to me."

257. Again no reference to Mao Tai. However, perhaps the most important element of this particular message is the comment:

> "When you drink with me, you couldn't tell how drunk I get by looking at me."

In my judgment Mr Hui probably realised that the response to his complaints would be that he did not appear to be drunk.

258. It is also noteworthy that he stated that "somebody got the dice out to play. How crazy" i.e. he could not remember, only days after the event, who got dice out. By the time of his statement there was a crystal clear recollection that it was Mr De Lima that got the dice out.

259. In a further message he stated:

> "I won't pay. Because I have already spoken to lawyers, asked a few casinos. They said "Are you crazy? If I were you, I wouldn't pay." Because you can tell them something, I can't speak to Mey, I think it's better for you to speak to her. The point is, I come to the table, before eating I told them to only let me gamble Because you can tell them something, I can't speak to Mey, I think it's better for you to speak to her. The point is, I come to the table, before eating I told them to only let me gamble 30,00 0and also I would leave the car here for 2 days. They said "Ok, Ok, Ok." Then kept giving, kept giving. And then they said by the law, you are drinking, you are drunk, all your guys were drinking about at least 8 bottles of red wines, 2 bottles of champagnes, whatever, it's crazy. See when would be a good time, or give me a call. I will only pick up a call from you, nobody else. I don't pick up phone call from anyone anymore."

260. So the overview of the messages is that in the days immediately after 9th/10th Mr Hui agreed to pay the sums lost whilst gaming. However by nine days later he had altered his view and was stating that he had received advice (from lawyers and other casinos) and he would not pay. He complained about his request for a 30,000 limit being ignored and of having drunk too much wine and champagne; so much that he could not remember much about his gaming. He made no mention of Mao Tai. He did recollect a dice game, but did not know who had the idea. So these relatively contemporaneously complaints are at significant variance to matters set out in his witness statement and oral evidence. The messages do contain reasonably contemporaneous complaints of being drunk. However this was, and is, the only easy way to challenge a gambling debt; so Mr Hui had a reason to advance his defence to the Claimant's employee once he had decided that he would not pay.

Conclusion on the central issue of fact

261. There has been a dispute of fact at the heart of this case which has not been easy to resolve (unfortunately it has been repeatedly pushed from centre stage by procedural and legal arguments which should never have received the limelight they had).

262. Mr Hui has made relatively consistent complaints that he was very drunk from an early stage after the evening in question. The relevant receipt shows 11 bottles of alcohol attributed to the table and Mr Hui's claims are supported by the evidence of Mr and Mrs Yuen.

263. What Mr Hui alleges would have entailed some form of conspiracy against him by members of staff (including Mr Heenan and Mr De Lima) to allow him to gamble whilst obviously drunk. Also, in my judgment untruthful evidence from at least Mr Heenan and Mr De Lima.

264. I have carefully considered all the relevant pieces of evidence before me to see if a sufficiently clear picture emerges of what happened on 9th/10th February 2016.

265. In my judgment Mr Hui's version of events has not been consistent in important respects. He claims that his memory has improved with the passage of time and without assistance from documentary/objective sources. He initially claimed not to remember much of the evening at all and made no mention of what were to become central elements of his case; the consumption of Mao Tai and what was effectively a drinking game with dice. Other elements are implausible; such as the possibility of some staff (including at close quarters at the table) not noticing that he was drunk and that he could collect his own car keys without interaction with the staff. It was telling that he was not prepared to say that Mr Heenan must be lying to the court.

266. I do not accept Mr Power's submission that the evidence of Mr and Mrs Yuen was "neutral" and reliable. In my view it is likely that they have been subjected to "powerful biases"[19] as his friends who were there at his invitation that evening. I have no doubt Mr Hui has strongly pressed his narrative that he was drunk and also that he drank Mao Tai that evening.

267. Ultimately, having reviewed all the relevant evidence carefully I cannot properly determine, on the ordinary civil standard, what was drunk over the evening by Mr Hui, although I am satisfied so that I am sure that he has significantly exaggerated the amount. All the relevant facts are not known and there are not sufficient pieces of the jigsaw to allow me to adequately piece the picture together so as to give an accurate picture of his consumption of alcohol.

268. I have no evidence at all about what three of the guests at the table drank[20], and what I view as an unreliable estimate as to what another (Mr Cheung) drank. It is also possible that both Mr and Mrs Yuen underestimated their consumption given that the wine was being mainly, or at least to an extent, served from a decanter not on the table. Ms Soo may also have underestimated what she drank (she chose to retire to the marketing room so as not to "misbehave" after three glasses, or as is likely "more than three glasses").

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[19] See **Gestmin** paragraph 19.
[20] Mr Cheung's partner and the two unidentified female guests.

Further I do not know who visited the table and/or if someone else could have shared the wine given that it was in decanters which were not on the table. Adopting a form of Holmesian elimination approach[21] to making a factual finding on the issue (which Mr Power attempted to do) would be wrong in principle.

269. Mr Power set out Mr Hui's case as to who drank what during his closing submissions, but in my view, without an adequate evidential foundation[22] . His analysis was that 5.5 bottles out of the 9 bottles of wine were drunk by the other guests

> "this leaves 3.5 bottles of wine to be consumed. Allowing, on balance for a further bottle of wine to be consumed by these guests left 2.5 bottles (for Mr Hui to have consumed)."

270. However if the base line is that Mr Cheung's partner and the other two women drank a bottle rather than half a bottle and a further bottle is divided between the seven people drinking wine this would leave just one bottle of wine for Mr Hui[23]. On balance I think it very highly likely that Mr Hui did drink more than a bottle of wine over the evening. The wine would have been in addition to champagne. However I am satisfied that he did not drink 5-10 shots of Mao Tai as alleged. I am also not satisfied that he had the other drink put on his bill.

271. As I have already set out the consumption of alcohol (which was not measured or counted by staff; there being no reasonable obligation to do so[24]) is only part of the factual picture. A highly important issue is the observable effect of what had been drunk by Mr Hui.

272. I am satisfied that whatever Mr Hui did drink (which is probably very significantly less than he claims he drank), it did not have a readily observable effect upon him such that members of staff noticed, or should have noticed. In part this was because of his high tolerance for alcohol. He did not appear intoxicated after drinking an amount which would have had very noticeable effects on most people. He was also trying during his interactions with staff not to appear drunk.

273. It may have been that Mr and Mrs Yuen talked to Mr Hui in Cantonese as the evening progressed and formed a view that he was getting drunk (due to either the content of conversation, such as Mr Hui saying he was drunk, as he had a habit of doing, or the way he spoke). However apart from Mey Soo (who had retired to the Marketing suite), there is no evidence that any members of staff present later in the evening spoke Cantonese. To the extent that he spoke English it was not reasonably apparent that he was drunk. I repeat that it was not in Mr Hui's interests to appear drunk as he knew that

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[21] Sherlock Holmes, said to Dr. Watson: "How often have I said to you that, when you have eliminated the impossible, whatever remains, however improbable, must be the truth?" In **Rhesa Shipping** [1985] 1WLR 948 Lord Brandon explained why it is inappropriate to apply this statement to the process of fact-finding.

[22] Save perhaps for an unfortunate/inappropriate assumption that each of the women will have drunk very significantly less than any of the men present.

[23] As I pointed out the analysis does not account for 1.5 bottles of champagne (assuming Mey Soo drank only a half bottle).

[24] In respect of Mr De Lima I am not satisfied that he was, or should have been, watching what Mr Hui drank, unless he began to see observable effects.

he would, or at the very least could, be stopped from gambling. This would have been very embarrassing.

274. It is also significant that Mr Hui himself, without prompting, stated that

> "…You couldn't tell how drunk I get by looking at me".

275. Mr Robson pressed Mr Hui on what the staff must, or at least should, have observed in relation to Mr Hui's state of intoxication. The question was clarified to ensure that the evidence given was clear and Mr Hui stated that he did not think that the staff recognised him as "blackout drunk". This was despite the content of his statement.

276. Drawing the strands together I am satisfied that the staff did not know, and there are no adequate reasons to support the proposition why they should have known, that Mr Hui was sufficiently intoxicated that he should not be allowed to gamble. In particular I accept as both honest and accurate the evidence of Mr Heenan and Mr De Lima as to their lack of belief or concern that he was drunk, during what were very important conversations.

Authorisation

277. Mr Heenan stated that he authorised the further £100,000 of facility (and refused the £300,000 sought) after consultation with Mr De Lima.

278. Mr Power argued that the contemporaneous documentation (to which considerable weight must be attached), including on one reading his own report of 4th September 2016, showed this to be incorrect and that Mr De Lima (who did not hold a British licence) had been the person who had taken any authorisation decision. Mr Power relied on a handover note compiled by Mey Soo which stated;

> "Lester Hui came in for Chinese New Year Dinner with guests …CDL and I hosted the dinner. His CCF was approved in house -£500 K by CDL."

279. It is clear that a credit report was obtained on 9th/10th February (as indicated in an e-mail sent by the cash desk at 01.28). An e-mail of 10th February 2016 sent at 03.12 from Heidi (a cashier) set out;

> "Further to this an additional £100K was approved by CDL"

280. Mr Power also referred to e-mails which "demonstrate Mr De Lima's role in facilitating (Mr Hui's) CCF in May 2014". However, when the e-mail of 25th May 2014 sent by Mr De Lima is considered it is significant that it stated;

> "Please reactivate the CCF for Mr Lester Hui which has been approved in house for £300,000 by Howard." (underlining added)

The Howard referred to was Mr Aldridge. Notably the e-mail did not say "which I have approved".

281. It is a very fair and important point that Mr Heenan's witness statement (which he stated in oral evidence was worded badly) stated that Mr De Lima had told him after speaking with Mr Hui that he approved the £100,000 increase. Further, in his report of September 2016 he referred to Mr De Lima informing Mr Hui that

> *"we* could not honour his request" (for a £300,000 TTO), however *he* was prepared to increase his CCF by £100,000."

282. However Mr Heenan was adamant that whilst Mr De Lima was consulted (at Mr Hui's request) he was the ultimate decision maker. Mr De Lima was not his boss. He recalled:

> "Chris would not back it either. It's not Mr De Lima's decision its joint."

283. Mr De Lima was very firm on the point that whilst he could and did provide a view the decision was not his to take.

284. Ultimately, but after some significant hesitation arising by reason of the wording within the contemporaneous documentation, I accept the evidence of Mr Heenan and Mr De Lima on the point and am satisfied that whilst Mr De Lima was asked for a view, at Mr Hui's request, and provided a view (probably a very firm one); the ultimate decision maker was in fact Mr Heenan. The two men discussed the issue and, as it was, he fully agreed with Mr De Lima's opinion they should decline Mr Hui's request for £300,000 extra credit but allow £100,000.

Script Cheques

285. It is the Claimant's pleaded case that:

> "the script cheques were accepted by the Club in exchange for the gaming tokens to the amount which the cheques were drawn, which enabled the Defendant to take part in gaming at the Club ("the loan agreement"). As a matter of necessary implication and/or as a matter of law, the said loan was repayable immediately but the Defendant's obligation to repay was suspended until or unless the relevant cheque or cheque(s) provided in place of that cheque was dishonoured by non-payment."

286. Mr Branson stated

> "22. Paragraph 32 of the draft Amended Defence states that
>
> "It is averred that the Claimant relied on the false instrument to provide the Defendant with the 5 Documents which in turn released gaming chips and in doing so, it wrongly relied on the

> false instrument to comply with its legal and gambling requirements pursuant to Section 81 of the Gambling Act 2005 on each occasion."
>
> 23. This allegation, and that contained in paragraph 16 of Mr Hui's witness statement, is premised on a serious misunderstanding of how a casino operates. The script cheques defined by the Defendant as the "5 Documents" are those that are appended to the Particulars of Claim and referred to in the Particulars of Claim at paragraph 4. They are documents that it is agreed between the parties were signed by Mr Hui on 9-10 February 2016. These documents are script cheques in their own right. It was these 5 script cheques that enabled Mr Hui to draw down against his CCF. The validity of these 5 script cheques is not somehow conditional upon there being a separate, earlier, script cheque for £500,000. In fact the opposite is true: if there was already a signed script cheque for £500,000, there would have been no requirement at all for the 5 script cheques that it is agreed were signed."

And

> "The Claimant at all material times held a blank signed personal cheque provided by the Defendant in June 2015, as I explained in my Second Witness Statement. Chips were provided to the Defendant in reliance on that signed blank cheque and on each occasion the Defendant gamed the Claimant had either taken and completed a photocopy of that signed blank personal cheque, or had required the Defendant to sign script cheques in advance of his gaming. Both of these were administrative processes secured by the original signed cheque provided by the Defendant and held by the Claimant. On the occasion of 9-10 February 2016 (which is the night that the gaming debt was incurred) this blank signed cheque was supported by the signature of the Defendant on the 5 script cheques in addition. By around late 2015/early 2016 the Club had started more frequently to invite players to sign script cheques rather than photocopying the signed blank cheques. The Defendant is alleging, as I understand it, from paragraph 16 of his witness statement, that the absence of a photocopy of the blank signed personal cheque for gaming on 9-10 February 2016 is sinister and renders the gaming on that night unlawful. I strongly disagree: it is unsurprising that there is no photocopy of the signed personal cheque for gaming on 9-10 February 2016. There was no need for a photocopy of the signed personal cheque on 9 February 2016 because the Club has 5 signed script cheques."

287. In his closing submissions Mr Power did not concede that the script cheques were valid cheques under and for the purposes of the Bills of Exchange Act 1882.

288. As set out in *Brindle and Cox* at 7-012:

> "Although a cheque is almost invariably written on a pre-printed form provided by a bank it need not be so. In Roberts & Co v Marsh the cheque was written on a blank sheet of paper. In Grosvenor v National Bank of Abu Dhabi [2008] 1 CLC 399 the cheques were 'scrip' cheques, that is blank ('house') cheques, kept by a gambling Club, and drawn as required on an account of the customer."

Further, a major difficulty Mr Power faced was that script cheques were in fact treated as valid cheques by the Banks, indeed one of Mr Hui's own script cheques had been banked (Cheque RD 133062). As a result I am satisfied that the script cheques were, at the material time, valid negotiable instruments.

289. An issue arose in relation to a script cheque (No 135698) which was prepared by the Claimant's staff in advance of the dinner/Mr Hui's gaming on 9th February 2016 in the sum of £500,000 (the full amount of his cheque cashing facility). The cheque was voided because Mr Hui did not want the whole of his facility. The disclosure of this cheque caused some understandable concern as, at first blush, the signature on the cheque bore some resemblance to Mr Hui's signature. Mr Branson dealt with how it came to be signed in his third statement;

> "it is not unusual for players to have their full facility (i.e. their full cheque cashing facility) available at the start of their gaming on any particular night. This is so that they did not need to go back and sign further script cheques in the course of the night, which could be an irritation for them."

And

> "…when a player signed a script cheque for the full amount of their facility then this sum would be placed " on deposit" which means that the player is able to draw down against that sum at whatever stage of the night they want to by asking for physical chips."

And

> "It was common for there to be voided cheques at the end of a gaming day."

As I have set out Mr Hui had previously gambled such that he could have incurred a £400,000 loss, so must have used most of his facility on that evening.

290. Once Mr Hui indicated that he did not want his full facility (he wanted £50,000 instead) the cheque was marked void. It was later signed by a manager (Mr Branson believed it was Mr Ashley Thorpe who is now sadly deceased) to show that it had been voided. I accept Mr Branson's evidence about this cheque. After initial concern about possible forgery the issue rather withered on the vine.

Should Mr Hui have been stopped from gambling?

291. Given my factual findings I can take this issue shortly. Section 20 of the Gambling Act 2005 provides for the establishment of the Gambling Commission and section 22 places upon the Gambling Commission a statutory duty to promote "Licensing Objectives" in the performance of its statutory functions under the Act.

292. The Licence Conditions and Codes of Practice 2015 (effective as at February 2016) ("LCCP") sets out two types of code provisions:

(a) "social responsibility code provisions"

and

(b) "ordinary code provisions".

293. Compliance with the former is a condition of licences; the latter do not have the status of operator licence conditions, but set out good practice.

294. It is Mr Hui's case[25] that the Claimant breached the following three regulatory obligations;

i. Paragraph 3.4.1 of the Social Responsibility Code;

ii. Paragraph 5.1 of the LCCP;

iii. The Claimant's own Gambling Policy.

295. As for the third of these, it is stated in the Claimant's 2015 Responsible Gaming Policy that it:

> "is generally recognised that gaming judgment may be impaired through excessive alcohol consumption."

296. The Responsible service of alcohol policy sets out that:

> "Crown Aspinalls Management will be vigilant to the abuse of alcohol on the premises and will be trained to approach Patrons if they are believed to be intoxicated and may ask them to leave or have them removed."

And

> "Where there is concern about the amount of alcohol consumed by a patron or party the Assistant Gaming Manager (ACM) should be made aware of this immediately: Until the ACM has

[25] As set out in a response to a Part 18 Request

> been spoken to and a decision made, no further alcohol should be served to the patron or party in question."

297. The Responsible Gambling Review; key points for marketing (2014) stated:

> "Players who are already on the premises and showing signs of intoxication must be refused further service of alcohol."

And

> "Any Player or guest who is deemed to be intoxicated should not be allowed to gamble."

298. The policy content begs the questions of what should be considered "excessive" alcohol consumption or "intoxication" and how such issues are assessed. Even if the sale of all alcohol was to be banned inside casinos it would not be possible to prevent people who had alcohol in their system from gambling without some form of blood/breath alcohol level testing (such as breathalysers).

299. At present most, if not all systems in operation in Casinos to prevent people gambling after having consumed an excessive amount of alcohol rely on a subjective analysis of both how intoxicated a person is, and also at what level of intoxication a person should be stopped from gambling. A person may be observed to drink three glasses of wine before and during a meal and as a result any responsible employee may suggest that they may be over the limit to drive. However that person may reasonably be thought to be capable of understanding the nature and extent of any transaction relevant to/involved in gambling and I have no doubt would be surprised if they were told that, although they were showing no signs of intoxication, they had drunk too much to gamble in a safe and responsible fashion (in so far as any gambling is safe and responsible). On the other hand, any person showing signs of losing control of their faculties or exhibiting unusual behaviour may be considered intoxicated. As Mr De Lima conceded, a person should not be gambling after having consumed 2.5 bottles of wine.

300. In my judgment if Mr Hui had drunk as much as he claims to have drunk and was "blackout drunk" then this should have been readily apparent to any member of staff observing him on anything other than a fleeting basis. If the Claimant's own policy had been adhered to Mr Hui should have been prevented from gambling. However as set out above, Mr Hui has exaggerated the amount he drank. I have also found as a fact that no member of the Claimant's staff considered, or had sufficient reason to consider, that he was too intoxicated to gamble. I accepted as truthful and accurate the evidence of Mr Heenan. Given that his interaction was at a time when Mr Hui had lost £500,000, as Mr Robson observed, this finding fatally damaged Mr Hui's claim that he should have been prevented from gaming. In my judgment there was no obligation to stop Mr Hui gambling. There was no breach of relevant policy or code provisions.

Lack of capacity

301. There was no dispute between the parties concerning the relevant principles in relation to capacity A contract may be avoided at common law if

(i) a person was mentally incapable of concluding it; and

(ii) this incapacity was apparent to or known by[26] the other contracting party. See per Lord Esher in **Imperial Loan Co. Ltd. v. Stone** [1892] 1 Q.B. 599 at 601:

> "When a person enters into a contract, and afterwards alleges that he was so insane at the time that he did not know what he was doing, and proves the allegation, the contract is as binding on him in every respect, whether it is executory or executed, as if he had been sane when he made it, unless he can prove further that the person with whom he contracted knew him to be so insane as not to be capable of understanding what he was about."

302. The burden of proof was on Mr Hui to establish both (i) lack of capacity; and (ii) knowledge on the part of the Claimant.

303. The understanding and competence required to uphold the validity of a transaction depends on the nature of the transaction. There is no fixed standard of mental capacity which is requisite for all transactions. What is required in relation to each particular matter or piece of business transacted, is that the party in question should have the capacity to understand the general nature of what he is doing. As Hoffman J stated in **K** [1988] Ch 310 at 313:

> "It is well established that capacity to perform a juristic act exists when the person who purported to do the act had at the time the mental capacity, with the assistance of such explanation as he may have been given, to understand the nature and effect of that particular transaction."

304. The capacity to incur liability as a party to a bill of exchange is co-extensive with the capacity to contract; see Bills of Exchange Act s.22(1). As set out at paragraph 2.11 of *Hedley and Hedley* on *Bills of Exchange and Bankers' Documentary Credits* (4th Edn):

> "[…] it can be said that if person is intoxicated by alcohol or drugs to such a degree that he does not know what he is doing, he will be able to avoid liability on a bill of exchange.

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[26] This is how Mr Hui's case has been pleaded and advanced in evidence/cross-examination. (It is also what is required on the authorities: see *Molton v Camroux* (1848) 2 Ex. 487, *Imperial Loan Co Ltd* [1892] 1 Q.B. 599; *Hart v O'Connor* [1985] A.C. 1000; and see *Chitty on Contracts* (34th Edn) at 11-078 to 11-088 addressing the obiter comments in *Dunhill v Burgin* [2014] UKSC 18, [2014] 1 W.L.R. 933.)

> It is, of course, a question of degree, and the burden of proof is heavy upon the person attempting to negative his liability for this reason.
>
> To avoid his liability he must prove (a) that at the time he gave the bill he did not know what he was doing and (b) the other party knew it.
>
> The liability is voidable [footnote: Gore v Gibson (1845) 14 LJ Ex 151] (not void altogether); consequently, his actions can be ratified when sobriety returns. [footnote: Matthews v Baxter (1873) 42 LJ Ex 73. […]]"

305. It is Mr Hui's case that he lacked the capacity to sign the script cheques. I have little hesitation in finding that he retained the capacity to enter into a contract and to understand the nature and extent of what he was doing throughout the evening (and through to the drive home).

306. There are varying degrees of drunkenness/intoxication, arising from various factors, most obviously the amount of alcohol consumed, the time frame and the tolerance to alcohol. The scale ranges from being very mildly drunk (but too drunk to drive or safely operate potentially dangerous machinery) through to being so heavily intoxicated that capacity has been lost and a person does not appreciate the implications of what they are doing. Save at the very extremes, where a person is upon that scale at any given time can be difficult to determine. I need go no further than to determine that when gaming Mr Hui was not close to the extreme end of heavy intoxication. He made a number of decisions, to gain more chips and in relation to his gaming, and he was fully aware of the nature and extent of these transactions. The decisions may have been unwise; but that is very far from sufficient to avoid liability.

Action on the cheque

307. Mr Hui signed the Premium Player Agreement knowing that the Claimant retained a blank cheque (No 022041) and that he was agreeing that it could be filled in with the full amount of any losses. This had happened on a previous occasion. He knew that the cheque in issue for this claim had been filled in and presented as on 11th February as he stated within messages on that day that the cheque was going to bounce. If he had been unaware that a cheque had been retained and/or had given no authority for its use he would have made the point at that stage (or indeed nine days later having consulted his lawyers).

308. A bill of exchange is defined by s.3(1) Bills of Exchange Act:

> "[…] an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or

> determinable future time a sum certain in money to or to the order of a specified person, or to the bearer."

309. Mr Hui does not dispute that the personal cheque was signed by him and as I have found as a fact he authorised its completion by the Claimant. Where a person signs a blank cheque, or a cheque which is wanting in any material respect, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit (for any amount). It will then be enforceable against any person who was a party to the bill before it was completed, provided that it was completed within a reasonable time and strictly in accordance with the authority given[27]:

310. The Personal Cheque was "dishonoured by non-payment" for the purposes of s.47(1)(a) Bills of Exchange Act. Under s.47(2), therefore:

> "(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder."

311. The measure of damages is set out by section 57:

> "Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:
>
> (1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—
>
> (a) The amount of the bill:
>
> (b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:
>
> (c) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.
>
> […]"

312. The Claimant is therefore entitled, pursuant to sections 47 and 57 of Act to judgment for the debt plus interest.

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[27] See section 20 of the Bills of Exchange Act and *Paget's Law of Banking* (15th Edn, Odgers et al) at paragraph 2.26.

Loan

313. If the claim based on the cheque had not succeeded then the Claimant would have succeeded on the loan agreements arising from the script cheques. There was no need for the Claimant to be registered as an authorised person by the Financial Conduct Authority so as to be able to provide loans.

314. Where A pays cash, or gambling chips equivalent to cash, to B in exchange for a cheque drawn on B's account, absent any agreement by A to accept the cheque in full satisfaction, there is an implied promise by B to pay if the cheque is dishonoured. A therefore has two causes of action – one on the original debt and one on the dishonoured cheque. This principle is set out in **Crockfords Club Ltd v Mehta** [1992] 1 WLR 355 at p.360A-E per Henry J and p.368D-E per Stuart-Smith LJ. Henry J stated:

> "Where a transaction involves the giving and acceptance of a cheque, ordinarily the cheque is conditional satisfaction of the primary obligation of the transaction…In those circumstances as the cheque is only conditional payment or repayment, on its dishonour the action on the loan…survives. That cause of action on the primary obligation on the loan .is only replaced where the cheque is taken in absolute satisfaction of that primary obligation. A cheque is only taken in absolute satisfaction when that is made clear at the time"

And

> "so the onus is on the Defendants to show that the cheque was taken in absolute satisfaction.; that is to say that in accepting the Plaintiff's cheque that their only remedy in relation to the loan was on the cheque."

I pause to observe that Mr Hui gave no such evidence. On appeal Stuart-Smith LJ noted:

> "The question which lies at the heart of this appeal is this: when a gambler goes to a casino and exchanges a cheque drawn on a third party account for cash or tokens, does he impliedly promise to pay the amount of the cheque if it is dishonoured? Or, in other words, is there a contract of loan between the gambler and the casino on which the casino can sue if the cheque is not honoured?
>
> In his reply, Mr Glick accepted that in the ordinary way in a case where there is no question of a gaming contract where A pays cash to B in exchange for a cheque whether drawn on B's account or C's, absent any agreement by A to accept the cheque in full satisfaction, there is an implied promise by B to pay if the cheque is dishonoured. A therefore has two causes of action — one on the original debt and one on the dishonoured cheque."

315. The Claimant provided gaming chips to Mr Hui in exchange for the Script Cheques. The Claimant has suffered a loss because Mr Hui has failed to repay the monies loaned and has a complete cause of action in contract, subject only to the defence as to capacity which has not been established.

Conclusion

316. For the reasons set out above the claim succeeds.

317. I leave it to the parties to draw up a draft order.