



OUTER HOUSE, COURT OF SESSION

[2022] CSOH 3

P860/21, P861/21, P862/21 & P863/21

OPINION OF LORD BRAID

In the petition of

THE ROYAL BANK OF SCOTLAND PLC,

a public limited liability company incorporated under the Companies Acts
and having its registered office at 36, St Andrew Square, Edinburgh as Trustee of the
Mary McGavin Will Trust

Petitioner

for

Authority to Resign as Trustee of the said Trust

Petitioner: Howie QC, Welsh; CMS Cameron McKenna, Nabarro and Olswang LLP

14 January 2022

Introduction

[1] Following a decision to discontinue its trusts and trust administration business, the petitioner, The Royal Bank of Scotland PLC, seeks judicial authority to allow it to resign as trustee on a series of trusts. Eight such petitions called before me on 17 December 2021, in four of which, including this one, senior counsel for the Bank moved for the prayer of the petition to be granted. (The remaining four were continued *sine die* to allow them to call alongside what senior counsel called the rump of petitions yet to come before the court.) Other than differences in relation to how the Bank came to be trustee and acquired title to sue (which I deal with in paras [8] to [11]), all four petitions raise the same issues, and all

stand to be granted or refused together. What I say in this Opinion therefore applies equally to the other three petitions dealt with on 17 December 2021, and I do not intend to issue separate Opinions in those cases. This Opinion will be equally applicable to the remaining rump of cases, albeit additional issues may arise in them.

[2] The commercial background, discussed more fully below, is the sale by the petitioner of its trusts and trust administration business to Ludlow Trust Company Ltd (Ludlow). The need for the petitions arises from the terms in which the trusts have been drawn and the fact that the trustees under the relevant trusts have been professional trustees and remunerated for their services as trustee. Consequently, they are precluded from making use of the statutory power to resign office as a trustee afforded by section 3 of the Trusts (Scotland) Act 1921.

Competency

[3] For completeness, since the petitions are presented both at common law and under section 3 of the 1921 Act, application by a trustee for authority to resign at common law has been treated as a matter for the *nobile officium* of the Court of Session and therefore as Inner House business. However, the Rules of Court now permit applications to the *nobile officium* which relate to the administration of trusts to be conducted by means of petition in the Outer House: RCS, 14.2(c)(i). There is therefore no issue as to competency.

Commercial background - the underlying sale

[4] The petitioner's position is that the size of its trust business has, over the years, diminished relative to that of the group of companies to which it belongs. Investment in that business has become increasingly difficult to justify to senior management. The

business is increasingly reliant on the skill and expertise of a limited number of people, the loss of just a few of whom could hamper significantly the petitioner's ability to carry out the business efficiently. The petitioner is increasingly exposed to levels of risk of liabilities and reputational damage. It therefore formed the view that it would be in the interests of the trusts, and the petitioner, if it were to divest itself of the trust administration business and try to seek its replacement as trustee by a specialist trust company which would have as its principal area of business the administration of trusts, and which through having a greater number of experienced staff would be less exposed to the above types of risk, or to financial risks through the conduct of banking business.

[5] The petitioner therefore decided to sell its trust administration business and to seek to secure the transfer of the position of trustee on the affected trusts to a suitable purchaser of that business. It embarked on a lengthy selection process for bidders and ultimately selected Ludlow. The process is described in some detail in an affidavit by David Price, a business analyst in the Financial Planning and Investment - Private Banking Services Department of Coutts & Co. He is employed by NatWest Group, of which the petitioner forms part. In particular, his affidavit describes, first, the bidding process through which a long list, then a short list of potential buyers was drawn up and how Ludlow was subsequently selected as the preferred buyer; and, second, the rigorous due diligence process which was gone through in relation to Ludlow before the Framework Transfer Agreement and Transitional Services Agreement referred to more fully below were entered into. In short, the petitioner has endeavoured to ensure that Ludlow is a suitable person to take over its trust business and that the transfers are carried out in such a way as to preclude any suggestion of it making any secret profit or breaching any fiduciary duty owed by it. I will say more about Ludlow's suitability below.

[6] At this stage, I should point out that while the petitioner requires, and seeks, the court's authority to resign as trustee, it does not require the court's authority to transfer the trust administration business, that not being a regulated business. Thus, the trust administration business itself has already been sold to Ludlow and the petitioner's employees have all transferred to Ludlow. To that extent it might be said that the court is being presented with a *fait accompli*, although senior counsel for the petitioner shrank from using that term and urged me not to look at the petition in those terms. Until such time as the petitions are granted, and the petitioner resigns, all trust decisions continue to require to be taken by the petitioner. It is this which the petitioner asserts would be inefficient and lead to unnecessary expense, or indeed potential loss to the trusts should an investment decision require to be taken urgently, all of which is contrary to the interests of the trusts.

[7] While on the subject of which acts require the leave of the court and which do not, it is also worth pointing out, as explained more fully below, that in the present four petitions the leave of the court is not required for the assumption of Ludlow as a trustee, so in some respects it might be thought that the court's imprimatur as to its suitability is neither here nor there: Ludlow could be appointed as trustee whether or not the petitioner is allowed to resign. However, senior counsel acknowledged that were the present petitions to be refused because the court did not regard Ludlow as a suitable person to replace the petitioner, that would have a significant impact on the petitioner's plans for the appointment of Ludlow.

Title to petition

[8] It is uncontroversial that the person with title to petition the court in each case is the trustee on the trust deed in question. A rather more complex question is how the company now known as The Royal Bank of Scotland comes to be trustee. The complexity is not

helped by the fact that the name “The Royal Bank of Scotland” (whether Ltd or PLC) has been held by a number of different companies over the years. The present case is relatively straightforward. The original trustee was the company then known as The Royal Bank of Scotland PLC (now known as NatWest Markets PLC, and referred to as such below, to avoid confusion). In 2018, a banking transfer scheme promulgated under section 106B of the amended Financial Services and Markets Act 2000 was approved whereby certain business of that company was transferred to Adam & Company PLC (now known as The Royal Bank of Scotland PLC: the petitioner). The purpose of the scheme was to allow the Royal Bank of Scotland group to ring-fence certain types of its business against risks to which they might otherwise be subject by reason of the conduct within the same legal entity of merchant banking and other forms of investment activity. The scheme was understandably complex and it is unnecessary for me to refer to it in detail. It is sufficient to note that under section 111 of the 2000 Act the Court was given a discretion to approve the scheme if it was “appropriate” to do so, and that section 112(2)(a) allowed an approved scheme to “transfer property or liabilities whether or not the transferor concerned otherwise has the capacity to effect the transfer in question.” Section 112(2)(b) permitted a scheme to “make provision in relation to property which was held by the transferor concerned as trustee”. Thus a scheme might of its own force transfer trust assets and liabilities whether or not that would otherwise have been legally possible without some other steps being taken. Senior counsel demonstrated, by reference to the relevant definitions in the scheme, that the effect of it was to transfer to the petitioner the personal and banking business of NatWest Markets PLC, which included all property and powers of every description held by that bank as “trustee, custodian, executor or in a similar fiduciary capacity” to the petitioner. Similarly, liabilities,

duties and obligations of NatWest Markets PLC as trustee or executor, were transferred to the petitioner.

[9] The effect of the scheme was that the petitioner became the trustee in all of the trusts in which NatWest Markets PLC had itself originally been appointed as trustee (albeit, known at the time of appointment as The Royal Bank of Scotland PLC).

[10] For completeness, in a number of older trusts, the means by which the petitioner derived title is more complicated. NatWest Markets PLC was not in all cases the original trustee. Under reference to the Royal Bank of Scotland Order Confirmation Act 1970 and the Royal Bank of Scotland Act 1985, senior counsel traced the route by which title to the trust was acquired in the case of the oldest petition before me (petition P862/21), in which the original trustee was the National Commercial Bank of Scotland Ltd. Paragraph 17 of the Order annexed to the 1970 Act provided that, following the merger of that Bank with The Royal Bank of Scotland Ltd, any reference in a trust document to the "National Commercial Bank of Scotland Ltd" be read as though there had been substituted therefor a reference to The Royal Bank of Scotland Ltd. Subsequently, The Royal Bank of Scotland Ltd (by then known as The Royal Bank of Scotland PLC) merged with RBSG plc and Williams & Glyn's PLC. Section 7 of the 1985 Act provided that assets of trusts which had been vested in RBSG PLC through the earlier merger sections of the Act would be held by that company "in the same capacity, upon the trusts, and with and subject to the rights, powers, provisions, liabilities and obligations" as had applied to the former Royal Bank of Scotland PLC. Following the incorporation on change of name of RBSG PLC to "The Royal Bank of Scotland PLC", which took place after the coming into force of the said Act, the trustee remained that company (in other words, the company now known as NatWest Markets PLC) until the 2018 scheme.

[11] None of the trusts being older than that in P862/21, I am satisfied that whichever incarnation of “The Royal Bank of Scotland” was originally appointed trustee, the petitioner has, ultimately through the 2018 scheme, and, if necessary through the 1970 and 1985 Acts, come to be sole trustee on all of the trusts under consideration.

[12] Before departing this topic, I should mention petition P861/21, in which the position is complicated by a purported Deed of Assumption and Resignation by NatWest Markets PLC in 2014, since when Coutts & Co has acted as trustee. However, the settlor remained alive at that time and, senior counsel submitted, having regard to the terms of the trust deed, that the purported assumption and resignation were void. I accept that submission and I am therefore satisfied that in that case, too, the petitioner is the trustee and has title to petition. (As regards any liability which might have arisen from the void transaction and any acts or omissions since then, it will be unaffected by the granting of the petition since the petitioner does not seek exoneration in any of the cases.)

The legal problem

[13] There are in general two means by which a trustee in practice normally resigns without recourse to the court: either in exercise of an express power to do so; or by using the ability to resign conferred upon trustees by section 3 of the 1921 Act. The trust deeds in the present cases do not confer an express power. Insofar as the section 3 power is concerned, they contain at least one, potentially two, restrictions which prevent the petitioner from availing itself of that power.

Section 3

[14] Section 3 provides, so far as material:

“All trusts shall be held to include the following powers and provisions unless the contrary be expressed (that is to say):-

(a) Power to any trustee to resign the office of trustee; ...

Provided that-

(1) A sole trustee shall not be entitled to resign his office by virtue of this Act unless he has first assumed new trustees and they have declared their acceptance of office...and

(2) A trustee who has accepted any legacy or bequest or annuity expressly given on condition of the recipient thereof accepting the office of trustee under the trust shall not be entitled to resign the office of trustee by virtue of this Act, unless otherwise expressly declared in the trust deed, nor shall any trustee appointed to the office of trustee on the footing of receiving remuneration for his services be entitled so to resign that office in the absence of an express power to resign; but it shall be competent to the court, on the petition of any trustee to whom the foregoing provisions of this proviso apply, to grant authority to such trustee to resign the office of trustee on such conditions (if any) with respect to repayment or otherwise of his legacy as the court may think just;”

The issue of the sole trustee

[15] The first proviso to section 3 prevents a sole trustee from resigning unless the trustee has first assumed new trustees. That presents a potential difficulty since the standard style of trust deed used in this and all the other cases expressly excludes the trustee’s power to assume new trustees, reserving that power to the settlor during his or her lifetime.

However, in this case (and the other three cases presently being considered) the settlor has died. In all these cases the petitioner has appointed another group company as an additional, and gratuitous, trustee, so that it might meet the first limb of the proviso. In due course, the intention is for that trustee to assume Ludlow as a trustee and then itself resign, obviating the need for further application to the court on its part for authority to resign. As I have recorded above, the court has no say in that process.

[16] There is another potential issue, in that the proviso refers to the assumption of trustees, in the plural. On a literal interpretation, a sole trustee would require to assume at least two additional trustees before being entitled to resign. Senior counsel drew my attention to the sheriff court case of *Kennedy, Petitioner* 1983 SLT (Sh Ct) 10, in which reference was made to academic opinion to the effect that the literal construction was correct. However, as the sheriff in that case pointed out, the same word, "trustees", is used in subsection (b), where, reading short, two or more trustees are given the power to assume new trustees; it can hardly be suggested that the legislature intended that a single new trustee could not be appointed in those circumstances; and it would be curious if the same phrase had a different meaning in two parts of the same section. I follow that reasoning to an extent, although in the context of a *power*, it may be said that the greater includes the lesser, and that a power to assume more than one trustee necessarily comprehends a power to assume only one. The same cannot necessarily be said of an *obligation* to appoint new trustees as a precondition of being entitled to resign.

[17] A shorter answer, as senior counsel suggested, is that by virtue of the Interpretation Act 1978 section 6, words in the plural include the singular, and perhaps one need say no more than that.

[18] By whichever means one gets there, I agree with the submission of senior counsel that it would be anomalous were the effect of the first proviso to section 3 to be that more than one trustee had to be appointed. The purpose of the proviso is that a trust should not lapse for want of a trustee. It would make no sense if a trust which had hitherto operated with a sole trustee was required to have a minimum of three trustees before that trustee was allowed to resign (particularly as one of the two additional trustees, if gratuitous, could resign immediately after having been appointed).

[19] So, to the extent that earlier academic opinion suggests otherwise, I respectfully consider that to be wrong. The appointment of a single new trustee by the petitioner is sufficient for it to satisfy the first limb of the proviso to section 3, which therefore does not present a problem in this petition, nor any of those in which the settlor has died.

The issue of remuneration of the trustee

[20] This issue arises in all the petitions before the court. In each of the trusts, the petitioner was entitled to, and in receipt of, remuneration for its services as trustee (as were the companies which previously acted as trustee prior to the 2018 scheme). As such, the second limb of the proviso to section 3 applies. In no case does the trust deed afford the petitioner the express power to resign.

[21] That limb of the proviso provides for a relaxation of the restriction, in the form of an application to the court for leave to resign. However, a question arises as to whether that application is available in the case of the trustee whose service as trustee has been remunerated, as distinct from one who has accepted a legacy, bequest or annuity.

[22] Adopting a cautious approach, senior counsel submitted that the proviso may not apply. He referred to a difference of academic view over its ambit. In Mackenzie Stuart, *The Law of Trusts*, at page 308, after stating that a trustee who is appointed to that office on the footing of receiving remuneration for his services cannot resign under the Act in the absence of an express power to resign, the following is stated:

“The words ‘on the footing of’ are no doubt intended as a substantial equivalent to the words in the prior part of the section ‘on condition...of accepting the office of trustee’ but a literal reading of the rest of the subsection would make nothing less than an express power to resign sufficient to give a trustee of this class the rights of a gratuitous one. The difference is probably attributable to careless draughtsmanship, and the power to resign may be inferred as under the earlier part of the section.”

That appears to be a reference back to the immediately preceding paragraph, in which the position of the trustee who has accepted a legacy, bequest or annuity was discussed, as follows:

“[such a trustee] shall not be entitled to resign the office of trustee by virtue of the Act unless otherwise expressly declared in the trust deed. No formal words of express declaration are necessary. Reserving to the trustee the powers of a gratuitous one is enough: *or it may be implied in rights conferred on the trustee which would be meaningless unless he had the power to resign*” [emphasis added].

A slightly different view is expressed in the latest edition of Wilson and Duncan, *Trusts, Trustees and Executors* (2nd edition) at paragraph 22.21, which states:

“There appears to be no reported case in Scotland concerning the resignation of a trustee appointed on the basis of receiving remuneration for his services. It is the practice of concerns such as banks who undertake trusteeships on a basis of payment for services rendered to insist that the terms of any trust in which they accept office should permit their voluntary resignation to take place at any time. Here the wording of the statutory provision [ie section 3(a) proviso (2)] may be said to result that nothing other than an express and specific authority for resignation will be effective.”

The footnote to the last sentence states:

“Cf. the wording of the same proviso as affecting the authority for resignation of a beneficiary-trustee as referred to *supra*...but see, *per contra*, Mackenzie Stuart, p 308 where the verbal difference is attributed to careless drafting and considered insignificant.”

[23] Senior counsel took from the foregoing that the difference of academic opinion was as to whether the trustee who received remuneration had the power to apply to the court under section 3. He submitted, by referring to the legislative history of section 3, that a drafting error was unlikely, not least as Parliament might have corrected any error in the Trusts (Scotland) Act 1961, and that the view in Wilson and Duncan should be preferred. He drew support for this approach from the fact that the court was empowered to impose conditions only in the case of the beneficiary trustee, which reinforced the view that the

remunerated trustee simply could not resort to section 3 if wishing to resign. An application under common law would be necessary.

[24] However, it seems to me that this approach is unnecessarily cautious and that section 3 does enable any non-gratuitous trustee to apply to the court for authority to resign under the Act. My starting point is the words of the proviso themselves:

“...it shall be competent to the court, on the petition of *any* trustee to whom the foregoing *provisions* of this proviso apply, to grant authority to such trustee to resign the office of trustee [emphasis added]”

The foregoing provisions of the proviso apply both to a trustee who has accepted any legacy, bequest or annuity and to any trustee who has been appointed to the office of trustee on the footing of receiving remuneration; and it seems to me that the proviso does therefore permit the remunerated trustee to apply to the court. As regards the academic opinion, my reading of the passages in Mackenzie Stuart quoted above is that a beneficiary trustee may resign without recourse to the court if the power to resign may be implied; and that a remunerated trustee may do so too notwithstanding the literal reading of the proviso. What the author is drawing attention to is the difference in wording between “unless otherwise expressly declared” and “in the absence of an express power to resign”, and putting that difference down to careless drafting; perhaps, the stylistic fault known as elegant variation. It is that with which Wilson and Duncan disagrees. But in my view, neither Mackenzie Stuart nor Wilson and Duncan is expressing any view as to whether or not the remunerated trustee may petition the court under section 3. Indeed, if one reads on in Mackenzie Stuart to page 309, after pointing out that the power to impose conditions strictly speaking applies only in the case of a legacy, and not to a bequest or annuity, but was probably wide enough to cover all three, the author commented: “[t]here is no express power to impose conditions as to repayment of any remuneration for work done as opposed

to a legacy”, which appears to be a clear recognition that in the author’s view, the proviso did apply even to a remunerated trustee.

[25] Ultimately it makes little if any difference whether section 3 applies or not, since as Mackenzie Stuart also states at page 309, authority to resign will be given on the same grounds as are available to trustees at common law. That such a power existed even prior to the Trusts (Scotland) Act 1861 is clear from *Dick’s Trustees v Pridie* (1855) 17 D 835 at page 836.

The grounds of resignation

[26] As Menzies, *Trustees*, points out at paragraph 870, “the circumstances in which a trustee might resign judicially at common law are nowhere laid down with any degree of certainty”. In *Watson v Crawcour* (1844) 6 D 687 the Lord Ordinary spoke of a right to resign under the sight of the court in cases of “absolute necessity” (page 688). Later cases have watered that test down somewhat, while also departing from any notion prior to the 1861 Act of a right to resign. Applications to resign have been granted where: the trustee has come to be in a conflict of interest with the trust and could not continue to act (*Guthrie, Petitioner* (1895) 22 R 879); the trustee’s health has failed (*Dick’s Trustee*, above); the trustee’s onerous duties as sheriff-substitute in Peebles, combined with 3 days each week in Edinburgh “engross[ed] the whole of [his] time” such that he could not properly discharge his duties as trustee (*Orphoot, Petitioner* (1897) 24 R 871); and where the trustee would be long abroad on military service, or had become old and infirm (*Sir Archibald Alison, Petitioner* (1886) 23 SLR 362). In that case it was averred by the petitioners that it was necessary for the administration of the trust that trustees who were unable to attend to their duties should resign, and the petition was granted on that basis.

[27] In addition to the above cases, senior counsel also drew my attention to cases where the trustee had not been permitted to resign. Of these, the most instructive is *Scott v Muirs Trustees* (1894) 22R 78 where authority was refused to a trustee who had found that the magnitude of the task of acting as trustee was likely to require more of his time than he was prepared to give: the Lord Justice Clerk pointed out that the petitioner did not aver that he could not carry out the duties of a trustee, merely that they would take up too much of his time, stating:

“There have been cases in which non-gratuitous trustees have been allowed to resign, but the Court in these cases considered that it was in the interests of the trust that the trustee should be allowed to resign.”,

giving as an example *Alison*, above, and stating that the petitioner did not meet that test.

[28] One may take from all of the cases that the test to be applied by the court is whether or not it can be said to be in the interests of the trust that the trustee resign, but that more is required than simply a trustee who is unwilling. As senior counsel submitted, what must be shown is an inability to carry out the duties of a trustee rather than mere disinclination to do so. He further submitted that the petitioner met that test. The petitioner had shown that resignation was in the interests of the respective trusts. Common to all of them was a case of practical inability to act efficiently as a trustee. Following the sale to Ludlow, the petitioner no longer had the staff familiar with the past administration of the trusts, whereas Ludlow did. Were the petitioner to remain a trustee, it would have to be consulted on trust administration matters, which would lead to inefficiency, delay and duplication, all inimical to the interests of the beneficiaries. It would be but a clog on the administration of the trusts, and a needless cost. The petitioner could not do the task properly any longer. It should be equated with the petitioners in the cases referred to in para [26] above, where the petitioner was unable for one reason or another to continue to act as trustee, rather than with *Scott*,

where the trustee was simply disinclined to act. It was therefore necessary in the interests of the trusts that the petitioner resign. Even if absolute necessity were still the test, that could be said to be met where resignation was necessary in the interests of the trust.

Ludlow

[29] That all said, the petitioner acknowledged that it had put itself into this position by selling its business to Ludlow and recognised that it would require to satisfy the court that Ludlow had the ability to match up to the performance of the petitioner as trustee on the trusts. If it could not do so, then it could not be said that it was in the interests of the trusts that the petitioner resign; the prejudice of the clog would be outweighed by the prejudice of having an unsuitable trustee. It was submitted that Ludlow was a company well capable of properly and successfully administering the several trusts for the benefit of their respective beneficiaries and that it had the financial wherewithal to meet any liabilities which its conduct of the trust administration may reasonably be expected to visit upon it. It was selected by the petitioner following the vetting process mentioned above. The petitioner had conducted that process with a view to satisfying itself that the business would be sold only to a company which the petitioner considered would be willing and able to act as a trustee in an apposite manner. Senior counsel impressed upon me the care the petitioner had taken in selecting Ludlow. It was not in its interests to appoint a trustee who might not administer the trusts as efficiently as it had done. To have done so might lead to reputational damage or loss of custom, since many of the settlors and their families remained valuable customers of the petitioner.

[30] Senior counsel stressed that the trust business was sold for no consideration, and that the petitioner was not seeking exoneration. Price had been a secondary factor. The

petitioner's main interest had been to ensure that the sale entailed no breaches of its obligations as trustee, and that the successor trustee would be such as might be expected to conduct the business as well as the petitioner had done. Although Ludlow was a new company set up for the express purpose of acquiring the petitioner's (and other) trust business, those behind it were known to the petitioner from previous dealings. They were all well-known and highly respected in the trusts and investments field. Of the five directors of Ludlow, one, Mr John Dennis, was previously Global Head of Corporate Development at Barclays Bank. A second, Mr Walter Coxon, long experienced in the trust administration sphere, was managing director of the Global Trust Business at Barclays, while a third, Mr Gary Collins, had for 2 years been the managing director of ZEDRA Group, the former Barclays Bank trust administration arm, an entity for which he had worked for the previous 13 years. The chairman of Ludlow, Mr Ali Reza Sarikhani, had been involved in the trust administration business for 30 years and is the Chairman of Hambleden Capital Partners LLP (Hambleden), a family office for the Sarikhani family wealth, with successful investment businesses such as ZEDRA Group, Chiltern Group and Kinetic Partners LLP. Accordingly there could be no doubt about the ability and credentials of the management of Ludlow. Additionally, the staff, most of whom had previously been employed by the petitioner, were all experienced in the administration of trusts.

[31] That all said, there is no getting away from the fact that Ludlow is a company set up in 2019 with a limited financial history. Its statutory accounts published at the beginning of December, 2021 show that it made a loss of over £1m in the period from incorporation to 30 June 2021, and that its balance sheet had a deficit of some £858,000. Those were the figures which caused me most concern. However, senior counsel, acting on instruction, assured me that those figures were of no concern to those of the petitioner's employees

charged with overseeing the transfer and that the figures in the accounts were of the order expected by the petitioner. Ludlow was in the financial position which might be expected of a newly formed trust administration business taking on business such as that which is being acquired by Ludlow. It had incurred substantial costs in setting up its business, acquiring premises, equipment and in carrying through the sale transaction, whilst limited income was as yet flowing through to it from its administration of those trusts which it has already taken over. It was anticipated that a further loss would be shown in the financial year to 30 June 2022, but that a profit would begin to be turned thereafter.

[32] Further comfort can be derived from the fact that the accounts show an intention on the part of the shareholders to continue to fund the company as required in the immediate future. The accounts have been prepared on a going concern basis and have been signed off by the auditors. Still further comfort is derived from a Letter of Commitment by Hambleden, referred to in clause 5 of the Framework Transfer Agreement and duly delivered at Completion, in which it has undertaken to invest, if required, a significant sum of money for a period of 3 years. I was told that the terms of the letter were commercially sensitive and I will not say more about it in this Opinion. Suffice to say that a copy was made available to me, and it has gone a long way towards assuaging the concerns I might otherwise have had about Ludlow's financial solidity during its formative years. I also attach some weight to the evident commitment of those involved in setting up Ludlow to operate in the trust administration sphere for the foreseeable future and to the petitioner's vetting process. The fact that the petitioner had (and, from its oversight of the transfer arrangements put into effect thus far, continues to have) no reason to doubt the genuineness or suitability of Ludlow, having undertaken a far more stringent process of due diligence than the court could ever hope to do, is a factor which attracts considerable weight. Ludlow

has already shown commitment by its acquisition of premises in Bristol and London and the employment of staff, all as might be expected of a company with a long-term intention of trading. Clause 16 of the Framework Agreement bars Ludlow contractually for the period of 30 months from the Date of Completion from disposing of the Business or any trust, and clause 18 bars it from assigning its rights or duties pursuant to the Agreement.

[33] In all these circumstances I am satisfied as to Ludlow's suitability to act as trustee, and to perform that task as well as the petitioner has done.

The Framework Transfer Agreement

[34] Senior counsel also addressed me in some detail on the terms of the sale of the business from the petitioner to Ludlow. Having perused those terms, I accept his submission that they reflect the commercial terms upon which the parties chose to do business and do not reflect upon Ludlow's suitability as trustee of the trusts. While on one view it may be unnecessary to go into any more detail, I will repeat the bones of counsel's submission if only to illustrate the care which has been taken in effecting the transfer (and perhaps to dispel any lingering notion that the court has been presented with a *fait accompli* insofar as the trusteeship of any particular trust is concerned).

[35] There are two agreements, the Framework Transfer Agreement dated 25 November, 2020 entered into among Coutts & Co., National Westminster Bank PLC, the petitioner and Ludlow, and a Transitional Services Agreement dated 1 April, 2021 which governs the provision of trustee services in relation to the trusts with which the court is presently concerned. The Framework Transfer Agreement recognises that the parties to it cannot at their own hand transfer the various trusteeships, each party undertaking to exercise reasonable endeavours to bring that result about by the long-stop date of the third

anniversary of the date of the Agreement. Clause 3 of the Agreement provided for the transfer to Ludlow of the Business, defined as including the business records, but excluding documentation specific to a given trust. The latter are to be transferred to Ludlow on the Transfer Date applicable to the trust in question.

[36] Completion (following an agreement to delay the original contractual date) took place on 6 April, 2021. On that date, the Business transferred to Ludlow, along with the staff (clause 11). The petitioner received the Hambleton Letter of Commitment in the Agreed Form, referred to above, and the consideration of £1.00 sterling provided for in clause 4 as the purchase price of the Business.

[37] The arrangements set out in the Framework Transfer Agreement in relation to the transfer of the trusts and their property and liabilities are complicated. For these, clause 4 provides that no consideration is to be paid. Clause 2 sets out a series of four Transfer Dates on which different categories of trusts will transfer to Ludlow along with the assets, liabilities and records of each trust. The First Transfer Date was the date of Completion, and applied to all those trusts where, as at that date, no consent to the change of trustee from the petitioner to Ludlow was required or such consent as was required had been given, a new Deed of Appointment had been executed and no intervention by a court was needed to bring about the transfer or the resignation from office of the petitioner. The Second Transfer Date fell in July, 2021, while the Third will now fall on 14 February, 2022. On those dates, there fell and will fall to be transferred all those trusteeships, with their relative assets, liabilities and records in respect of which the requisite consents had been given in the period since the immediately preceding Transfer Date. The Fourth Transfer Date will fall on the day one calendar month after the final court order is made approving the transfer of trusts under the relevant powers of the court, in those cases where the court's approval is required.

In practice, that date is likely to be one month after the last order is granted in England, if such be the case. On the Fourth Transfer Date, in simple terms, the remaining trusts are to be transferred, other than any trusts which are excluded because consent has been refused whether by the court or by some other party having the power to refuse consent. Such trusts and the assets, liabilities and records pertaining thereto will not be transferred under the Framework Agreement. Accordingly, in the event that in any given case, the authority of the court should not be given to the resignation of the petitioner as trustee, the trust in question would become an "Excluded Trust Mandate" and it would fall out of the overall transaction embodied by the Framework Agreement.

[38] The remaining provisions of the Framework Agreement are either immaterial for present purposes or ancillary to those already mentioned, and I need not mention them, other than clause 7, which provides for the coming into force of the Transitional Services Agreement for the period between the Date of Completion and the Fourth Transfer Date. That contract is designed to promote a continuity of trust administration given the transfer of the trust administration staff to Ludlow, and thereafter, a smooth transition of the trusteeships from the petitioner to Ludlow. It effects a delegation of the non-fiduciary acts of trust administration for all of the trusts to Ludlow for the period in question, whilst retaining in the hands of the petitioner (and the other group trustees) all fiduciary powers and discretions and the exercise thereof. It is, of course, envisaged that, as trusts are assumed by Ludlow and the petitioner or its fellow trustees resign office, the whole administration of the trusts will move to Ludlow.

[39] I mention all of the foregoing simply to illustrate that the arrangements between the petitioner and Ludlow are unexceptional and have been well thought through so as to protect the interests of the trusts. The contracts are professionally drafted, and nothing in

them causes me any anxiety. If resignation is approved by the court, the trusts will transfer to Ludlow; if resignation is refused, the petitioner will require to continue to act as trustee.

Decision

[40] Drawing all of the above together, I am satisfied that the petitioner has title to bring this, and the other, petitions, under section 3 of the 1921 Act. I am also satisfied that the petitioner has shown good reason for wishing to divest itself of its trusteeships in the interests of the trusts and has acted responsibly. While to an extent the petitioner might be said to have caused the inefficiency which has given rise to its need to resign and to appoint Ludlow, by selling its trust business to Ludlow, there were sound business reasons underlying the decision to sell, not least the diminishing pool of expertise available to the petitioner and the consequent risks to the trusts. The petitioner has demonstrated to my satisfaction that it is to be equated with a natural person who has become unable to carry out the duties of a trustee, rather than one who is simply disinclined to do so. It is in the interests of the trusts that a replacement trustee be found.

[41] As regards Ludlow's suitability, I have attached particular weight to the impressive track records of the individuals involved in establishing it, and their evident commitment to making the business a success; and to the Letter of Commitment guaranteeing significant financial support through its formative years should such be required. Those factors outweigh any concerns arising from its financial performance to date. I appreciate that there is no guarantee that the business will be a success but in the current economic climate, with all the uncertainties which can arise from factors such as Brexit, Covid and who knows what other future events presently unforeseen, that could be said of any business.

[42] I am therefore satisfied that it is necessary in the interests of this, and the other three trusts before me, that the petitioner be granted leave to resign, with a view to Ludlow in due course being assumed as (ultimately) the new sole trustee using the mechanism described above. The question of exoneration does not arise, since that is not sought, nor is there any question of imposing conditions.

Disposal

[43] I have granted the prayer of all four petitions in which I have been asked to do so, under section 3 of the 1921 Act. Had I formed the view that section 3 was not available, I would have granted the petitions at common law, the test being the same.