Judgment Approved by the court for handing down
(subject to editorial corrections)

Henchley & Ors v Thompson and Anr

Neutral Citation Number: [2024] EWHC 607 (Ch) Case No: HC-2016-001901

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLND & WALES

PROPERTY TRUSTS AND PROBATE LIST (ChD)

BEFORE DEPUTY MASTER LINWOOD **26th March 2024**

IN THE MATTER OF THE WCC HENCHLEY TRUST

BETWEEN:

(1) CLAIRE HENCHLEY
(2) ELIZABETH ANNE BAXENDALE
(3) VIVIEN MASH
(4) NATASHA JADE KHAMBHAITA
(5) TORI BRITTANY KHAMBHAITA
(6) CHARLES MARTIN MASH
(7) NICHOLAS JOHN MASH
(8) JAMES HENCHLEY MASH
(in his own capacity and as representative of JOSEPH MASH and JUDE MASH)
(9) CAROLINE ELIZABETH BEDDALL
(in her own capacity and as representative of MACIE BEDDALL and JACK BEDDALL)

Claimants/Respondents

- and -

(1) PATRICIA THOMPSON CBE
(as Executrix of the late David Brian Thompson CBE, Deceased)

First Defendant/Applicant

(2) KATHARINE WOODWARD
(as representative of SERENA WOODWARD, CAN-CLAUDE HENCHLEY and ANNIE-SELIN HENCHLEY and as representative of the unborn contingent beneficiaries of the WCC Henchley Trust)

Second Defendant/Respondent

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The Claimants appeared in person

Ian Clarke KC and Andrew Holden (instructed by **Carter-Ruck Solicitors**) for the **First Defendant/Applicant**
The Second Defendant did not appear and was not represented.

Hearing: 15th, 16th and 17th January 2024

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JUDGMENT

This judgment was handed down remotely at 10.00am on Tuesday 26th March 2024 by email to the representatives of the parties and to the National Archive.

Deputy Master Linwood:

1. The Eagles in their iconic 1976 hit Hotel California sang "You can check out any time you like but you can never leave". Mr Holden submitted at a hearing in May 2023 that the First Defendant was in the same position as the WCC Henchley Trust ("the Trust") has not been wound up despite the passage of decades. I hope this judgment will bring the finality he urged upon the court. I will refer to the parties by their first names for ease of reference with no disrespect intended. References thus [ ] are to paragraphs within this judgment unless the context indicates otherwise.

2. This claim is now in its eighth year. The Trust was settled almost 64 years ago. Mr David Thompson was appointed as a trustee just over 50 years ago with the administration, except for the correspondence which led to this claim, concluding about 30 years ago. Fortunately, and somewhat surprisingly, a very substantial number of documents have been obtained from various sources to reconstitute the affairs to lead to the production of the Updated Account.

3. By application notice dated 23 February 2023 D1, Patricia Thompson CBE, as sole executrix of the estate of her husband asks the court to approve and settle the Updated Account of the Trust. The application is opposed by the Claimants. Below I will set out the background to the Trust, the family and the parties, the procedural background, the Issues, the law, the submissions in essence and my findings with reasons on the Issues.

The Trust and the Parties.

4. The Settlor, the late Mr WCC Henchley, settled the Trust by a deed dated 12th September 1960. The original trustees have all passed away. The beneficiaries are his children, namely Claire (C1), Elizabeth (C2), Vivien (C3), Patricia, Julian and Alex. At Annex 1 to this judgment is a current family tree. Nancy, the Settlor's second wife, is not a party but gave evidence as I will come to. The background to the Trust is not in dispute and for ease of reference I set out the summary provided in D1's skeleton argument that I have slightly amended:

"Clause 3 of the Trust Deed constituted a primary discretionary trust of the capital and income of the Trust Fund in favour of such of the Beneficiaries or their respective issue as the trustees should (with the consent of Nancy) appoint. …the terms of the Trust were subsequently varied by deed dated 28 March 1978, adding a proviso to clause 3 limiting the exercise of the powers contained within it only in relation to a part of the capital of the Trust Fund in which a beneficiary for the time being enjoys an interest in possession."

In default of appointment, clause 4 of the Trust Deed constituted a trust of the capital and income of the Trust Fund for the Beneficiaries living on the Perpetuity Day[1] or who attained the age of 30 and, if more than one, in equal shares, save that the Trust Fund was directed to be divided into two equal parts for the benefit of, respectively, the Settlor's sons and daughters. By virtue of the Settlor having 2 sons and 4 daughters, the Trust Fund was not held equally.

Clause 5 of the Trust Deed then constituted further trusts of the daughters' respective shares of the Trust Fund (but not of the sons'). A daughter's share was held:

a) on trust to pay the income to the daughter for life; and

b) from and after the daughter's death or on the Perpetuity Day for that daughter if living or otherwise for such of her children and remoter issue as the trustees should appoint and, in default of any appointment, in equal shares.

In the event, all of the Settlor's children reached the age of 30, such that the Trust Fund was (in broad terms, and on the basis that in practice the Perpetuity Day would not be reached during the lifetime of any of the Settlor's daughters) held:

a) 25% for Julian.

b) 25% for Alex.

c) 12.5% of the income for Patricia for life, remainder to her children and remoter issue.

d) 12.5% of the income for Claire for life, remainder to her children and remoter issue.

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[1] The perpetuity period is fixed via a Royal Lives clause. The perpetuity period has not expired and will not expire for at least 20 years, there being at least one lineal descendant of HM King George V still living who was alive at the date of the establishment of the Trust (including HM The King).

e) 12.5% of the income for Vivien for life, remainder to her children and remoter issue.

f) 12.5% of the income for Elizabeth for life, remainder to her children and remoter issue."

5. In summary, the two sons received an absolute interest of 25% each but the four daughters received 12.5% of income for life each with remainder to their children and remoter issue. Only legitimate and legitimated issue may benefit, so the issue of Tori (C5) and Nicholas (C7) cannot do so. At the hearing in May 2023 I mention above, Master Brightwell ordered that various representative parties were appointed.

6. D2, Katharine, is a daughter of Patricia and was appointed to represent various minors and unborn contingent beneficiaries. Since her appointment, Katharine's daughter Serena has reached her majority. Katharine did not appear at the hearing but wrote to the court on 9th January 2024 to say it would not be proportionate for her to do so in circumstances where she has taken legal advice for herself and those she represents and that she has seen the Updated Account. She said that she "…strongly support(s) the matter being finally determined by the court". Serena also wrote to the court supporting her mother's stance and confirming she wished her mother to continue to represent her.

7. At the hearing before me Elizabeth took the lead in making submissions for the Claimants, assisted by Claire and Nicholas on certain transactions they queried. Vivien made a brief submission. Tori did not attend but Charles did when he could. Their submissions were articulate and focused upon transactions that concerned them. I am grateful to all of them for the way they conducted this disposal hearing, especially in view of the substantial number of documents they had to master in making those submissions, against the background of events which in the main took place decades ago.

8. The Settlor died in January 1972. He in his lifetime, and after his death Nancy, had the power to appoint new trustees. Later that year by a Deed of Appointment ("the 1972 Deed") she appointed David, Patricia's husband, as Trustee particularly to assist her by advising her on the business of the companies whose shares were held in the Trust. His co-trustees were then Mr Walter Martin and Ms Doris Watson, both of whom were employees of the aforesaid companies. Ms Watson kept the books for the Trust. She died in 2003 and there was uncertainty as to what became of the papers she maintained, but a certain amount came to light in 2019.

9. Those three trustees were in place from 1972 until the Trust ended in April 1993, a period of some 20 years ("the Relevant Period"). The schedule to the 1972 Deed lists the then assets of the Trust, starting with three freehold properties, ("the Properties") namely a) Milton Works, Reform Row Tottenham N.17, b) 93 Turnmill St and 19 Benjamin St EC1 and c) Latimer Road Hammersmith – various numbers at 140-150. Leases are noted against various parts of the Properties.

10. The other class of asset was shares in 20 companies, some listed, some not, with at least 2 in liquidation, plus £5,000 of Treasury stock. There was no cash. In the evidence before me is a summary balance sheet at 16th November 1972 prepared by Mr Roy Copus, a Chartered Accountant employed as Finance Director by a company controlled by Mr Thompson. Mr Copus has primarily been responsible for the collation of many thousands of pages of documents from diverse sources. His has been a herculean task and has resulted in what appears to me to be a particularly full and detailed account of the transactions he has reviewed. It was reconstructed by Mr Copus from contemporary documents or else where necessary, publicly available sources such as HM Land Registry and the Financial Times for the then share prices. It is the bedrock of the substantial financial dealings which took place over the Relevant Period and shows the assets were then valued at £52,329.

11. I refer to the Updated Account and the reasons for and method of its production in more detail below but by way of background Annex 1 to the Updated Account shows the income and expenditure for the financial years for the Relevant Period namely 1972-1993. For those years are listed rental income, dividends, interest, capital gains, expenses, taxation (Basic, CTT, Investment Income Surcharge and CGT) and distributions and loans. Over that time income amounted to £472,072, net capital gains were £155,911, with expenses of £50,612 and tax of £243,360. The beneficiaries received income and capital amounting to £430,004. Patricia did not receive anything from the Trust whilst her husband was trustee. The compound annual growth rate of the Trust during the Relevant Period was about 12%. There was substantial inflation over much of the Relevant Period and I am not aware as to whether that return, whilst appearing good in today's terms, was good then.

The procedural background.

12. In July 2013 Claire wrote to Mr Thompson raising concerns over the NE Henchley Trust, another trust established by the Settlor, in respect of which no account has been ordered. Much was made by Mr Clarke of allegations of fraud which he submitted Claire originally made but backed away from. I need not make findings about that and other tendentious matters as the application before me in short is whether the Updated Account should be approved, as more defined in the agreed List of Issues. Further, consideration by me now of these matters which have been extensively canvassed in witness statements and correspondence is disproportionate and unnecessary in view of the judgment of Chief Master Marsh that I will refer to.

13. Claire initially instructed Wedlake Bell and then Withers from March 2014 to make various allegations about the operation of the trusts, asking for an account in respect of both. Mr Thompson's position was that he had not kept copies of accounts or underlying documents. In June 2016 Claire issued this Part 8 Claim seeking:

    i) an order that Mr Thompson provide an account of his dealings with the assets of the Trust and of the NE Henchley Trust;

    ii) an order that the account be verified by affidavit and supported with all relevant documents pertaining to any transaction included in the account; and

such further or other accounts and inquiries as may be considered appropriate following the provision by Mr Thompson of those accounts (which may include the surcharging and/or falsification of the same), and directions in relation to the taking of such further accounts and inquiries.

14. The application was heard before Chief Master Marsh in December 2016. He handed down his judgment in February 2017 with neutral citation number [2017] EWHC 225 (Ch) ("the Judgment"). My judgment must be considered in the light of it, especially as to the background and findings as to this Trust at [39-59]. At [66] he said:

> "First and foremost, the Defendant says that he has provided all the information which was available to him and it would be pointless to make an order for an account against him because he could not do more than he has done. In this regard, I express a degree of disappointment that the Defendant's energies appear to have been principally focused on defending this claim rather than pursuing enquiries which might help the Claimants. As I have already observed, his response to the reasonable and measured enquiries put to him before the claim was issued was unhelpful. His approach to this litigation has been combative. He has sought to blame others for what he says is an inability to provide an account but I remain unconvinced that he has done everything that is open to him. By way of example, although he has stated the efforts made to retrieve information held by Mr Copus, he has not said what efforts he has made to obtain information from others. Nancy and Julian would appear to me to be prime candidates. It is not, as he appears to suggest, for the beneficiaries to make their own enquiries and produce their own accounts".

15. The Chief Master continues by referring to Mr Thompson's "active involvement" and that he had "…lost sight of his obligation to [the beneficiaries]". The Chief Master found "…the 1990 and 1991 accounts troubling…" and that the Trust was operated in a "…disorganised manner…Examples of this include a liability to tax accruing over a number of years and the very rapid erosion of the value of trust assets." The Chief Master recognised that Mr Thompson was elderly but made an order for an account in respect of the Trust, but not the NE Henchley Trust.

The consequentials hearing took place in March 2017. The Claimants were ordered to provide:

"copies of all documents and information in any of their possession or power which relate to the Trust or its affairs, save insofar as legal privilege is claimed in respect of any document..."

16. Mr Thompson was directed to file an account which should, as best as he could:

i) Identify all the assets that have been acquired by the Trust from time to time, the price at which they were acquired and the identity of the transferor.

ii) Identify all income generated by the Trust from its assets and all and any dividends paid on the Trust's investments.

iii) Identify all distributions made from the Trust including the amount of such distributions (or assets which have been distributed), the date of such distributions and the identity of the recipient, the basis on which such distributions were made consistent with the terms of the Trust, and how such distributions were effected (including details of any deeds of appointment).

iv) Identify all disposals which have been made from the Trust including the date, amount (or the asset) and the recipient of each such disposal.

v) Identify all payments made by the Trust including the date of such payment, its nature and quantum and to whom such payment was made.

vi) Insofar as not covered by e., above, identify details of all loans made by the Trust or to the Trust including the identity of the borrower/lender, the date on which such loans were made (and, where applicable, repaid) and the terms of such loans including the interest payable.

vii) Show a true current balance of the Trust's assets and liabilities.

viii) Include all supporting documents in his possession, control or power in relation to sub-paragraphs a.-g., above.

ix) Where he was unable to provide figures in respect of any matters falling within sub-paragraphs a.-g., above, provide a narrative account of the Trustees' dealings in relation to such matters and an explanation of the efforts he has made to obtain information and documents necessary to compile the Account.

17. At that consequentials hearing Mr Wilson, leading counsel for the Claimants, submitted that Mr Thompson should account for, as he put it, "…certain transactions [that] were engaged in at a company level" where shares in the companies concerned were held in the Trust. This was refused by the Chief Master, but he said it was a point that may go further. However, as Mr Clarke submits, in the almost 7 years since that Order was made, the Claimants have not applied to vary, extend or otherwise expand the scope to require an account in respect of underlying company transactions,

notwithstanding being represented by Withers and counsel until May 2023. Therefore, Mr Clarke submits, it is impermissible for the Claimants to try and do so now.

18. Mr Thompson filed the account he was ordered to in [16] above exhibited to an affidavit dated 28th August 2017. In the latter he explained he was then 81 years old and had little recall of the affairs of the Trust. He listed all persons he, his solicitors or Mr Copus had approached, and that in compliance with [15] above the Claimants had in March 2017 disclosed 9 lever arch folders of documents and a further 80 pages in May 2017, but that despite repeated requests they had not informed him of the sources of much of the material nor whether more was available.

19. Mr Thompson also evidenced how Nancy had, at least historically, been in receipt of Trust documents, but that despite repeated efforts she had not responded to communications. Mr Thompson referred to possibly applying for disclosure orders against her, which he later did do, as I will come to. From the sources who did cooperate, he said some 5,000 pages of documents were obtained. Importantly, these included:

(i) Capital Transfer Tax computations from archives maintained as a precedent of such calculations. These had been prepared by the Trust's accountants at the time for the period 1972-1977 and include detailed income and distribution information. Further, they included a set of accounts for the year ended 5th April 1979, and some correspondence with HMRC had survived which corroborated these accounts for the period 1972-9.

(ii) copies of annual accounts for the Trust over the period 1979-1991, which had been professionally prepared by accountants, which were obtained from Julian.

20. Not every single individual transaction was evidenced, but overall a detailed picture of the affairs of the Trust was constructed from, in the main, contemporaneous documents. Further, the professionally drawn accounts had been audited by those accountants notwithstanding there was no requirement to do so.

21. Just over a year elapsed before Withers wrote in October 2018 setting out almost 120 detailed queries on the Account, albeit that many of those queries related to company level transactions. For example, at [29] one whole section was entitled "C4 Sale of Plant and Equipment" and stated "In 1982, the plant and equipment of Fuller's Studios was transferred to Pims for consideration of £117,287. Leasing equipment of Tru-Tone was also transferred to Pims for consideration of £38,836." Withers also said that the Claimants had "…instructed property valuation experts and a forensic accountancy expert to assist them in analysing the Account."

22. Their Query C4.3 asked "Was the plant and equipment independently valued? If so, who by? What was the outcome of the valuation?" Next at C4.4 Withers asked "On what basis was the purchaser chosen?". Mr Clarke submits this clearly is out of the scope of the Account as ordered, and Mr Thompson said he had "…no specific recollection of the extent to which the trustees of the Trust considered the actions of the directors of Fuller's Studios in connection with the sale of this equipment."

23. However, Julian did provide substantial commentary. For example, as to C4.3 the response of Carter-Ruck was:

> "…Fuller's Studios decided to cease further printing activities and put its assets (fixture and fittings) up for sale, which…were valued by Henry Butcher Limited in the sum of £117,287 (being the then book value). Julian has confirmed no offers were received for the printing equipment, other than from Pims. Given that the sale to Pims was a related party transaction and recorded to be so in the accounts, these transactions would have been reviewed by the Inland Revenue. Julian Henchley has confirmed that the actual equipment acquired was a proofing press; a set and repeat press; a flip-top plate making machine; light boxes; and a dark room camera."

24. I have set out the above as an example of the level of detail requested and answered in respect of events just over 35 years earlier notwithstanding I accept that this query is a Company Level transaction and is therefore outwith the scope of the Updated Account and this application. It is of course the case that Mr Thompson should have ensured accounts of the Trust were available at the time as found by the Chief Master.

25. Mr Thompson did not consider the Claimants had complied with their disclosure obligations such that he was concerned about selective disclosure and disclosure without explanation of provenance. In June 2019 Mr Thompson issued a Part 8 Claim against Nancy seeking an Order that she should search for and provide copies of all files and documents held by her relating to the Trust. Withers were told of the issue of this by Carter-Ruck in July 2019. Then Claire said she had discovered a substantial number of documents at Nancy's home, Whaddon Lodge, which she was then sharing with Elizabeth. Withers provided these documents to Mr Thompson. Nancy then filed a witness statement stating that before that disclosure had been made, Claire had without her permission searched her home, taken certain documents and then returned them – all without her knowledge.

26. Claire has not made a witness statement explaining these matters. Mr Thompson felt, again, that the documents had been selectively provided, and that they were a subset of original records of the Trust, maintained by Ms Doris Watson, the Trust's bookkeeper. There are hundreds of pages of bank statements, cheque stubs and so on which relate to individual transactions, but do not include accounts and suchlike material. Mr Thompson then in November 2020 issued an application requiring each claimant to make an individual disclosure statement prior to him updating the Account to include the documents from Whaddon Lodge. However on 29th December 2020 Mr Thompson died.

27. Patricia took out a grant of probate which took some time. In February 2022 I approved two Consent Orders which:

    i) substituted Patricia (in her representative capacity as the executrix of Mr Thompson's estate) as First Defendant;

ii) provided for her to update the account by reference to the Whaddon Lodge Disclosure ("the Updated Account") and serve same by 29th April 2022;

iii) provided for the filing and service of any Points of Dispute to the Updated Account by the Claimants by way of a Scott Schedule by 29th July 2022;

iv) then for the filing and service of Points of Reply by Patricia by 28th October 2022 stating her response to each objection as to whether it was accepted, set out a substantive response if so and any alternative submission on quantum; and

v) compromised the application for disclosure statements pursuant to an indemnity provided by the Claimants which was executed on 25 February 2022, which provides that no Claimant would seek to have the account amended by reference to any documents subsequently disclosed by them.

28. Patricia in May 2022 filed and verified the Updated Account. It was then for the Claimants to set out by way of a Scott Schedule as was provided in the Order: "…in respect of each objection, particulars of: (i) the entry in the Account to which the objection relates; (ii) a summary of the nature of the objection; and (iii) the quantum of the objection if upheld by the Court." Those particulars are vital for Patricia to know the case she had to meet.

29. Towards the end of August 2022 the original Scott Schedule was served by the Claimants. It did not comply, Mr Clarke submits, with my Order in that it was unspecific and unparticularised, as especially shown by the heading which referred to six "Concerns" (certain of which have sub-concerns), in which the phrase "it is not accepted" appears regularly. For example, Item 3a states "It is not accepted that the Trust's shares in Fenngrade were properly or validly disposed of or that they have been properly accounted for".

30. Quantum should be provided in respect of each Item and cross referenced to the supporting evidence. All of that is absent with "TBD (plus interest)" appearing against the majority with the addition of the words "but estimated to be ~ £XXX" for five items, which total £7,663,000. No evidence in support is cross referred to which I consider to be a substantial defect in the submission of a proper Scott Schedule. I appreciate that for a small number that might not be possible due to a need for further accounting and so the column has to be marked TBD. However, there is nothing to evidence how the estimated figures were arrived at which is of concern especially in view of the substantial sums sought for just these items.

31. In summary, the Scott Schedule did not engage with the Updated Account as was a) ordered and, b), in the ordinary course of accounts and Scott Schedules, expected. The Updated Account contains 1,202 "Lines" or items which are listed by tax year or exact date. Columns follow across the page for Debits, Credits, Account Balance, Document Reference(s) and Narrative. A simple example is at Line "471 – 23 December 1977 – Debit £16,293 – Account Balance £23,058 – document reference

CBS 367 – Narrative – Payment of Taxation – Cheque 434407 payable to Inland Revenue".

32. The narrative varies according to the item in its detail and cross referencing, plus the assumptions that are sometimes necessary in this post event reconstruction. For example, Line 302 dated "12 August 1976 - Credit Receipt of £5,670 – Account Balance - £43,085 – Document reference(s) – 1441-2 – Narrative – Proceeds of Share Sales – Sale of ICI ordinary shares per stockbroker contract note. The Trust did not hold these shares at the date of [D1's] appointment as Trustee, so they must have been acquired at some later date (assumed in this Account to be 6 April 1976 at the same price as the ultimate proceeds – see [Line] 284 above)".

33. The Account Balance figure is checked against contemporaneous records. For example, "05 April 1981 – Account Balance £582 – document reference(s) 2286, 2289-92 – Narrative Bank Balance Carried forward at 5 April 1981 – Agrees to the accounts for the year to 5 April 1981 prepared by the auditors and year end bank statement (£582 in current account.)"

34. At [10] above I referred to Mr Copus carrying out his herculean task of the preparation of the Updated Account. What I have set out at [32-33] is the briefest possible snapshot of the Updated Account in that it is one of 1,202 Lines. I was told it took him over 1,000 hours of work which is hardly surprising.

35. In November 2022 Patricia served her Points of Reply within the Scott Schedule, which detailed non-compliance with my Order, denied that the Claimants had raised triable breach of trust claims and referred to the Exoneration Clause in the 1960 Deed and limitation. In addition, the so-called "Concerns" of the Claimants were responded to. Patricia asked for approval of the Updated Account. Almost three months passed with no reply so this application was issued in February 2023, and listed for hearing on 26th May 2023.

36. The position of the Claimants then changed substantially; they served Notices of Change putting themselves on the Court Record in place of Withers from 12th May 2023 onwards. On 11th May 2023 a direct access barrister instructed by the Claimants wrote and said that the Claimants did not accept the veracity of the Updated Account and would file evidence in response.

37. Master Brightwell at that hearing on 26th May 2023 ordered:

    i) Notice of the proceedings was to be given to the adult contingent beneficiaries of the Trust pursuant to CPR r.19.13 (formerly CPR r.19.8A) so to make any Order binding on them;

    ii) Katharine (Patricia's daughter) was appointed as representative of her minor daughter and the minor children of Alex and of the unborn contingent beneficiaries of the Trust; and

iii) The Eighth Claimant and the Ninth Claimant were to act as representatives for their respective minor children.

iv) The Claimants had permission to file and serve evidence but limited to the objections to the Updated Account set out in the original Scott Schedule, and Patricia had permission to file evidence in reply.

38. Claire on behalf of herself and her fellow Claimants served a witness statement on 8th August 2023 exhibiting a new version of the Scott Schedule ("the Further Scott Schedule" or "FSS") containing a new column populated by their responses to Patricia's Points of Reply. The column headed "Concerns" was renamed "Points of Dispute" but the narrative is the same. Permission had not been obtained to serve this revision – the Claimants had permission to file evidence consisting of objections to the Updated Account. Mr Clarke submits that document still does not comply with CPR PD 40A or the Order of February 2022 and it does not cure the defects in the original, in that it contains a mix of commentary and some wholly new objections, which should not be permitted, plus new allegations of fact which are outside the scope of the Updated Account and not permitted in any event.

39. The FSS is appended to this judgment as Annex 2. Mr Copus made a further witness statement in response to that of Claire dated 10th November 2023. Mr Copus explains how he considers some of the points made by Claire are difficult to follow, making as they do a series of allegations and comments, some relevant, some not, and some he finds difficult to understand. He replies to Claire's statement so far as he can, including the New Points as he defines them, whilst reserving Patricia's right to object to them as impermissible by reason of the Orders of this court.

The Law.

40. I first wish to emphasise, as the Claimants are not now represented, notwithstanding that I have considered hundreds of pages of evidence plus detailed written and oral submissions, I will not deal with every point in the evidence or submissions. I say that for these reasons; first, to address the Agreed Issues I do not need to set out all the evidence I have considered. Secondly, it would be disproportionate and expend time and costs unnecessarily to do so.

41. There was no issue between the parties on the law. I will therefore state the principles in short form with minimal citation. This Court has jurisdiction to examine a trustee's accounts and settle or approve them when the beneficiaries will not do so: *Chadwick v Heatley* (1845) 2 Coll 137.

42. The process is that the Court orders the taking of an account. The account is then taken by the Court reviewing the account and objections and reaching a decision on same. The account is then approved or otherwise; if the latter the successful party will ask the Court to enter judgment against the trustee and order s/he to pay what ever is due into the trust.

43. The procedure is as I have mentioned set out in CPR PD 40A. After setting out the general approach and the verification of the account the PD continues as to objections:

> "3.1. Any party who wishes to contend…"
>
> (c) that any item in the account is erroneous in respect of amount, or
>
> (d) that in any other respect the account is inaccurate,
>
> must, unless the court directs otherwise, give written notice to the accounting party of his objections.
>
> 3.2. The written notice referred to in paragraph 3.1 must, so far as the objecting party is able to do so…
>
> (c) specify the respects in which it is contended that the account is inaccurate, and
>
> (d) in each case, give the grounds on which the contention is made.
>
> 3.3. The contents of the written notice must, unless the notice contains a statement of truth, be verified by either an affidavit or a witness statement to which the notice is an exhibit"

44. The procedure is further governed by the Orders I have set out above. I also was referred to the judgment of Lord Justice McCombe in *Exsus Travel Limited and Ors v James Turner and Anr* [2014] EWCA Civ 1331 and especially the Principles of Law at [21-25] and the discharge of the legal burden on the accounting party varying from case to case at [42], [46-48] and [58]. By way of broadest summary, the Court may not need documentary evidence for every single item in an account but can approach the evidential burden according to the facts of each account.

45. The difference between an account in common form – as here ordered by the Chief Master – and one on the footing of wilful default is important; see *Lewin On Trusts* 20th Edition at [41-003] and further as to authorised and unauthorised transactions and the scope of an account in common form at [41-004-006] respectively. So here as the account is in common form it is for the Claimants to falsify the account to show the position before the breach of trust was committed, as opposed to breaches of trust consisting of omission in that the trustee is charged with what they received and surcharged with what they might have received – see also [41-048 to 050]. Importantly, here, the Updated Account cannot therefore be surcharged with sums the Claimants may consider Mr Thompson ought with reasonable diligence to have obtained in the course of his duties.

46. *Lewin* at [41-003] cited the judgment of Mr Justice Lewison (as he then was) in *Ultraframe v Fielding* [2005] EWHC 1638 (Ch) at [1513]:

> "The taking of an account is the means by which a beneficiary requires a trustee to justify his stewardship of trust property. The trustee must show what he has done with that property. If the beneficiary is dissatisfied with the way that a trustee has dealt with trust assets, he may surcharge or falsify the account. He surcharges the account when he alleges that the trustee has not obtained for the benefit of the trust all that he might have done, if he had exercised due care and diligence. If the allegation is proved, then the account is taken as if the trustee had received, for the benefit of the trust, what he would have received if he had exercised due care and diligence. The beneficiary falsifies the account when he alleges that the trustee has applied trust property in a way that he should not have done (e.g. by making an unauthorised investment). If the allegation is proved, then the account will be taken as if the expenditure had not been made; and as if the unauthorised investment had not formed part of the assets of the trust. Of course, if the unauthorised investment has appreciated in value, the beneficiary may choose not to falsify the account: in which case the asset will remain a trust asset and the expenditure on it will be allowed in taking the account"

The Agreed Issues

47. At the outset of the hearing I asked Mr Clarke if a list of issues could be provided in draft for agreement with the Claimants. This was done and the Agreed List of Issues is:

> "1. What are the objections to the Updated Account which the Claimants are permitted to make (the 'permitted objections') having regard to:
>
> a. the Court's order dated 7 March 2017; and/or
>
> b. the Court's order dated 21 February 2022; and/or
>
> c. the Court's order dated 26 May 2023; and/or
>
> d. CPR PD 40A?
>
> 2. In particular, and in respect of each of the Claimants' objections:
>
> a. does the objection properly comply with the requirements of the Court's orders and/or CPR PD 40A?

b. does it comprise a new objection which is prohibited by the 26 May 2023 order?

c. is it a company-level objection, for which permission has not been given?

d. does it comprise a request to surcharge the Updated Account, for which permission has not been given?

3. With regard to each of the Claimants' permitted objections (if any):

a. is the objection proved on the facts?

b. if so:

(i) to which line(s) of the Updated Account does the objection relate?

(ii) on the evidence, what is the quantum of the objection?

(iii) what value(s) should be substituted in relation to the stated value within the Updated Account?

4. To the extent that any values in the Updated Account are changed as a result of a permitted objection being sustained, does that result on the face of the Updated Account in there being any deficit in the Trust?

5. If so, does D1 have a defence to any personal liability to which the Estate might otherwise be subject to reconstitute the Trust fund or otherwise pay compensation in respect of any such deficit:

a. by virtue of the exoneration clause in the Trust Deed?

b. under the Limitation Act 1980/doctrine of laches?

c. under section 61 of the Trustee Act 1925?

6. Subject to 5 above, should any monetary judgment be entered against the Estate?

7. Subject to the said determination of the Claimants' permitted objections, should the Updated Account be approved?

8. Irrespective of whether the Court approves the account, should it dismiss the balance of the Claimants' claim and/or make any further orders?"

The Submissions

48. The Claimants made an opening statement on the second day of trial and in it emphasised their case was that Mr Thompson's aim, as can be seen in the Updated Account, was to liquidate the Trust and achieve that by erosion of asset values. They also complain about the NE Henchley Trust, which is not the subject of this account and so whilst I have heard and read those submissions I will not deal with them in this judgment.

49. In their skeleton argument they submit that all they "…have ever done as beneficiaries…is to seek to understand what happened during the [Relevant Period]. Despite the 1991 Deed of Renunciation it is now very clearly evidenced that the First, Second and Third Claimants were never once informed as to the real intention being to wind up the…Trust irrespective of the content of that Deed. We were once again left totally in the dark." The Claimants in their submissions quote extensively from the Judgment of the Chief Master. Their key submission as appears at [21 & 22] of their skeleton argument is that the "…Trust was intended to last for generations…[but]…the trust fund has been reduced to zero."

50. The Claimants expand at some length their allegations as to the NE Henchley Trust, including in particular over the issue to it by HMRC of a Unique Tax Payer Reference number ("UTR"). A UTR was also issued to the Trust and much was made of a telephone conversation Claire had with HMRC on 9th January 2024. I explained during the hearing how I could not, absent an appropriate application, take that evidence into account, which was accepted by the Claimants.

51. In the penultimate paragraph of their skeleton argument the Claimants say:

> "The Court is with the greatest of respect urged not to approve and settle the Updated Account as a true and accurate account of Mr Thompson's trusteeship of the Trust please and not to dismiss the balance of the Claim until such time as the serious concerns outlined at paragraphs 24.1. to 24.19. have been fully investigated and addressed in respect of both the Children's Trust and now the Henchley Trust, the First Claimant appointed a trustee in 2012 despite HMRC having been informed in August 1998 that the Trust had ceased to exist".

52. The concerns at [24.1-19] include, at [24.1-8], allegations as to the NE Henchley Trust which, as the Claimants conceded, is not for me to determine. Further, and of note in the way the Claimants have approached this hearing, is that they ask for their allegations to be ordered to be "…fully investigated and addressed…". But this is the only night of the show – their responses to the Updated Account must be determined now in accordance with the framework set out in the CPR and the various Orders, the starting block – and hence it's importance in such litigation - being the Scott Schedule and now the FSS.

53. In the FSS the Claimants structure their objections as follows:

(1) Loans to Companies owned by the Children's Trust

(2) Loans to Mr Thompson's companies

(3) Liquidation of companies owned by the Children's Trust namely (a) Fenngrade (b) Fuller's P&M (c) Tru-Tone and (d) HB Malling

(4) Loans to companies associated with Julian Henchley

(5) Trust Properties

(6) Distributions to Beneficiaries

54. As I will turn to below I asked the parties to provide a closing summary statement of their position on the Issues. Unfortunately the Claimants changed the structure of their objections to:

A Loans to D1's Companies – Hillsdown Holdings

B Distributions to Beneficiaries – 1978 CTT and 1976 CTT

C Loans to Julian Henchley's Companies/Accumulated Income

D Trust Properties

E Liquidation of Companies owned by the Trust – Fenngrade, Fullers, Tru-Tone and HB Mailing

F Company Level

55. This has somewhat complicated the objections and made correlation more difficult than it need have been. Further, there is a new point – Hillsdown Holdings at [54A] above which is set out by the Claimants in detail. There is also an impermissible objection at [54F] as no permission was given by the Chief Master back in 2017 for company level objections. No application has ever been made to make such objections so I need have no regard to them.

56. Mr Clarke's starting point in his submissions is that the FSS breaches the CPR and the Orders and in any event no objection has the evidential basis necessary to lead to a falsification of any entry in the Updated Account which would result in a judgment against D1, especially in view of the limitation issues which beset the objections and finally the protection of the Exoneration Clause in the Trust Deed.

57. In his skeleton argument at [101] Mr Clarke summarises his case:

a. "The Points of Dispute in the [FSS] are defective, being in breach of CPR PD40A and of the February 2022 Order. They do not permit any meaningful taking of the Updated Account.

b. Points 2, 3b., 3c., and 3d. are wholly outside the scope of the Updated Account.

c. Points 1, 2, 3, and 4 are largely illegitimate attempts to surcharge the Updated Account.

d. None of the Points of Dispute makes any allegation that is even capable of overcoming the Exoneration Clause, and any liability pursuant to Point 6 is barred by limitation or laches."

Submissions on the Agreed Issues.

58. As I have mentioned on the last day of the hearing I asked the parties to file and serve a Note of their positions on the Issues. I emphasised – for the Claimants' benefit – that I did not want a detailed note of their submissions but a summary for each listed Issue. I explained this could be in bullet point form – it did not have to be grammatically correct and short form was perfectly acceptable. I hoped this would concentrate minds to focus in a forensic manner upon the matters I am to determine. I asked for those written submissions to be filed to CE-file within 48 hours.

59. Those for Patricia were so filed, including as an annex a schedule of further new points which counsel said appeared for the first time in the Claimants' skeleton argument and/or orally at the hearing. The answers which appear in that schedule are without prejudice to their submission that the Claimants do not have permission to make yet further new points.

60. The Claimants however submitted a note of their Day 2 oral submissions and their opening statement. I pointed this out to them, saying there was some misunderstanding but giving them a further 48 hours in which to file submissions which complied with my request. Within that extended time, on 24th January, a note on the Issues was filed. This for some unexplained reason unfortunately varied the order of the original "Concerns" and added in yet more new points. One, concerning a loan to Hillsdown Holdings of £120,000, (see [54A]) whilst referred to for I believe the first time in oral submissions, has been expanded by a couple of further new points.

61. On 6th February 2024 counsel filed a Note in answer to these new matters in the post-hearing documents filed by the Claimants. Whilst there is no direction for the filing of this Note, in these circumstances it is only fair and just for a reply to be filed on a without prejudice basis as I have mentioned, and so I have taken it into consideration. The Claimants do not appear to appreciate the convention that the applicant has the last word as on 19th February 2024 they filed a response but limited to Samuel Lewis Housing Trust ("SLHT"). I have taken it into account so far as I consider it necessary or possible.

62. Then on 4th March C7, Nicholas Mash, politely enquired whether the Claimants could a) respond to D1's note of 6th February and b) file key evidence which had been omitted from the hearing bundle by D1. I refused this request, pointing out this was not a never-ending process and that D1 was to have the last word.

Compliance with Rules and Orders and litigation procedures generally.

63. The Claimants were legally represented up to and at the hearing before Master Brightwell in May 2023. In their opening they said they had done their utmost to secure legal representation but it was a simply impossible task as their resources had been exhausted, referring to the David vs Goliath battle they found themselves in through no fault of their own.

64. Substantial emphasis has been placed by Mr Clarke upon the failure of the Claimants to comply with what they have been ordered by this court or required by the rules to do. Unfortunately that appears to have been ignored by the Claimants, until provision of their Note on the Issues on 24th January. Even then, this document rather than respond to each Issue relists the original concerns in a different order and then applies the Issues to each concern.

65. Their responses to the oft made point that they were in default was, in respect of Hillsdown Holdings, to identify the Orders and CPR PD 40A and set out details they considered sufficient to so comply. Later in their note they responded to Issue 2a namely "Does the objection properly comply with the requirements of the Court's Orders and/or CPR PD 40A" by a simple assertion. For example, in their "Submission B – Distributions to Beneficiaries" Issue 2 is answered "Yes, the below points of submission comply". That is repeated for their Submissions C, D and E for Issue 2. But there is no explanation beyond that mere assertion. Further, and in any event, this is a new point.

66. I turn now to the need for compliance with the CPR and Orders, so that the Claimants are aware of the reasons for compliance. I hope the Claimants do not think I am patronising them but in view of the points made against them as to their objections to the Account and Updated Account I will explain the background and why in respect of certain matters which go to my consideration of the Updated Account. First, about 25 years ago, there was a major change in the rules used in this court, when the Rules of the Supreme Court were replaced by the Civil Procedure Rules ("CPR").

67. Both are, as they are titled, rules. They are not guidance, for parties to pick and choose what they wish to comply with or not. Some demand compliance in that they are a "must", and others may permit discretion to be exercised by the court – a "may". The CPR marked a wholesale change of emphasis in that no longer would the parties control the pace of litigation (which often meant it was very slow); the court would actively case manage. Compliance with Rules and orders was not enforced as it could have been. All that changed. The CPR started at CPR1.1 with the Overriding Objective, being the new procedural code to enable the court "… to deal with cases justly and at proportionate cost."

68. Part of the latter included "…compliance with rules, practice directions and orders". The parties were expected to assist the court in achieving the Overriding Objective. The CPR applies to all litigants whether legally represented or not and the court will enforce these rules for all parties. Finality is stated to be inherent. The court as part of actively managing cases can specify sanctions for non-compliance with rules and

orders. Those sanctions will be effective unless the party in default obtains relief by an application to the court.

69. Compliance is necessary with this rules-based system as it cannot function properly or fairly or at proportionate cost unless the rules or orders are complied with. Otherwise it is like wrestling with jelly. Parties have to know the case against them so they can answer it. If not, the process cannot be fair and just. Put another way, non-compliance can diminish the force of an objection as it may not be properly understood or dealt with or excluded.

70. Therefore a rolling series of allegations is impermissible, as unfair and impossible or very difficult to adjudicate fairly. Finality is essential as claims cannot be open-ended. As has recently been confirmed in the Court of Appeal the trial – or application hearing as here – is "…not a dress rehearsal" but "…the first and last night of the show…".

71. Scott Schedules should be concise and focused so that complex factual matters can be set out by the parties to facilitate judicial decision item by item, but the parties must follow the prescribed approach. Otherwise, their usefulness is limited. Before I turn to the Issues, during the hearing I asked Mr Clarke to take me through the structure of the Updated Account and then some examples, agreed with the Claimants if possible, to show how the documentary trail follows through from the Updated Account to the source documents. This he did, which I found it very helpful, with which the Claimants agreed.

THE ISSUES

1.What are the objections to the Updated Account which the Claimants are permitted to make having regard to a) the Order of 7 March 2017 b) the Order of 21 February 2022 and/or c) the Order of 26 May 2023 and/or CPR PD40A?

72. My Order of 21 February 2022 required the Claimants to file and serve by Scott Schedule particulars of a) the entry in the Updated Account that was objected to b) a summary of the objection and c) quantum of each objection. The Original Scott Schedule did not condescend to the detailed particulars by reference to the Lines in the Updated Account save for a passing reference under concern 3a to Fenngrade and the last entry in respect of that company at Line 1,068.

73. I will consider 3a now as it stands alone in compliance at least in part with my Order of 21 February. Whilst quantum is pleaded at more than £5M plus interest, there is no basis to nor evidence for that quantification. Further, 3a is a good example of the difficulties in dealing with the Claimants' objections where on the face of it it refers to the Updated Account but is opposed by D1 for other reasons.

74. Line 1,068 states the tax year concerned is 1982/3, records a debit payment of £46,844 with the Account Balance then being £132,368 and references document number 2685.

75. The Narrative reads "**Loans to Fenngrade and Subsidiaries.** Given that all previous loans were also ultimately provided against (see Entry 1,044) the additional provision of £46,844 shown in the accounts for the year to 5 April 1983 prepared by the Auditors (Document 2685) must be equal to the additional loan. This is evidently before the final loan to Fenngrade Ltd (book cost £671) went into voluntary liquidation which process yielded a nil return for the Trust" (emphasis as in original).

76. The "Concern" at 3a is "The Updated Account fails to account for the Trust's shares in Fenngrade. Reference is made to Fenngrade in the accounts up to 1982/3 (the last entry relating to Fenngrade is at 1,068), but not thereafter. It is not accepted that the Trust's shares in Fenngrade were properly or validly disposed of or that they have been properly accounted for."

77. This was replied to by D and then, without permission, the Claimants served further submissions in the form of the additional column in the FSS. I uphold the entry at line 1,068 of the Updated Account and thereby dismiss other criticisms concerning Fenngrade and/or the Fenngrade Companies (being Fenngrade, Fullers and Tru-Tone as defined by Mr Copus) for these reasons:

(1) Whilst 3a does refer to Line 1,068 it does not address the substance of the entry. Further, the Claimants' key allegation, that the Updated Account fails to account for the Trust's shares in the Fenngrade Companies, is demonstrably unfounded as those companies went into liquidation, as is set out in the Narrative at [76] above.

(2) The Claimants then say those companies were wrongly placed in liquidation. In other words, they failed due to neglect on the part of the Trustees, and that they should have been kept trading to, I presume, realise income and increase the asset ie share value. But the Claimants are thereby endeavouring to surcharge the trustees, which is impermissible as this is an account in common form, not wilful default.

(3) The substantial quantum is wholly unevidenced or unsupported by any other materials. I can only assume it is a guess. As I have explained above this is not a dress rehearsal. The objection is meaningless without proper, evidenced quantification.

(4) If I am wrong as to (2) and (3) above, the objection is unsustainable as I accept the evidence before me that Fenngrade entered a creditors' voluntary liquidation in 1983. Therefore there was no realisation of the Trust's shares held in it/them and accordingly no cash entry can appear in the Updated Account. I also accept that on dissolution there were no distributions to shareholders and so the shares were of no value.

78. I therefore dismiss the objection at 3a for each of the above 4 reasons independently of each other; they are not cumulative. I now revert to my determination of Issue 1.

79. Mr Clarke submits the Claimants have made no permitted objections in that all (possibly with the exception of 3a which I have determined above) fall outwith the Orders and PD 40A, some are new which are also impermissible, and yet more new points have been made by the Claimants in their skeleton argument for the hearing,

their oral submissions and their Note on the Issues. He submits that accordingly the points are inherently difficult to address, but that they too should be rejected as they suffer form the same fundamental defects as the earlier objections.

80. In conclusion:

(1) The Order of 7th March 2017 only ordered D to provide an account of the Trust. Chief Master Marsh specifically declined to make an order in respect of the NE Henchley Trust. Therefore objections, comments or queries as to the latter trust are impermissible and I need not and will not consider them.

(2) My Order of 21st February 2022 required the Points of Dispute in a specific format, common in taking an account. No application has ever been made to vary that – and the Order was by consent.

(3) Master Brightwell's Order of 26th May 2023 provides at [5] that "…the Claimants may (if so advised) file and serve evidence, to be limited to evidence in relation to the objections to the Update Account raised in the…Scott Schedule…". The provision by the Claimants of the FSS in so far as it raises new points is outwith the scope of that Order and does not fall for determination by me.

(4) The requirements of CPR PD 40A at 3.2 (c) and (d) require specificity as to the respects in which the account is said to be inaccurate and the grounds in each case.

2. In particular, and in respect of each of the Claimants' objections: (a) does the objection properly comply with the requirements of the Court's Orders and/or PD 40A?

81. The objections or "Concerns" I list at [54] above in the original Scott Schedule which follow in to the FSS do not, as they are required to, cross refer to the Lines in the Updated Account, save arguably 3a which I have dismissed above. Further, quantum has not been set out as required. They are in clear breach of my Order of 21st February 2022 and PD 40A.

82. The Claimants, then represented by Withers, were notified of this both within the Points of Reply dated 24th November 2022 and in Carter-Ruck's letter of 25th November 2022, which added that "Notwithstanding these clear deficiencies on the part of your clients, our client has sought to respond to your clients' concerns to the best of her ability. We enclose our client's responses to the Scott Schedule, which include references to line entries from the Updated Account and underlying documents."

83. Withers acknowledged receipt on 1st December 2022 and then on 7th December said they would respond substantively "as soon as possible". Carter-Ruck reminded them of the need to so respond by letter of 23rd February 2023, maintaining the Scott Schedule was "wholly defective". They sent another reminder on 26th April 2023. At about that time the Claimants dispensed with the services of Withers and correspondence ensued with Ms Hermione Williams instructed as direct access

counsel. In her letter of 11th May 2023 she repeated that the Claimants did not accept the Updated Account and wished to "…file evidence in response…and your client may want a right of reply." She did not mention the deficiencies. The responsive evidence was provided for in Master Brightwell's Order of 26rd May 2023.

84. I have set the history out to show the Claimants have had repeated notice of the failure to comply both in the Scott Schedule and in correspondence over a period of almost 6 months but not once were Carter-Ruck's proper objections responded to, during which period the Claimants were legally represented.

85. In summary, for the reasons I have given in [80], none of the objections in the Scott Schedule comply with my Order or CPR PD 40A. But the matter does not end there as the FSS was served on or about 7th August 2023. The deficiencies were not addressed in that document. Carter-Ruck objected in their letter of 12th September 2023 that the Claimants' evidence was not restricted as required by Master Brightwell. That was met with a bare rebuttal by the Claimants in their response a week later.

86. I have set out all the above to show how the Claimants have been on notice for some 15 months of why their objections do not comply and given every opportunity to remedy and/or justify their position or make an appropriate application to this court. Indeed, as I have explained at [65] in all but one instances their final word is "Yes the below points of submission comply." As ever, no points of substance have been made. I do not think any can.

87. The objections in the original Scott Schedule are 10 in all and are numbered 1, 2, 3, 3a, 3b, 3c, 3d, 4, 5 and 6. I determined and rejected 3a in [73-78] above. As to the 9 that remain, in the above circumstances and for the reasons stated my finding on Issue 2a is that none of the objections raised by the Claimants comply with the Orders and CPR PD40A. They are therefore dismissed in their entirety. Consequently, as the original objections are dismissed the subsequent ones should fall away. However, if I am wrong about that, I determine them below. An aspect of that lack of compliance was accepted by the Claimants' counsel as I set out at [89-90] below.

2b. Does it comprise a new objection which is prohibited by the 26th May 2023 Order?

88. I have mentioned Master Brightwell's Order of 26th May 2023 at [38] above and by [5] the Claimants had permission "…to file and serve evidence, to be limited to evidence in relation to the objections to the Updated Account raised in the Claimants' Scott Schedule dated 25 July 2022" ie the original Scott Schedule. Mr Clarke complains the Claimants have breached that permission. No substantive response has been made by the Claimants to that point despite this being a live issue for some considerable time.

89. I think it necessary in view of the importance of this Issue to consider context by reference to the transcript of that hearing how the restriction in [5] was ordered. I note that Ms Williams, counsel for the Claimants at that hearing (the last time they were

legally represented) did refer to her clients asking for details of what transpired at a company level and the lack of response was hampering the Claimants. Ms Williams then submitted that the Claimants were not aware that a two stage Scott Schedule process was to be the last word on the matter, which was a complete surprise to them. Master Brightwell observed that the Claimants had not served witness statements in accordance with CPR PD 40A which she accepted.

90. Master Brightwell said that he was under the impression that the Claimants "…were seeking to extend the scope of the issues which have crystallised in the Scott Schedules." Ms Williams accepted she was arguably, as Master Brightwell put it "…seeking permission to put in new witness statements that possibly ought to have been put in last July". Ms Williams then submitted she was content for objections to be limited in headline points at least to those in the original Scott Schedule. In his ruling Master Brightwell said any such evidence would be limited to evidence in support of objections which had already been made, but if the evidence went beyond that for which he was granting permission, D1 would simply be entitled to ignore it.

91. Unfortunately the Claimants did not heed that indication. In the FSS at Annexe 2 the Claimants' Response/Evidence to the Defendant's Points of Reply is headed "Responses". There are 73 in all. The first 9 are narrative responses so I need not determine them. Mr Clarke submits that 11-15, 17, 23, 31-34, 36, 45, 50, 56-61, 70 and 72-73 are "New Points" and in the absence of any application to vary [5] of the Order or seek the Court's permission to raise them should be dismissed.

92. I will now determine those not included in the above list, but a finding in the Claimants' favour does not necessarily mean that they will succeed overall as I then will need to determine if those points (and for that matter any or all of the balance namely the New Points) should be rejected as a company level transaction (Issue 2c), a surcharge (Issue 2d) or not proven on the facts or not establishing a deficit (Issues 3 and 4), subject to the over-arching defences of limitation or the exoneration clause.

93. In Response 10 the key point the Claimants make is that "…the Trust accountants verified that the Trust has disposed of its shares in Fenngrade and its subsidiaries in December 1981." Mr Copus in his second witness statement ("Copus 2") says he believes this to be a reference to a letter from the then accountants of 24th April 1986, but no reference was provided by the Claimants. However, that letter states that the reason why losses "…were claimed in 1981/2 was because the companies all ceased trading and the loss was found to have been made in December 1981." (my emphasis).

94. That, Mr Copus says, shows the Claimants misunderstood the position as a tax loss can be claimed on assets prior to disposal if they become of negligible value, the accountants making a claim for negligible value, not disposal. He relies upon an Inland Revenue letter to those accountants dated 2nd May 1985 which specifically refers in this respect to a "negligible value" claim. I accept what he says and therefore dismiss this part of Response 10.

95. I now turn to the second part of Response 10 namely that Line 1044 contains an error for the Tax year 1981/2 in that £168,892 was written off. That Mr Copus says is again a misunderstanding as the Claimants have failed to understand that the Updated Account is in common form which will show cash movements only, not loan provisions. This is fully set out in the Narrative for Line 1,044. Again I accept the evidence of Mr Copus and reject this allegation.

96. Response 16 relates to the original Point of Dispute that it was "…not accepted that the Loans were in fact loans, rather than gratuitous/disguised distributions". The Reply was that this allegation lacked particulars. Now the Claimants in their Response say they are referring to Julian's company, PIMS and the loans were written off in December 1981 when PIMS was incorporated.

97. Mr Copus says this is simply false; the documents show almost all his cash subscription was made on 22nd December 1982, one year later than the claimants alleged, and one week after he received his entitlement namely a total capital sum of £131,239. This I find appears in Lines 1071 and 1072. Mr Copus says the obvious inference is that he invested that capital to fund PIMS. That in my judgment is a reasonable conclusion on the balance of probabilities which I accept. I therefore reject this Response.

98. Responses 18, 19 and 20 are company level objections which I determine below. Next, 21 is narrative and is not an objection so not for my determination. Then 22 relates back to Response 10 which I have determined. I also accept the point in [36] of Copus 2 that the claimants have selectively quoted from the documents mentioned to support their claim. I say that deliberately; I do not think it is a misunderstanding.

99. As the narrative is clear in 24 this is an impermissible attempt to surcharge the Updated Account by comparing Trust investments to successful property companies the objection seemingly being that the Trustees should have so managed that investment so as to ensure a better return. I therefore dismiss it.

100. I am unsure as to what the Claimants' allegation is in 25. Mr Copus states that if, as the Claimants say, Fenngrade were still the holding company for Fullers and Tru-Tone at the time of their liquidation, then in his view the shares would not be referred to by the liquidators as they would have had no value. I dismiss this Response.

101. Then at 26, 27 and 28 the Claimants refer again to 10 which I have rejected. 28 raises a question as to a lack of a "genuine explanation" from Mr Thompson as to the fate of these shares but the point has been properly explained by Mr Copus so I dismiss it.

102. Next 29 and 30 are narrative but I cannot see what allegation, if any, is being made in respect of the Updated Account. 30 seems to allege that the Fenngrade companies made a nil return for the Trust whereas Renoir made a good profit on investment. But Mr Copus points out that Renoir like them went into liquidation in the severe recession of the early 1980s. I dismiss these objections as not understood. They also appear to be attempts to surcharge the account.

103. Then 35 is pure narrative making an unevidenced allegation that the premises concerned at Turnmill Street could not accommodate 2 sets of plant and machinery for Fullers and H Mailing. I dismiss this as of no relevance.

104. At 37 is the oft referred to allegation by the Claimants regarding concealment of purchase of racehorse(s). I dismiss this as frankly irrelevant as a) the fixed assets remained the same over the period in question (see D1's reply at 21.1) and the matter of from whom this was concealed and its effect or detriment is never addressed by the Claimants. Finally, the request for further information seems of no relevance and in any event is just not possible as the only person who seemingly would have been aware, namely Mr Thompson, is dead, this allegation being raised after he died.

105. Then at 38 the Claimants allege that the Trust funded acquisitions of properties as opposed to Tru-Tone. This is not an objection to the Updated Account. In any event, the Deed referred to states Tru-Tone did fund the purchase. The objections which follow at 39 and 40 likewise do not appear to be relevant to the Updated Account and are company level transactions. For all those reasons I dismiss these three.

106. The objections at 41 and 42 about HB Mailing are in my judgment company level objections. Mr Copus says in any event the accounts show Julian as part owner of the shares in that company. The reference to the company being based at Faber Court in October 1980 in 43 does not amount to an objection so I dismiss 41-43.

107. Likewise 44 is a company level objection, but in any event I accept what Mr Copus says in that whilst gross book assets were £159,735, the net assets were negative so no realisation was possible. Then 46 is a correcting point by the Claimants of narrative in that D1's Response wrongly quoted the Claimants' original Point of Dispute at 4 but is not for determination. At is 47 a long narrative based upon Elizabeth's understanding that a loan to her and her then husband was by Julian and not his company PIMS. It may have been that Julian borrowed from PIMS to lend to Elizabeth but there is insufficient evidence before me and in any event I do not see the relevance of this point.

108. Then in 48 the Claimants query how could a loan of £11,000 to PIMS appear in the accounts of the Trust to April 1981 when PIMS was only incorporated in December 1981. Mr Copus observes that after over 40 years it is impossible to so determine but repeats the Updated Account is based on annual accounts prepared at the time by independent professional accountants. I do not think the point can be taken further and so dismiss it.

109. Next at 49 is an implication that by holding a share in PIMS Mr Thompson was somehow in breach of trust due to loans to that company from 1985 to 1991. Like 48 that is a surcharge attempt so I reject it, although I do accept the explanation set out at [63.iv] of Copus 2 namely that Mr Thompson held one share for company law requirements which obtained then.

110. In 51 and 52 the Claimants complain of a lack of production of loan agreements of monies lent to the Trust. Mr Copus is unaware of whether any of the agreements have

survived but says the loans are properly evidenced by the contemporaneous documentation referenced in the Lines. I accept that on the balance of probabilities and so dismiss 51 and 52, which also are impermissible attempts to surcharge.

111. As appears 53-55 concern the 1991 Deed. I struggle to discern the point the Claimants are making here so dismiss them. Then at 62 – 65 are a series of points which centre upon the calculation of CTT and it being paid on school fees from the 1960s, but that Julian and Vivien were not included. The Claimants suggest that there was some error, miscalculation or mis payment in that CTT was linked to school fees, holidays and sundries. Mr Copus says the 1976 CTT calculation contains a useful summary of income distributions post 1961 with which I agree. I also agree with the somewhat obvious point Mr Copus makes – but it has to be made – that the calculation does not refer to CTT being chargeable on income as CTT was a tax upon capital.

112. I again have to say I cannot see the relevance to the Updated Account of 66-69. The Claimants' Point of Dispute at 6 is entitled "Distributions to Beneficiaries" and alleges that £157,000 of accumulated income in 1981/2 was unaccounted for when the beneficiaries received no such or suchlike sums. These points do not bear upon that matter but as appears make various comments upon tax matters. I therefore reject these objections.

113. In summary the objections that are not categorised by Mr Clarke as New Points that I have rejected above, notwithstanding their non-compliance with Issue 2a, are 10, 16, 18-22, 24-30, 35, 37-44, 46-49, 51-55 and 62-70. They total 41.

114. I now turn to the New Points namely 11-15, 17, 23, 31-34, 36, 45, 50, 56-61, 70 and 72-73, a total of 23. I am satisfied that they are New Points and consequently the Claimants have no permission to make them. I will however notwithstanding that take certain ones as examples which do not fall in to the other categories namely company level or surcharge points in Issues 2c and 2d.

115. One of these is 36 where the Claimants raise concerns over the value of P&M of Fullers valued at £117,287 in PIMS 1982 accounts and Fullers' own net book value of £70,004 which the claimants say means a profit of £47,283 for Fenngrade. It is clearly a New Point. Mr Copus states it is in any event wrong as a) it is for different years and b) was irrelevant as there was an excess of liabilities over assets. I accept what he says. That determines this point.

116. In 58 the Claimants say, as they orally submitted at the hearing, that Mr Thompson's long-term aim was to erode the Trust's assets so as to be able to wind it down when it was supposed to benefit future generations of children. But the letter referred to, from Mr Thompson to Vivien, dated 17th January 1991, is far from evidencing any such an intent. I presume the Claimants are relying upon the reference he makes to trying without success over 10 years to liquidate the Fund but that he could not tie down the Inland Revenue. But I do not think this sentence is evidence as the Claimants say as a) he states he failed and b) it defies logic that he would, if he wished to operate against the beneficiaries' interests, write and tell them so. The point is therefore rejected as having no basis in fact.

Issue 2c: is the objection a company level objection for which permission has not been given?

117. I have set out at [18] how the Chief Master on 7th March 2017 refused to permit company level objections namely where the Trust held shares in certain companies; so objections could not be made as to underlying transactions in those companies. This has been known to the Claimants for some 7 years. For the vast majority of that time they were legally represented. But the Claimants have, without making any application to vary the Order of the Chief Master, persisted with making company level objections.

118. In the original Scott Schedule the Claimants in their Point of Dispute 2 "Loans to Mr Thompson's Companies" raised concerns as to Fullers and Tru-Tone, then in 3 "Liquidation of Companies Owned by the Children's Trust and also at 3b, 3c and 3d. In each case Mr Thompson responded by referring to Reply 11, which as can be seen from Annexe 2 states such objections or concerns are "…outside the remit of the Updated Account and have no place as points of "concern" within the Scott Schedule or at all."

119. Notwithstanding the clear non-admissibility of these company level points they were all answered on a without prejudice basis by Mr Thompson – for example see 3b, Fuller's P&M, answered at 21 and responded to again at 35, 36 and 37. A substantial amount of time was clearly taken in responding to these company level points. The Claimants' response to Reply 11 was a series of points numbered 5-9 in their Responses, almost all of which quoted from the transcript of the hearing in I assume an attempt to justify the making of those points.

120. What is notable in my judgment is that:

(1) At no time anywhere in the FSS or its predecessor did the Claimants attempt to dispute the objection that these points should not be made as they have no permission for them.

(2) In their written closing submissions on the Issues apart from listing Issue 2c within the Issues they then wholly ignore it, listing only 2a, ignoring 2b, 2c and 2d and going next to 3, shutting their eyes as if those Issues did not exist.

(3) But then at the end they introduce a new point "Submission F – Company Level". This refers back to 3a and 31/34 of the FSS. But it does not try to justify the references to that which they were aware was excluded.

(4) That the Claimants knew company level points were excluded appears in their written closing submission on Issue 8 where at (2) they "…request the Court please to make a further order that an account at company level be provided."

(5) This is repeated in the Conclusion at (4) where the same request is made but specifically in respect of the Trust.

121. In my judgment in the FSS the Responses numbered 18-20, 23, 31-34, 37, 39-42, 44 and 45 are company level points which I need not determine. I have as appears above in any event rejected 8 of the Responses numbered 18-20, 39-42 and 44.

Issue 2d: does it comprise a request to surcharge the Updated Account for which permission has not been given?

122. Above I have explained that the Updated Account is by Order of the Chief Master to be taken in common form. The Claimants cannot surcharge it by making allegations of neglect or omission by the trustees, such as failing to sell a property at best value. The difference is that by the latter an account on the basis of wilful default will permit the Claimants to require the trustees to make good to the Trust damages from such a negligent sale.

123. I consider in the Points of Dispute at the end of Point 1 in part, that relating to the allegation of "…gratuitous/disguised distributions…" is impermissible as an attempt to surcharge. I have rejected that Point amongst others as non-compliant in any event.

124. Next, 4. This includes the allegation is that the trustees made "…substantial-free loans to beneficiaries" (sic) (I assume interest free is meant.) Accordingly that part of 4 appears impermissible but in any event I have disposed of 4 in its entirety in my determination of FSS points 46-49 above.

125. The Responses in the FSS are far more numerous. I find these are impermissible: 14 – the trustees "…should have sought guaranteed security of that level of indebtedness" and 15 – "…it would have been prudent to take a floating charge over the assets…". Both 14 and 15 were also rejected as New Points as above.

126. Then 18 is impermissible as it queries why Tru-Tone ceased trading after monies were transferred to it. Likewise 19 in its reference to loans advanced by the Trust which were written off and 20 are impermissible, 20 being an allegation of a conflict of interest against Mr Thompson. All were rejected as company level points and in any event disposed above.

127. I also find the allegation in 23 as to Euroscan to be that it owed a Trust owned company monies but was permitted to continue to operate out of formerly Trust owned property. That is impermissible as an attempt to surcharge. I have in any event rejected it as a New Point and a company level transaction.

128. I find 24 impermissible with the implication that Tru-Tone was allowed by the trustees to be unprofitable when Mr Thompson's personal other property investment companies were successful. Then 30 is an implication that as shares in Renoir became valuable those of the Trust in the Fenngrade companies should have been likewise. That is impermissible and has been rejected above.

129. I have rejected 48, 49, 51 and 52 above and found them impermissible attempts to surcharge. 50 is a surcharge point as well as a New Point, so is rejected on both

Issues. The same applies to 56 as it refers to a) Mr Thompson choosing to sell shares at substantial losses and b) lack of benefit to the Trust from a rights issue.

130. Then 57 is an allegation that the trustees should have protected £105,000 of capital, which they failed to do, which is impermissible as well as a New Point. 58 likewise is impermissible as it refers to liquidation of the Trust by Mr Thompson, as well as a New Point. 61 alleges Julian's company PIMS benefitted from planning permission granted to the Trust for re-development of 140-144 Freston Rd. That likewise is impermissible and again is a New Point. Finally 70 alleges the trustees failed to preserve capital which is impermissible and again is rejected as a New Point.

131. Above I have dealt with all the Claimants' points made in the FSS, namely the 10 "Concerns" renamed "Points of Dispute" plus the 73 "Responses", plus "Submission F" in the Claimants' Position on the Agreed List of Issues document. I have found as to the Updated Account the Claimants' objections do not comply with my Order and/or CPR PD 40A and/or are New Points which are prohibited by Master Brightwell's Order and/or are company level objections for which there is no permission and/or are requests to surcharge which is impermissible as this is an account in common form. Further, many objections have been rejected by me on multiple grounds.

132. I did intend to complete the FSS with my findings in the usual way. However, due to multiple reasons for rejection of the numerous points for procedural non-compliance or in substance as I summarise at [131] above it would not in all the circumstances be proportionate to do so.

The Further New Points and Additional New Points of the Claimants

133. The Claimants have advanced yet further New Points ("Further New Points") in their skeleton argument and during their oral submissions in the hearing. There is, as before, no permission for these points to be raised and they breach Orders as I have found. They are disruptive and to deal with all of them would in my judgment be disproportionate in view especially that I have dealt with all the points as I describe in [131].

134. Counsel in their closing Note on the Agreed Issues dated 19th January 2024 have listed 15 Further New Points and answered them there or in oral submissions in the hearing. Then yet more new points were made ("Additional Further New Points") by the Claimants in their written Position on the Agreed List of Issues dated 24th January 2024. As explained above the Claimants did not file same within 48 hours of the end of the hearing as I directed. But they have taken the opportunity – wrongly and without permission – to advance these Additional Further New Points in the document they eventually did file.

135. Understandably, counsel served Replies to New Matters in Claimants' Post-Hearing Documents on 6th February 2024. I am not going to examine and determine all of them. This hearing and thereby my judgment is confined to review and approve or not the Updated Account in accordance with the law, procedure and Orders of this Court.

It is not, as the Claimants seek, a rolling never ending process of suggestions, comments and criticisms which do not so comply nor is it as they have requested a step towards a further inquiry, not only as to the Trust, but also the NE Henchley Trust.

136. Put simply, new points at any time after the Points of Dispute in the original Scott Schedule are out of time. I therefore will not address the Further New Points nor the Additional ones. I will review a few by way of example to show their lack of substance before returning to the List of Issues.

137. My first example is what I consider to be the main concern of the Claimants namely Hillsdown Holdings, Mr Thompson's company, and especially that "…the Claimants have seen no evidence that the loans [£120,000] were paid back to the Children's Trust in their entirety." In their submissions counsel show, by reference to documents that the Updated Account is based on that £120,000 was lent to Hillsdown on 21st November 1977 citing the cheque stub in that evidence. The cash book which lists cash transfers and investments for the Trust shows a transfer in on 9th February 1978 from Hillsdown of that amount. The book then shows £80,000 was transferred that day to Barclays Bank.

138. The balance of £40,000 was back in the Trust by the end of the 1979 financial year as it appears in the Notes to the Draft Trust Accounts as Hillsdown are no longer shown as a Sundry Debtor. Evidence that the loan was interest bearing at least in part in the same accounts as Interest Receivable for both 1978 and 1979 tax years of £2,334 and £689.68 respectively which I consider show the reduction in the loan amount as above.

139. The Claimants also now say that interest was only 4% per annum. But Line 456 of the Updated Account which in a particularly detailed narrative shows a rate of 8%. In summary therefore the Claimants' objections that a) the loan was not recorded b) there is a discrepancy and c) it was never paid back are wrong; the clear evidence is that it was lent, then repaid and bore interest at 8%.

140. My next and second example was put forward by C7, Nick Mash, during the hearing. He submitted that Line 724 showed CTT paid of £19,193, but that the CTT computation as of 28th August 1978 based on 5th April 1978 accounts showed a total value of £232,000 for the 3 freehold properties I describe in [9] above. His concern was that the total value ascribed by A G Tight, valuer, was £765,000, according to his invoice for his services addressed to the Trust dated 25th July 1978. All that is correct on the face of those documents.

141. He posed these questions; how has the computation of CTT been based on a valuation of about one third of the surveyor's valuation? Why is there no evidence of a correct valuation? Has CTT been underpaid to the Inland Revenue by the Trust?

142. The answers to me are 1) reliance cannot be placed upon the valuation stated in the invoice as it is not known what the instructions to the valuer were nor 2) the valuation itself is not available but 3) what is known is that most of the properties were subject

to leases as I note in [9] above which must have impacted upon value – but without the original survey it is impossible to see how. On the balance of probabilities there is nothing therefore in this criticism of the Updated Account. Further, it does not seem to advance the Claimants' position even if it was correct.

143. My third and last example concerns SLHT. This goes back to a Further New Point that Fenngrade's purchase of Faber Court for £182,500 was "curious". The response in the Defendant's Note on the Agreed Issues was this was a company level point and further an impermissible attempt to surcharge, which I find is correct, so this is rejected.

144. But then the Claimants in their Position on the Agreed List of Issues dated 24th January stated under Issue 8 after [2] asking for an order for a company level account that at [4] "What happened at company level affected the value of the shares especially in relation to the property, Faber Court". Then at [5] they allege Mr Thompson and Julian "…made considerable profits from the sale of…Faber Court…originally owned by…Fenngrade and at which no Trust company was ever based.".

145. This I consider is wrong in that [80-82] of Copus 2 set out a very different position (the point regarding SLHT is that they purchased Faber Court in 1994 and sold it in 2001 and the vendor to and buyer from SLHT were associated with Mr Thompson/Julian – hence the reference to personal profits). But Mr Copus at his [82] explains companies in which Mr Thompson had an interest actually lost substantial sums over the purchase and sale of Faber Court.

146. The penultimate paragraph, [6], makes a new allegation that "Southern Housing Group have confirmed in writing that "They have never heard of [SLHT] and…can find no evidence of this name internally". I can only presume this is to ballast the Claimants' allegations of impropriety by Mr Thompson and Julian.

147. This written evidence is not produced. Patricia's response is that it was the Claimants through their solicitors, Withers, in their letter of 12th October 2018 that first raised the involvement of SLHT at [25 C3.8] (I also note at [25 C3.9] Withers accept the loss on the sale of Faber Court). Further, the Claimants themselves in their letter of 23rd June 2023 to Carter-Ruck at [2b] stated "We have been made aware by Southern Housing (previously SLHT) that…".

148. Then the Claimants, in their final submission of 19th February 2024 at [5] changed their position again and stated "SLHT…existed until 2001 when it became Southern Housing Group (which is correct).

149. I have set out the above in some detail to show how the Claimants' points consist at times of wholly unevidenced assertions of fact which are made continuously notwithstanding evidence to the contrary. They also make uncorroborated allegations of personal impropriety. They contradict themselves in various iterations of their complaints. But most seriously of all, they do not go to the key issue of the Updated Account but attempt to surround it in a web of detail which they expect will lead to

further inquiries, permission to make company level points and to re-open the NE Henchley Trust.

150. In summary, I find none of the Claimants' objections comply with Issue 2; none are permitted objections.

Issues 3, 4, 5 and 6

151. In view of my above findings I need not determine Issues 3-6.

Issue 7. Subject to determination of the Claimants' permitted objections, should the Updated Account be approved?

152. My answer is yes. I consider the Updated Account has been prepared as best as it could be in the circumstances that obtain. It relies extensively upon contemporaneous documents including with third parties such as banks and the Inland Revenue and the extensive work of Mr Copus, a professional accountant. It has been exhaustively tested. Whilst there are certain gaps I have no doubt on the balance of probabilities that it should be approved.

153. The Claimants have failed to comply with the Orders and Rules of this Court in constantly making submissions which they knew or should have known were not permissible. I have some sympathy with them in that they were faced with an uphill task in getting Mr Thompson to account as he should have done whilst the Trust was in being and no doubt over the years their concerns and suspicions mounted and as they did so the rhetoric increased. But that is never a proper base for a challenge such as they were entitled to make here.

Issue 8. Should the Court dismiss the balance of the Claimants' claim and/or make any further orders?

154. I dismiss the balance of the Claimants' claim and approve and settle the Updated Account. I will hear the parties as to any other matters on a date to be fixed if a minute of order cannot be agreed.

Deputy Master Linwood 26th March 2024.