Neutral Citation Number: [2021] EWHC 1050 (Ch)

Claim No: PT-2019-LDS-000151

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Leeds Combined Court Centre,
The Courthouse,
1 Oxford Row,
Leeds, LS1 3BG.

Date: 05/05/2021

Before:

HH JUDGE KLEIN SITTING AS A HIGH COURT JUDGE

- -

Between:

JAMES SLEIGHT (as the trustee of the bankruptcy estate of Charles Edward Holroyd deceased)	**Claimant**
- and -	
AMY CALLIN	**Defendant**

- -
- -

Darren Finlay (instructed by **Gateley plc**) for the **Claimant**
The Defendant in person

Hearing dates: 13-15 April 2021

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HH JUDGE KLEIN

HH Judge Klein:

1. Charles Edward Holroyd ("Mr Holroyd") died on 8 May 2009, leaving alive a wife and a daughter, the Defendant ("Mrs Callin"). According to Mrs Callin, during his lifetime Mr Holroyd had been a successful businessman. He had trained as a chartered accountant but then took over the running of his family's businesses, which covered property development, engineering and commodities trading. He was so successful that he was appointed chairman of Leeds Building Society. During the economic downturn which began in 2007 part or all of Mr Holroyd's business empire collapsed and, by the time of his death, Mr Holroyd was heavily indebted, including to a charity which he managed, from which, according to Mrs Callin, he had stolen. On 20 April 2010, Mrs Callin obtained a grant of probate to Mr Holroyd's estate, the other executors named in Mr Holroyd's will having renounced probate, and, with the assistance of professional advisors, she began to administer the estate. Unusually, six years later, on 2 March 2016, on Mrs Callin's application, District Judge Stapely, sitting in the County Court at Darlington, made an insolvency administration order and, on 4 April 2016, the Claimant was appointed as the trustee of Mr Holroyd's bankruptcy estate ("the bankruptcy estate").

2. By this claim, which was begun on 9 October 2019, the Claimant seeks to recover from Mrs Callin, or be compensated by her for, assets (and sums generated by ownership of them) which he claims are, should be, or should have been part of the bankruptcy estate; namely:

    i) a lump sum of £43,942.97 ("the Guardian lump sum") paid on Mr Holroyd's death under a Guardian Life insurance policy ("the Guardian policy") taken out by him on 7 October 1971. At the time of Mr Holroyd's death, the policy was administered by ReAssure Life;

    ii) a lump sum death benefit (and interest) of £97,481.31 ("the NPI death benefit") paid under an NPI pension policy ("the NPI pension") begun on 5 September 2001 by Mr Holroyd. After Mr Holroyd's death, the policy began to be administered by Phoenix Life;

    iii) 58,278 shares ("the Rosetta shares") in Rosetta Capital Ltd. ("Rosetta") which were transferred to Mrs Callin by a stock transfer form made on 15 July 2013;[1]

    iv) Mr Holroyd's estate's ("the estate's") interest in BML Participation Holdings Limited Partnership ("BML") which was assigned to Mrs Callin in accordance with an asset purchase agreement made on 15 July 2013. Since that assignment, Mrs Callin has received £574,387.39 by virtue of the assigned interest in BML ("the BML interest");

[1] The Claimant seeks an order only that Mrs Callin signs a stock transfer form in his favour in relation to the Rosetta shares and completes such other documents as it is appropriate for her to complete so that he can be registered as the shareholder. I was not taken to Rosetta's Articles of Association or other documents which might contain any restrictions on the Claimant's registration as a shareholder or on a transfer. Mr Finlay, who appeared for the Claimant, accepted that any such matters had to be resolved between the Claimant and Rosetta. Similarly, the Claimant seeks an order only that Mrs Callin completes such documents as it is appropriate for her to complete so that the assignment to him of the BML interest can be effected. Mr Finlay accepted that, if there is some obstacle to the assignment of that interest which is outside Mrs Callin's control, that is a matter to be resolved between the Claimant and the relevant third party (which is likely to be BML's general partner).

v) an interest in Roseway Participation Partners LP ("Roseway") which was assigned to Mrs Callin on 18 November 2014 by the general partner, Rosetta Capital GP Ltd. ("the Roseway general partner"). Since that assignment, Mrs Callin has received £31,859.86 by virtue of the assigned interest in Roseway ("the Roseway interest").[2]

3. Mrs Callin has always accepted that the NPI death benefit was paid initially into her former solicitors' ("Clarion's") client account but that, when she terminated Clarion's retainer, on her instructions they paid the NPI sum death benefit to her personally. Although Mrs Callin previously disputed that she had ever personally received the Guardian lump sum, she accepted at trial that it was paid initially into her former financial advisors' ("Mercer & Hole's") client account and then (together with a small amount of interest earned from the client account) paid into her personal bank account. She also accepted at trial that she personally received £574,387.39 in profit shares by virtue of the BML interest and £31,859.86 in profit shares by virtue of the Roseway interest.

The parties' cases

4. Mr Finlay reminded me that, by CPR 16.4(1), particulars of claim must include "a concise statement of the facts on which the claimant relies". As it happens, in a case such as the present one, the particulars of claim must also contain details of all breaches of trust on which the claimant relies (see CPR PD 16; para.8.2). This does not mean that the claimant cannot also summarise in the particulars of claim, in a way that is clear and helpful to the court and the parties, the legal basis for his claim (see note 16.4.1 in the 2020 White Book). The present claim is not straight-forward legally. Rather it is one in which a clear summary, in the particulars of claim, of the legal basis for the claim was appropriate.

5. As developed at trial, the Claimant's case, as I understand it (and as I understand Mr Finlay confirmed to me on the second day of the trial), is as follows:

i) The payment out of Mercer & Hole's client account of a sum representing the Guardian lump sum to Mrs Callin personally was a void disposition by virtue of s.284 of the Insolvency Act 1986 ("s.284") so that, from the Claimant's appointment as trustee of the bankruptcy estate (as "trustee in bankruptcy"), Mrs Callin held or should have held the sum on a bare trust for him (for the benefit of the estate's creditors) and she is liable to pay over that sum to him or compensate him in an equivalent amount if she no longer holds that sum;

ii) The payment out of Clarion's client account of a sum representing the NPI death benefit to Mrs Callin personally was a void disposition by virtue of s.284 so that, from the Claimant's appointment as trustee in bankruptcy, Mrs Callin held or should have held the sum on a bare trust for him (for the benefit of the estate's creditors) and she is liable to pay over that sum to him or compensate him in an equivalent amount if she no longer holds that sum;

[2] By the amended particulars of claim, the Claimant also claimed an interest in, or compensation in relation to, two further limited partnerships; Rosetta Capital IV LP and Rosetta Capital V LP. Following a discussion between me and Mr Finlay during his opening, the Claimant elected not to pursue those claims.

iii) The assignment to Mrs Callin of the Rosetta shares was a void disposition by virtue of s.284 so that, from the Claimant's appointment as trustee in bankruptcy, Mrs Callin has held the shares on a bare trust for the Claimant (for the benefit of the estate's creditors) and she is liable to transfer them to him and do all she can so that he may be registered as the shareholder;

iv) The assignment to Mrs Callin of the BML interest was a void disposition by virtue of s.284, so that, from the Claimant's appointment as trustee in bankruptcy, Mrs Callin has held the interest on a bare trust for the Claimant (for the benefit of the estate's creditors) and she is liable to transfer it to him and do all she can so that he may have that interest fully vested in him. The BML profit shares received were received by Mrs Callin whilst she has been a trustee of the BML interest (now in favour of the Claimant) as additions to the trust fund, and on the same terms as the trust of the BML interest, and she is liable to pay over those sums to him or compensate him in an equivalent amount if she no longer holds those sums;

v) The receipt by Mrs Callin of the Roseway interest represents an unauthorised profit made by virtue of, or in conflict with, her position as trustee of the Rosetta shares. The Roseway interest and the profit shares received in relation to that interest have therefore been held on a constructive trust for the same beneficiaries as the Rosetta shares have been held (that is, now the Claimant) and Mrs Callin is liable to pay over the profit shares to the Claimant or compensate him in an equivalent amount if she no longer holds those sums.

In fact, Mr Finlay put the Claimant's case in relation to the Roseway interest in other, alternative, ways but, to the limited extent that he developed those alternative cases at trial, I am not sure that they assist the Claimant and, in the light of the conclusions I have reached in any event, I do not need to consider those alternative cases.

6. On careful reflection, I am satisfied that the Claimant's case, as I have summarised it, meets the specific requirements of CPR Pt.16 I have referred to.

7. Although Mrs Callin had legal representation for most of the litigation, by the time of the trial (and by the time she filed an amended defence) she was a litigant in person. Mrs Callin was an engaging litigant and witness who was clearly doing her best to help me. Mrs Callin was assisted in the preparation for the trial and at the trial by her husband. I understand that Mr Callin had been a banker and had earlier taken a law degree. I am grateful to them both for the very fair, moderate and clear way Mrs Callin's case was presented.

8. I am not certain that Mrs Callin fully understood the claim against her. It would not be surprising if she did not do so, because of the legal complexities of the claim. The amended defence, running to twenty five pages, contain very many contentions. Mrs Callin's skeleton argument, with appendices, running to fifty five pages, repeated many of her pleaded contentions and made further assertions. I have carefully considered all of Mrs Callin's submissions, just as I have considered all of Mr Finlay's submissions, all the witness evidence and the documentary evidence to which I was referred. I am afraid that many of Mrs Callin's legal submissions are misconceived or are irrelevant to the claim. I will give a straightforward example of a misconceived submission. Mrs Callin contended that the Claimant does not have

standing to bring the claim because the insolvency administration petition was presented more than five years after Mr Holroyd's death. In support of this contention Mrs Callin relied on s.421A of the Insolvency Act 1986 ("the 1986 Act") which provides, at sub-s.(1)(b), that a petition for an insolvency administration order must have been presented within five years of the day on which a deceased died. The section has nothing to do with whether the Claimant has standing to bring the present claim. The section was inserted in the 1986 Act to permit trustees of a deceased's bankruptcy estate to be compensated, for the benefit of creditors, for the loss, by the right of survivorship, of that deceased's joint tenancy interest in a property, such as their matrimonial home. An application under the section can only be brought if a petition is presented within five years of a deceased's death, but there is no such application in this case.

9. The principal purpose of a judgment is to explain to the parties (and to other readers) the reasons for a judge's decision. I do not think that it would be helpful to address all of Mrs Callin's submissions (even though, I repeat, I have considered them carefully). To address all of her submissions would make this judgment unnecessarily complicated and less easy to follow. Indeed, I think that addressing all of Mrs Callin's submissions would not further the overriding objective. In this judgment, I address (mainly) those of her submissions which I am satisfied are not clearly misconceived or irrelevant.

10. Mrs Callin makes the following contentions in her amended defence:

    i) The Guardian policy and the NPI pension were held in trust, before Mr Holroyd's death, for her, so they (and the payments made under them) have never formed part of the estate;

    ii) Prior to his death Mr Holroyd had signed a nomination letter in relation to the NPI pension naming her and, by signing the letter, he declared a trust of the pension for her benefit;

    iii) Mrs Holroyd was entitled to a spouse's pension under the NPI pension and this needs to be taken into account;

    iv) The NPI pension has never formed part of the estate by virtue of s.11 of the Welfare Reform and Pension Act 1999 ("the 1999 Act");

    v) The BML interest never formed part of the estate, because Mr Holroyd was insolvent during his lifetime (in that he could not pay his debts as they fell due);

    vi) The Limited Partnerships Act 1907 prevents any part of the BML interest forming part of the estate or, if it does not, it prevents any part of the BML interest except Mr Holroyd's capital contribution of £176.96 forming part of the estate;

    vii) She should be relieved of liability under s.61 of the Trustee Act 1925, including because, at the time she acquired the Rosetta shares and the BML interest, she was following professional advice, and she was heavily pregnant and caring for her young daughter and for Mrs Holroyd who was terminally ill;

viii) The Claimant failed to warn her, properly or at all, of the risks to her personally of petitioning for, and obtaining, an insolvency administration order and, in consequence, the rule in *ex parte James* should preclude him from obtaining any remedy against her;

ix) The estate is indebted to her, directly or indirectly, in the sum of £2.94 million and she claims to set off that indebtedness against any liability she has to the Claimant.

11. In her skeleton argument, Mrs Callin also raised limitation issues, as she did in her closing submissions, arguing that the claim is statute-barred. She also applied orally, in closing, for a validation order for the disposal to her of the Guardian lump sum, because, she said, she and Mrs Holroyd had paid the policy premiums.

Factual background

12. I was only taken to a limited number of documents in the comprehensive trial bundle. Principally by reference to those documents, I now set out, chronologically, the background leading to the claim.

13. The Guardian policy was taken out on 17 October 1971 and the NPI pension was begun on 5 September 2001, as I have said. Less than four years later, on 3 March 2005, NPI informed Mercer & Hole that the NPI pension was not written in trust and that "there is no beneficiary".

14. An amended partnership agreement relating to BML was entered into on 30 September 2008, by Mr Holroyd amongst others. It provided:

> "…6. The partnership shall…continue until 90 (ninety) days after the final realisation of the partnership's investments. The partnership shall continue in existence notwithstanding any change in its composition…
>
> 7. The limited partners have contributed or agreed to contribute to the partnership the capital contributions set opposite their names…[(which, in Mr Holroyd's case, was €179.45)]…
>
> 9.1 The limited partners shall be entitled to the profits of the partnership available after payment of the general partner's share, which shall be distributed by the general partner when such profits become available. The percentage share of each limited partner in the profits shall be as follows: [There then follows a computation for the profit shares]…
>
> 10.1 Limited partners may not sell, assign, transfer…or otherwise dispose of their interest in the limited partnership other than in the event of death whereby it shall pass to their estate…
>
> 10.4 The transfer of any interest in the partnership shall not cause the dissolution of the partnership…

> 11.3 This agreement and the rights, obligations and relationships of the parties hereto under this agreement shall be governed and construed in accordance with the law of Scotland…"

15. Five days before his death, on 3 May 2009, Mr Holroyd signed a letter ("the nomination letter"), drafted by Mercer & Hole, relating to the NPI pension in which he said:

> "Please accept this letter as my written authority to have my daughter Mrs Amy Callin as my nominated beneficiary for the above plan".

16. Mr Holroyd died on 8 May 2009.

17. On 10 June 2009 NPI wrote to Mercer & Hole:

> "We note from your correspondence that you have given information regarding a beneficiary nominated by Mr Holroyd prior to his passing. Please be aware that policies of this nature do not carry the facility of nominating a beneficiary, as any monies due must be paid to the estate."

18. On 23 June 2009 NPI wrote to Nightingale Associates (who were also advising Mrs Callin):

> "…The death benefits…forms part of Mr Holroyd's estate…"

19. Having previously met with Dickinson Dees, solicitors, Mrs Callin instructed Clarion to act for her. David Arundel, a partner, wrote to her on 4 August 2009:

> "Thank you for preparing the summary of assets and liabilities in the estate together with the more detailed schedule of the same. It does appear on those valuations that the estate is insolvent.
>
> That being the case you can either appoint an administrator (usually an accountant) to deal with the estate on an insolvent basis. Alternatively you as an executor can carry on, realise the assets, pay the secured creditors and then arrange to distribute the balance between the unsecured creditors…
>
> If an administrator is appointed then it is fairly straight forward for you to purchase an asset or assets within the estate from the administrator. If however you continue to administer the estate then you would have to be careful about purchasing any of the assets. You would certainly need to get professional valuations together with a professional view as to what a realistic price might be. It would also be prudent to get the consent of the unsecured creditors if possible."

20. It appears that, on 12 August 2009, Sara Rogers, a partner at Clarion, advised Mrs Callin that "there is an option to go to the court to obtain directions and approval of the way she proposes to administer the estate".

21. A grant of probate to the estate was made to Mrs Callin on 20 April 2010.

22. The Guardian lump sum was paid into Mercer & Hole's client account on 17 May 2010.

23. Roseway was registered as a limited partnership on 25 May 2010.

24. The NPI death benefit was paid into Clarion's client account in June 2010 and, on 30 June 2010, Ms Rogers emailed Mrs Callin:

> "I have received confirmation that the payment from NPI was to the estate not to you personally."

25. The sum representing the Guardian lump sum (and some interest) was paid by Mercer & Hole into Mrs Callin's personal bank account on 7 September 2010.

26. Michael Forer has been a director of Rosetta and a representative of the BML and Roseway general partners. On 10 November 2010 he emailed Mrs Callin:

> "…I wondered if you…had formal letters of probate yet so we could send you the following properly assigned:
>
> The share certificate in Rosetta…
>
> The interest in BML…
>
> £2,500
>
> And an economic interest in a new vehicle we just completed called Roseway…"

27. Mrs Callin emailed Ms Rogers on 23 March 2011:

> "…I think it is bad news for me in terms of the NPI policy, I spoke to Paul [Callin] and it seems that it was not nominated correctly and therefore falls into the estate which is a great shame…"

28. Rosetta's directors circulated a letter to Rosetta's shareholders in October 2011, which said:

> "You will recall that we have the potential to benefit from positive investment returns through our carried interest (i.e. profit share) vehicles (BML…and Roseway…) which also includes you. We remain hopeful and optimistic that with some luck, these vehicles may generate an investment return."

29. Mr Forer emailed Clarion on 2 November 2011:

> "Rosetta…is a management company…
>
> BML…and Roseway… - these are vehicles that are entitled to profit shares (carried interests) in the funds under management…
>
> …we would encourage you to keep the holding in the management company [and BML and Roseway] for the long term. At your request…the board of Rosetta considered what the management company could afford to pay the estate to purchase back the three interests and came up with the price of £15,000…We…encourage you to keep the holding for the long term if you can."

30. BML's partnership agreement was amended on 5 December 2011 so that cl.10.11 was replaced with:

> "Limited partners may sell, assign, transfer…or otherwise dispose of their interest in the limited partnership provided they obtain the consent of the general partner, such consent not to be unreasonably withheld, except for in the event of death whereby it shall automatically pass to their estate."

31. By February 2012 Mrs Callin had agreed in principle to dispose of the Rosetta shares, the estate's interest in BML and the interest in Roseway to Robert Iggulden for £18,000. Consent to that transaction was not given by Rosetta's directors, BML's general partner and the Roseway general partner. In explaining their reasons, Mr Forer said in an email to Clarion on 24 April 2012, amongst other things:

> "With regard to the proposed transfer of the Holroyd estate interest in Roseway…, the transfer was also not approved…"

32. Mr Forer emailed Clarion again on 4 May 2012:

> "With regard to Roseway…, in reviewing my file, I recalled that we have not formally assigned the interest to our shareholder of record Edward Holroyd because the transaction closed after his death. We thus decided to delay assignment of the interest until we were advised by the estate to whom we should properly assign it to. The form of assignation that all of our financial shareholders received is attached…[L]et us know, when appropriate, what name to put the assignation in and we will issue it…"

33. On 9 May 2012 a Clarion solicitor, Rachel Dean, emailed Mr Forer:

> "…I apologise but I am a little unsure of the background of this matter and would appreciate it if you could explain this point, does Edward Holroyd have an interest in Roseway…?"

34. Mr Forer responded the same day:

> "In short, yes, we held an interest in Roseway…for all our "financial" shareholders in Rosetta…There was no legal obligation to do so, and actually our investors (clients) in the underlying LP would prefer we do not. Just let us know what name you would like it in."

35. Ms Dean emailed Mr and Mrs Callin on 24 May 2012, following a decision not to proceed with the transaction with Mr Iggulden (in the light of the April 2012 refusals to consent to which I have just referred), setting out options "with regard to disposing of the estate's interest in Rosetta…, BML…and Roseway". She said that "option 2" was to "sell the interests back to the company and the limited partnerships". She explained that Mr Forer had offered to match the price Mr Iggulden was prepared to pay but, she added, that "this may be negotiable". She then referred to "option 3", which actually comprised two different options:

> "We discussed that you may be able to buy the interests in consideration for writing off some of your debt from [the] estate.
>
> We have taken further advice from our insolvency and probate teams who are of the opinion that because the estate is insolvent it may amount to a "preference" under the Insolvency Act 1986…whereby one creditor is "preferenced" over another. If you are found in contravention of the IA 1986 you may become personally liable for any "gain" you have made.
>
> As discussed on Friday, although the chances of any creditor making a claim under the IA 1986 are low, there are risks associated with being in contravention of the IA 1986.
>
> There is also the possibility of you buying the interests for value. I have spoken to Sara [Rogers] and she has confirmed that…you would need to be prepared to argue that you are not getting the interests at a reduced price and that you would be paying market value for the interests. This begs the question as to what market value for the interests is and the £18,000 offered by Mr Iggulden will be a starting point."

36. Ms Rogers sent an internal email to Ms Dean on 22 June 2012. Referring to a possible disposal to Mrs Callin of the Rosetta shares and the BML interest, she wrote:

> "…Whilst [Mrs Callin's] trust is owed money by the estate, she is not personally owed any debts. She might be happy for her trust to hold the shares. But the next problem is there will be a payment of only 8p in the £ to those who are owed money, so the shares may cost more than is owed to the trust."

37. Mr Forer emailed Clarion on 9 October 2012:

> "…the estate has the following interests:

> - shares in Rosetta…
>
> - an LP interest in BML…
>
> - an LP interest in Roseway…"

38. Mr Forer emailed Clarion on 7 February 2013:

> "…the interests to transfer are:
>
> - the shares in Rosetta…
>
> - the partnership interest in BML…
>
> On reviewing the file, I am reminded that we established Roseway…after the death of Edward, and therefore did not assign the interest to him. As a result, I think it is within the right of the [Roseway general partner] to simply assign it to Amy if that is your request…"

39. Mrs Callin executed an asset purchase agreement ("the APA") on 15 July 2013 by which, as executrix, she agreed to sell to herself the Rosetta shares and the estate's interest in BML. The APA provided, in relation to consideration:

> "The consideration for the assets is £18,000.00…
>
> [Mrs Callin] is owed money by the estate…and the assets shall be transferred to [her] and the amount owed by the estate…shall be reduced by £18,000.00…"

In other words, Mrs Callin adopted the first of the two alternative "option 3s" set out in Ms Dean's 24 May 2012 email.

40. Mrs Callin also executed a stock transfer form on 15 July 2013 by which, as executrix, she transferred the Rosetta shares to herself.[3]

41. Rosetta's directors circulated a letter to Rosetta's shareholders on 15 August 2013, which said, in relation to Roseway:

> "You will recall that this fund is a structured investment in a publicly listed venture capital fund called Growthworks Canadian Fund. Our investment had a three year term for the return of the principal plus minimum participation payments. The term ended in May 2013 and we expect it will take 12-18 months for Growthworks to pay the principal and final minimum participation payment. In such event, we will also be expecting carried interest payments through our participation vehicles, in which you will share."

[3] I was not taken to any deed, or other form, of assignment of the BML interest but Mrs Callin accepted, in para.42 of the amended defence, that, subject to her defences to the claim in relation to the BML interest summarised above, the BML interest was assigned to her.

42. The Roseway general partner assigned an interest in Roseway to Mrs Callin on 18 November 2014.

43. The first relevant profit share payment was received by Mrs Callin on 2 December 2014.

44. Phoenix Life wrote to Clarion about the NPI pension on 18 August 2015 confirming that "the plan was not written under trust as no trust deed was completed".

45. A Meeting took place, on 20 October 2015 between solicitors at Clarion, including Vivienne Wild, a partner, and Mr Callin ("the 20 October 2015 meeting"). Mrs Callin was to have attended but was caring for their daughter who had chicken pox. Clarion's attendance note records that Mr Callin was advised that the NPI death benefit was not held on trust and was not protected from the Claimant by virtue of the 1999 Act. The attendance note also records as follows:

> "[Mr Callin] says he will discuss the NPI money with [Mrs Callin]…[Mr Callin] asking if there is anything wrong with taking a view on the matter. RGM [(a solicitor at Clarion; probably Ryan Millmore)] says that Clarion could not advise them in these circumstances but if [Mrs Callin] did "take a view" then she would have to be alive to the potential for a challenge by creditors and the risk that that entails."

46. Ms Wild spoke with Mrs Callin on 5 November 2015. Ms Wild's attendance note records:

> "…we had encountered a problem because whilst we had advised Paul [Callin] at our meeting with Ryan [Millmore] that the NPI pension was clearly an asset of the estate…[Mrs Callin] had chosen to disregard that advice as indicated in her letter to us. Unfortunately, if we were to assist with completing the file it would appear that we would be assisting her to put assets beyond the reach of creditors. That put us in a tricky position as, given we are solicitors, we must always act properly. As such, what I am not sure of is whether we would not be able to act at all or would only be able to act in part…
>
> [Ms Wild] advised that, as indeed Paul was advised at the meeting, [Mrs Callin] is entitled to seek a second opinion and may do so simply to put the matter to bed…"

47. On 19 November 2015 Clare King, a legal executive at Clarion, advised Mrs Callin that she had calculated that the estate was indebted to Mrs Callin in the sum of £221,281.67. (If a dividend of eight pence in the pound was paid to creditors, as had been suggested some years before, Mrs Callin's dividend would have been £17,702.53).

48. Mrs Callin emailed Clarion on 30 November 2015 terminating Clarion's retainer and instructing Clarion to transfer the balance of its client account relating to the estate (including the sum representing the NPI death benefit) to her personal bank account.

49. Ms King responded to an email from Mrs Callin on 3 December 2015. It appears that, in Mrs Callin's email to which Ms King was responding, Mrs Callin suggested that there was no prospect of creditors receiving a dividend of as much as ten pence in the pound.

50. As I have said, Mrs Callin presented a petition for an insolvency administration order on 15 February 2016 and, on 2 March 2016, District Judge Stapely, sitting in the County Court at Darlington, made an insolvency administration order in relation to the estate. The Claimant was appointed trustee in bankruptcy on 4 April 2016.

51. Phoenix Life wrote to the Claimant in relation to the NPI pension on 15 August 2016, making the following points:

> "…The plan was not written under trust as no trust deed was completed.
>
> The plan was payable to the…estate, which was paid out in June 2010 to Mrs Amy Callin as legal personal representative.
>
> The amount paid out was £97,481.31 [with] an allowance for interest."

52. ReAssure Life wrote to the Claimant on 18 August 2016 about the Guardian policy:

> "…There were no trusts, nominees and/or beneficiaries named on the policy...
>
> The policy was settled on 11 May 2010.
>
> The proceeds…were paid to the executor…"

53. As I have said, the claim was begun on 9 October 2019.

54. Sarah Laidler, a Rosetta director, emailed Mr Callin on 5 March 2021, repeating a statement she had apparently made to the Claimant's solicitors:

> "It is important to note that there was never any one over-arching agreement. It was always at Rosetta's full discretion to offer participation in carry vehicles, whom to offer, and how much. From reviewing the documentation it appears Mr Holroyd was participating in…BML…prior to his death, but all subsequent vehicles and associated participation were after he was deceased…"

55. Mr Forer emailed Mrs Callin on 27 March 2021:

> "I confirm that Edward Holroyd had no legal entitlement for participation in investment vehicles established after his death.
>
> There was no over-arching agreement for such participation. It was always at the full discretion of Rosetta…to offer

> participation in any such new investment vehicle, whom to offer such participation, and how much to offer."

56. I turn now to consider the witness evidence, which, so far as is relevant to my decision, was limited.

The Claimant – Mr Sleight

57. Mr Sleight is a licensed insolvency practitioner and a director of PKF Geoffrey Martin & Co. Ltd., based in Leeds. His witness statements did no more than recount or summarise documents which are contained in the trial bundle.

58. Most of the evidence given by Mr Sleight in cross-examination is not relevant to my decision. Mr Sleight did say that, at the time he discussed with Mrs Callin the possibility of petitioning for an insolvency administration order, she was being advised by Gunnercooke LLP, solicitors.[4]

Mrs Callin

59. Mrs Callin is a trained chef and, together with Mr Callin, now runs a guesthouse in North Yorkshire. She speaks movingly in her witness statements of the toll Mr Holroyd's insolvency and financial dealings, and the litigation, have taken on her, Mr Callin, and their young children.

60. The picture she painted of Mr Holroyd was of someone who was financially sophisticated.

61. She said that, shortly before Mr Holroyd's death, Jeremy Goodwin, from Mercer & Hole, advised Mr Holroyd that the NPI death benefit would fall into (be part of) his estate unless he nominated a beneficiary, which Mr Holroyd could do by sending a letter to NPI. It is to be noted that Mrs Callin did not suggest that Mr Holroyd protested that the NPI death benefit was already held on trust or that he had already nominated someone to receive the death benefit. However, she suggested, it was improbable, because of his financial sophistication, that Mr Holroyd had not declared trusts of the NPI death benefit or the Guardian lump sum.

62. She accepted, in cross-examination, that, within a few months of Mr Holroyd's death at the latest, she knew that NPI was asserting that the NPI death benefit was not held on trust, that there was no operative nomination of a person who might benefit from it, that the death benefit could not be held on trust and that the death benefit could not be subject to a nomination. However, she added, Mercer & Hole asked her to provide documents so that they could investigate NPI's assertions.

63. She explained that she had no experience of administering an estate and she said that she sought out specialist advice.

64. She acknowledged that, by 31 July 2009, she appreciated that there was a real possibility that the estate was insolvent and that, by 4 August 2009, on the available evidence that the estate was insolvent.

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[4] This is disputed by Mrs Callin.

65. She said that she understood, from Mr Forer's email, dated 10 November 2010, to her, that he was saying that she would receive the Rosetta shares and BML and Roseway interests because she was Mr Holroyd's personal representative.

66. She accepted that "Clarion informed me that, whilst I exposed myself to a potential risk from creditors for [transferring the Rosetta shares to myself personally] at [the] value [of £18,000], they considered it a fair price and the risk of a claim from creditors was, in fact, minimal".

67. She suggested that, in 2012, she understood that she was not a creditor of the estate. She referred, in her first witness statement, to an email, dated 27 June 2012, from Clarion to her which "flagged the point…that my lifetime interest trust had a claim against the estate rather than me personally and that made writing off the debts [(i.e., the consideration actually provided for in the APA)] difficult". She also acknowledged that she was told that Mr Iggulden's offer to buy the Rosetta shares for £18,000 "was a good starting point to value the shares".

68. She said that, following the 20 October 2015 meeting, she appreciated that Clarion's advice was that the NPI death benefit fell into (was part of) the estate. She said that Mr Callin had reported to her Clarion's view, but he also said that he took a different view. She said that she did not accept Clarion's advice but relied, instead, on what she said was Mercer & Hole's advice, given in 2010, that the death benefit did not fall into the estate. She added that she did not pay the NPI death benefit to the Claimant because to do so would be inconsistent with Mercer & Hole's 2010 advice. She said that she did not transfer the Rosetta shares to the Claimant because Clarion had advised her and she had entered into the APA.

Mrs Callin's defences

69. I consider separately Mrs Callin's defences which depend, more or less, on her being found to have a liability to the Claimant but which, if established, protect her from that liability; i.e., her claim to be relieved of liability under s.61 of the Trustee Act 1925, her reliance on the rule in *ex parte James* and her set off defence. I also briefly consider, at the same time, the question of limitation periods and her oral application for a validation order.

70. In this section of the judgment, I consider her remaining defences, which I have summarised at paras. 10(i)-(vi) above.

NPI pension / Guardian policy

71. I have concluded that neither the NPI death benefit nor the Guardian lump sum have ever been held on trust for Mrs Callin. There is no evidence at all of the existence of any trust (the nomination letter excluded, about which I comment further below). As I have noted, Mrs Callin paints a picture of Mr Holroyd as a financially sophisticated person. It is likely therefore that he would have had a record, or Mercer & Hole (who were apparently his long-term advisors) would have had a record, of any trust arrangement, but, as I say, there is apparently no record. Had there been a trust arrangement in relation to the NPI pension, it is likely that Mr Holroyd would have mentioned it when he was asked to sign the nomination letter, but, apparently, he did not. To the contrary, there is evidence that there was no trust arrangement. NPI,

Phoenix Life and ReAssure Life have repeatedly said that there was no trust arrangement and that appeared to be Mercer & Hole's view, in relation to the NPI pension, before Mr Holroyd's death.

72. I was not taken to any of the constitutional documents relating to the NPI pension. There must be some doubt, in the light of NPI's 10 June 2009 letter, whether Mr Holroyd could nominate anyone to receive the NPI death benefit.

73. It appears to be common (to guard against inheritance tax) for pension policy holders to be able to nominate individuals as possible recipients of their pension death benefits. Formally, it appears, in these circumstances pension policy trustees often have an absolute discretion to whom death benefits are paid so that, formally, the nominee has no entitlement to any part of the death benefits and the death benefits are not held on trust for them. By way of example, Tolley's Pension Law Service explains, at para.D3.14:

> "The trust deed and rules of a scheme usually provide for lump sum death benefits to be held by the trustees and applied at their discretion among a wide class of beneficiaries….
>
> Scheme rules usually allow members to give some indication as to whom they wish the trustees to pay lump sum death benefits. This gives the member at least some ability to direct the destination of these benefits and, if the nomination is not expressed to be binding on the trustees, will not result in any IHT liability in the event of the trustees following his or her wishes. Many pension schemes have now adopted the practice of styling nomination forms "expression of wish forms" to underline the discretion they exercise in conferring the benefit. The "nomination" may simply refer to the names of intended beneficiaries or go into more detail about their individual circumstances and the reasons for their selection. In the absence of some compelling reason, the likelihood is that the trustees will respect the expressed wishes of the deceased member. Although the trustees cannot surrender their discretion, there is no reason why they should not rely heavily upon the information provided by the member in circumstances where they almost certainly have no personal knowledge of the situation themselves. Needless to say, if they consider that they require further details they may ask prospective beneficiaries to submit reasons why they should be selected. It is dangerous for trustees to accept a nomination form at its face value without making at least some further enquiries."

So, it would be irrelevant if the NPI pension allowed this sort of nomination. In that case, the NPI pension trustees could have, but did not, all the evidence shows, exercise their discretion in Mrs Callin's favour, instead paying the death benefit "to" the estate.

74. Against this background, I am not satisfied that the nomination letter does amount to a declaration of trust. Lewin on Trusts (20th ed.) explains, at para.5-005:

> "Testators often and settlors inter vivos occasionally use words precatory or recommendatory or expressing a belief when they mean to declare a trust. In the earlier cases the tendency of the court was to recognise a trust wherever such words were used. Thus the employment of the words "hope", "request", "desire", "recommend", "in full confidence" and similar expressions were held to constitute trusts. But precatory expressions have not so easily been construed as imposing trusts since *Lambe v Eames*, decided in 1871, and the earlier cases will not necessarily be followed today. The principle to be applied was stated by Lindley LJ as follows:
>
> > "You must take the will which you have to construe and see what it means, and if you come to the conclusion that no trust was intended, you say so, although previous judges have said the contrary on some wills more or less similar to the one which you have to construe."
>
> This principle, that one seeks always to determine the intention of the testator or settlor, has often been applied with the result that the precatory words were held not to create a trust. But trusts will still be created by any words which on the true construction of the document as a whole show an intention to do so, and precatory expressions have been construed as trusts in later cases. If the subject-matter of the gift is uncertain, that may have a reflex action upon the precatory words and throw doubt on the testator's intention to create a trust."

It is most likely that the nomination letter was intended to be no more than a (non-binding) expression of wishes form. Mr Holroyd identified Mrs Callin as his nominee. In pension arrangements, nominees commonly are not trust beneficiaries. Rather, as I have explained, they are the individuals who, formally, the pension policy holder asks their pension trustees to consider when their pension trustees, exercising their own discretion, select who is to be paid a death benefit. Further, Mr Holroyd merely permitted (gave his written authority) to NPI to treat Mrs Callin as his nominee. He did not instruct, or otherwise direct, them to treat Mrs Callin in a particular way. That too tends to indicate that Mr Holroyd was trying to specify Mrs Callin as an individual in whose favour the NPI pension trustees (if there are any, and that is in doubt) might exercise their discretion.

75. There is no (or insufficient) material before me which would entitle me to conclude that Mrs Holroyd was entitled to a spouse's pension under the NPI pension but, even if she was entitled to a spouse's pension, I do not see how that might help Mrs Callin in any event. The sum NPI paid to Clarion was a death benefit. If too much was paid by NPI by way of death benefits (which may be the point Mrs Callin was trying to make), that does not mean that the sum actually paid did not fall into (was not part of) the estate.

76. S.11(1) of the 1999 Act (as it applied at the relevant times) provides:

> "Where a bankruptcy order is made against a person on a petition presented after the coming into force of this section, any rights of his under an approved pension arrangement are excluded from his [bankruptcy] estate."

77. I received very limited submissions on this provision. Mrs Callin merely asserted that it had the effect of excluding the NPI death benefit from the bankruptcy estate in this case. Mr Finlay accepted that the NPI pension was an approved pension arrangement but argued, briefly, that:

    i) no bankruptcy order was made in this case. Rather an insolvency administration order was made;

    ii) the Administration of Insolvent Estates of Deceased Persons Order 1986 ("the 1986 Order") provides, by para.3, only that, for the purposes of the 1986 Act, references to "a bankruptcy order" are to be read, in a case such as the present, as "an insolvency administration order". On a literal reading of the 1986 Order, Mr Finlay is correct;

    iii) Parliamentary papers support the proposition that s.11 of the 1999 Act only applies when a bankruptcy order is made (rather than an insolvency administration order) because they say: "should a bankrupt die before the date of their automatic discharge, and the pension scheme does not nominate a beneficiary (or class of beneficiaries), the trustee in bankruptcy may claim the death benefit";

    iv) "There is also an inexorable logic to [the] distinction [referred to in the extract Mr Finlay quoted]. Someone saving all their life for a pension maybe deserves "a break" to allow their pension to be ringfenced from their creditors while they are alive: but once dead that moral argument evaporates as they no longer need the money for their retirement – by virtue of being dead".

78. I have already said that, on a literal reading of the 1986 Order, it does not modify the 1999 Act. I also accept that there was no bankruptcy order in this case, so that, on a literal reading of s.11 of the 1999 Act, it does not apply in this case.

79. Although neither party referred me to it, the most recent authority on s.11 of the 1999 Act appears to be *Wilson v. McNamara* [2020] 2 CMLR 27, in which Nugee J said, at [43]:

> "[A] brief review of the history suggests that it is an oversimplification to say that the purpose behind s.11 WRPA 1999 was to avoid individuals becoming a burden on the resources of the state in old age. I think a more detailed account of the purpose behind ss.11-16 taken together is that pension rights are intended, and tax relief is given, to support individuals in the future in retirement, not for the benefit of creditors if the individual becomes bankrupt before retirement, and that save where excessive contributions can be shown to be made, those rights should be exempted from bankruptcy. That however does not explain why s.11 should be (broadly) limited

> to tax-approved schemes. I was not shown any material specifically addressing this question but I think it is likely to be because one of the features of tax approval (as it then stood) was that it limited the benefits that could be paid to the member (for example in occupational schemes by reference to his salary and period of service). There is by contrast no limit to the benefits that can be provided under unapproved schemes, so it is not perhaps surprising that it was thought inappropriate to exempt those in their entirety, but only to the extent that they were reasonably needed by the bankrupt and his family."

80. Applying Nugee J's analysis, a purposive interpretation of s.11 of the 1999 Act would not yield a different result from a literal interpretation of the section. The purpose of the section was to give bankrupts a measure of protection in their future retirements. Its purpose was not to protect third parties. This point is reinforced somewhat when it is borne in mind that many insolvent estates are not administered in bankruptcy so that, if the section did apply when an insolvency administration order was made, creditors of an insolvent estate might be prejudiced by the making of such an order and I can think of no good reason why this might be so.

81. For all these reasons, I have concluded that s.11 of the 1999 Act does not provide any defence to Mrs Callin.

The BML interest

82. Whilst it is possible, if not probable, that Mr Holroyd was unable to pay his debts as they fell due at some point during his lifetime, no bankruptcy petition was presented nor was a bankruptcy order made against him. I am afraid that, as explained to me by Mrs Callin, I do not understand how any inability to pay his debts divested Mr Holroyd of the BML interest. Neither the BML general partner, nor Mercer & Hole, Clarion or Mrs Callin seem to have thought, until relatively recently in the case of Mrs Callin, that Mr Holroyd was divested of the BML interest in his lifetime.

83. Nor do I understand how the Limited Partnership Act 1907 ("the 1907 Act") assists Mrs Callin.

84. As I understand her case, she relies on s.4(3) of the 1907 Act, which (as it applied at the relevant times) provides:

> "A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back."

Mrs Callin argues, I understand, that, by s.4(3) of the 1907 Act, the estate has never been entitled to the BML interest or any payments from BML, except perhaps a minimal sum representing Mr Holroyd's capital contribution.

85. There is something unreal about this contention. If it was right, taken to its logical conclusion Mrs Callin would not have been entitled to receive the sum of £574,387.39 which she has in fact received in relation to the BML interest. More generally, if it was right, it would mean that limited partnerships, which, as this case demonstrates, are used in complex investments, would be very unattractive, because they would prevent investors obtaining any return on their investment. As it happens, the contention is a bad one. S.4(3) of the 1907 Act deals only with a limited partner's capital contribution and the consequences of its withdrawal by the limited partner. The sums received in relation to the BML interest were, on all the evidence, profit shares. There is nothing to suggest that any sum received represented a withdrawal of Mr Holroyd's capital contribution. That there is a distinction between capital contributions and profit shares is well illustrated by cl.7 and cl.9.1 of the BML amended partnership agreement.

86. Nor does s.4(3) of the 1907 Act or, it seems, any other provision of the 1907 Act prevent the BML interest forming part of the estate. Cl.10.1 of the BML amended partnership agreement appears to regulate what happened to the BML interest on Mr Holroyd's death. It fell into the estate.

87. For these reasons, these two defences to the Claimant's claim in relation to the BML interest fail.

The Claimant's claim – relevant legal principles

88. As in the case of Mrs Callin's defence based on s.11 of the 1999 Act, so more generally, the parties' legal submissions were somewhat limited and, particularly in their closing submissions, I was referred to hardly any authorities. For these reasons, and because Mrs Callin is not legally qualified, I set out, in this section of the judgment, some relevant legal principles and, in doing so, I refer to academic commentary more than I might otherwise have done.

89. The 1986 Order, which makes provision for insolvency administration orders and for insolvent estates to be administered in bankruptcy, applies s.284 to the present case, but with amendments. As I read the 1986 Order, as amended s.284 (as it has applied at the relevant times) provides:

> "(1) Where an insolvency administration order is made, any disposition of property made by the personal representative in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.
>
> (2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid as part of the deceased debtor's estate.
>
> (3) This section applies to the period beginning with the day of the death of the deceased debtor and ending with the vesting,

> under Chapter IV of this Part, of the deceased debtor's estate in a trustee.
>
> (4) The preceding provisions of this section do not give a remedy against any person -
>
> (a) in respect of any property or payment which he received before the insolvency administration order is made in good faith, for value and without notice that the petition had been presented, or
>
> (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy…
>
> (6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the deceased debtor's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person."

It can be seen, therefore, that all dispositions of estate property by a personal representative, and all payments by a personal representative, made between the date a deceased dies and the making of an insolvency administration order are void, unless a court validates the disposition or payment, or sub-s.(4) applies.[5] Where a payment is made, subject to those two exceptions the recipient expressly holds the sum received on trust for the estate.

90. The operation of s.284 was considered by the Court of Appeal in *Re Ahmed (a debtor)* [2018] BPIR 535. In that case, Gloster LJ (with whom Patten and David Richards LJJ agreed) made the following points, it seems to me:

i) S.284 operates to avoid relevant dispositions and payments. It does not say what is the remedy for a void transaction, as to which the general law applies (see [29]);

ii) On the making of a void disposition or payment, the recipient holds what they have received on trust. Once a bankruptcy order (or insolvency administration order) is made and a trustee in bankruptcy is appointed, that trust is a bare trust in favour of the trustee in bankruptcy (see [45]-[46]);

iii) The remedy available to the trustee in bankruptcy is restitutionary, so requiring the recipient (in a case such as the present one) to restore to the trustee in bankruptcy what has been received if still in the recipient's hands. Otherwise, (and, in other cases, in any event) the recipient must pay compensation for what the bankruptcy estate has lost (see [33]-[34]);

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[5] Schaw Miller and Bailey: Personal Insolvency Law and Practice (5th ed) suggest, at para.16.31, that a recipient of a void disposition may be able raise to change of position defence. Mrs Callin did not raise a change of position defence in response to the Claimant's restitutionary claim. I make no comment about whether it is in fact possible to establish a change of position defence in response to such a claim. Nor do I make any comment about the merits of any change of position defence which Mrs Callin might have raised.

iv) There can be no breach of trust by the recipient, for failing to return trust assets to the trustee in bankruptcy, before the trustee in bankruptcy is appointed (see [51], [55]).

91. Where a trustee receives a payment derived from the asset they hold on trust, that payment becomes part and parcel of the same trust. Underhill and Hayton: Law of Trust and Trustees (19th ed) explains, at para.1.1:

> "…The trust fund comprises not just the trust property originally owned by the trustee as trustee and all the fruits from time to time thereof (e.g. interest payments, rents, dividends from shares or bonus issues of shares), but also authorised substituted property subsequently acquired by the trustee on behalf of the trust. Moreover, the beneficiaries are entitled to claim that the trust fund comprises unauthorised substituted property purportedly acquired by the trustee on behalf of the trust, and any property purportedly acquired by the trustee for himself from his sale or exchange of trust property or even from his misuse of his position as trustee (e.g. secret commissions or bribes). When property is subsequently transferred by a settlor to a trustee in his capacity as trustee of the settlor's subsisting trust no new trust of such property is created: the trustee is trustee of one trust for the beneficiaries, the property from time to time owned by him as trustee thereof being held en masse as a fund. If a third party transfers his property to that trustee to be held en masse as part of the trust fund, he will be regarded as settlor of the proportion of the trust fund representing the value of his property…"

92. A bare trustee has a duty (in a case such as the present one) to transfer the trust assets to the trust beneficiary on being called on to do so by the beneficiary (see Lewin on Trusts (20th ed); para.1-037).

93. In the case of a trust which is not continuing (such as in the present case), where the trustee does not, or is unable to, transfer a trust asset to the beneficiary, they must pay the beneficiary compensation (see Lewin; para.41-003). Historically, courts have ordered the taking of accounts to determine the amount of compensation payable, but that is not necessary when the amount of the compensation is capable of being calculated at trial (see Lewin; para.41-006). As Lewin explains, at para.41-010:

> "It was confirmed by the House of Lords in *Target Holdings Ltd. v. Redferns*, that the basic rule on the personal liability of a trustee is that he must restore or pay to the trust estate either the assets which have been lost to the estate by reason of the breach of trust or failure to account properly for the trust fund, or compensation for such loss. The form of relief is couched in terms appropriate to require the defaulting trustee to restore the missing assets to the trust estate. If specific restitution of the trust property is not possible, the trustee must pay sufficient compensation to put the estate back to what it would have been had the breach not been committed. Where the trusts are no

> longer subsisting at the date of trial, the award of compensation is made to the beneficiary who is absolutely entitled. At such point, there is no longer a right to specific restitution of the trust estate. The trustee's liability thus continues in existence after the termination of the trust. Trustees cannot mitigate or alter the quantum of their liability by bringing the trust to an end, such as to require each beneficiary to prove that he has suffered loss."[6]

94. Lewin explains, at para.45-033:

> "A trustee must not, without authority, place himself in a position where his personal interest, or interest in another fiduciary capacity, conflicts or possibly may conflict with his fiduciary duty to protect those whom he is bound by that duty to protect. If he does so, he is obliged by his trust to prefer the interests of his beneficiaries. If, in breach of this duty, he enters into a transaction or other engagement on his own account, thereby preferring his own interest to that of his beneficiaries, he is not permitted to retain the profit, to the extent that it is made within the scope and ambit of the duty which conflicts or may conflict with his personal interest, or interest in another fiduciary capacity. It is not because he has made a profit from trust property or his fiduciary position that the trustee is liable under the conflict rule, but because, being in a fiduciary position, he has entered into a transaction inconsistent with his fiduciary duty of loyalty to the beneficiaries which has yielded the profit, and thereby misused his position. The opportunity to make the profit may not arise from the trustee's fiduciary position; he might just as well as have had the opportunity if he had not been in that position, but even so his liability in respect of the profit arises because of the conflict. Thus, what is crucial to the application of the conflict rule is not that the profit is the fruit of the trust property or the trusteeship, but that it is made in circumstances where the conflict exists and falls within the scope and ambit of the conflicting duty. Normally in a case where the conflict rule applies, the trustee will also have taken advantage of the trust property or the trusteeship. But that will not always be so…"

95. Where there is a breach of the conflict (or, rather, no conflict) rule, an institutional constructive trust is imposed so that the trustee holds the tainted "profit" on the same terms as they hold the other trust assets (see Lewin; para.45-035, 45-040). The remedies available to the beneficiary of the institutional constructive trust include those I have already discussed (see also Lewin; paras.45-042, 45-044, 45-046).

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[6] Lewin also says, at para.41-070: "Usually, money paid as equitable compensation for breach of trust is ordered to be added to the trust fund by way of reconstitution of it, or if the trust fund is immediately distributable, to be paid to the claimant beneficiary."

96. I turn now to consider Mrs Callin's liability in connection with the Claimant's claim (subject to those of her defences which, if established, it may be said, formally or in practice protect her from, or relieve her of, liability (i.e. her claim to relief from liability under s.61 of the Trustee Act 1925, her application for a validation order, her reliance on the rule in *ex parte James*, her set off defence and her defence that the claim is statute barred), which I shall refer to as her "relief from liability defences", the merits of which I consider in later sections of this judgment)).

The Guardian lump sum and the NPI death benefit

97. As I have said, it is not disputed that Mrs Callin has personally received sums representing the Guardian lump sum and the NPI death benefit. These were paid to her out of Mercer & Hole's and Clarion's client accounts respectively. It was not suggested that, because the payments Mrs Callin received were sums representing the Guardian lump sum and the NPI death benefit and the sums were actually paid to her by Mercer & Hole and by Clarion, the payments to her were thereby precluded from being caught by s.284. I received no submissions on this point. The parties did not refer me to *Pettit v. Novakovic* [2007] BCC 462. Adopting the analysis of the judge in that case, on all the evidence to which I was taken, in the light of the conclusions I have already reached and applying the legal principles to which I have referred, the sums Mrs Callin received have been, or should have been, held on trust by her since she received them, now for the benefit of the Claimant as trustee in bankruptcy.

98. I heard no evidence about whether Mrs Callin has retained the sums she received (or, indeed, any of the other sums relating to BML and Roseway in respect of which the Claimant makes a claim). However, Mrs Callin did explain to me that the financial consequences for her, if the Claimant succeeds, would be very serious indeed and she suggested that the claim, if successful, might (or would) bankrupt her.

99. In the light of the legal principles to which I have referred (and subject to any successful relief from liability defences), if Mrs Callin retains the sums received, she must pay them to the Claimant and, if she does not retain them, she must pay equitable compensation, in the principal sums of £43,942.97 in relation to the Guardian policy and £97,3481.31 in relation to the NPI pension.

The Rosetta shares, the BML interest and the sums received in relation to the BML interest

100. On all the evidence, in the light of the conclusions I have already reached and applying the legal principles to which I have referred (and subject to any successful relief from liability defences), the Rosetta shares and the BML interest were part of the estate and now Mrs Callin holds the Rosetta shares and the BML interest on trust for the Claimant as trustee in bankruptcy, and she must complete those documents which it is appropriate for her to complete to allow the Claimant to be registered as the holder of the Rosetta shares and to become the assignee of the BML interest.

101. The transaction by which Mrs Callin, as executrix, disposed of the Rosetta shares and the BML interest to herself was expressed, in the APA, to be for consideration; namely, the forgiveness of £18,000 of the estate's indebtedness to her.

102. Mrs Callin has not relied on s.284(4)(a) but I have considered whether it is applicable in any event on the evidence which I heard and to which I was taken (although, to be clear, I heard no submissions or specific evidence on the point).

103. It will be recalled that s.284(4)(a) provides:

> "The preceding provisions of this section do not give a remedy against any person…in respect of any property or payment which he received before the insolvency administration order is made in good faith, for value and without notice that the petition had been presented."

104. I am not satisfied that s.284(4)(a) would assist Mrs Callin.

105. At the time the disposal of the Rosetta shares and BML interest was being considered, Ms Rogers explained that the estate was not indebted to Mrs Callin. If this is right, Mrs Callin gave no value for the disposal to her of those assets.

106. It is right that, just over two years after the APA, Clarion advised that the estate was indebted to Mrs Callin in the sum of £221,281.67. On all the evidence, it is unlikely that the dividend to creditors would be more than eight pence in the pound. As I have explained, that would mean that Mrs Callin might receive a divided of no more than £17,702.53. The very limited evidence before me suggests that the Rosetta shares and the BML interest were worth in the region of £18,000 in July 2013, because that had been what Mr Iggulden had been prepared to pay for them (and for the Roseway interest). Even if the estate was indebted to Mrs Callin and, by the APA, she did purport to give up the whole of her claim, she received in return assets which were valued at about the same amount as the whole of the dividend she was likely to get. In fact, she did not purport to give up the whole of her claim. She purported to give up only £18,000 which, at a dividend rate of eight pence in the pound, would amount to a giving up of a dividend of £1,440 in return for assets worth in the region of £18,000.

107. By July 2013, Mrs Callin knew that the estate was insolvent and everybody involved in administering the estate was proceeding on that basis. She had been advised in 2009 to obtain a professional valuation before she bought any estate assets. She was advised to consider obtaining creditor consent to any purchase by her of estate assets. She was also advised in 2009 that she could get the court's approval of how she proposed to act. In 2012, Mrs Callin was warned that a disposal to herself of the Rosetta shares and the BML interest in return for the forgiveness (the writing off) of some the estate's indebtedness to her may amount to a preference which, if established, would put her at risk of personal liability. She was told, in terms, that the transaction which, as it happens, actually took place (the APA) risked her "being in contravention of [the 1986 Act]".

108. I am therefore doubtful about whether Mrs Callin received the Rosetta shares or the BML interest in good faith, if the estate was in fact indebted to her. Schaw Miller and Bailey say, at para.16.32:

> "No remedy lies against any person in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the

> petition had been presented. Nor does any remedy lie against any other person in respect of any interest in property which derives from an interest in such property. This provision is modelled on the protection provided by the Bankruptcy Act 1914, s.46 which was discussed by the Divisional Court in *Re Dalton, ex p. Herrington & Carmichael (a firm) v the Trustee*. The court held that the requirement of good faith connoted that some duty was owed and that in the context of bankruptcy that the duty was owed to the general body of creditors. In showing good faith to that general body, what was involved:
>
> > "goes beyond mere personal honesty: it requires more than absence of dishonesty, more than absence of conscious attempt to defraud. If Mr Bennett had made the payments with the knowledge that the process would result in some creditors being paid in full and others whistling for their money, we do not consider that the payments would have been made bona fide…It might well be that if a person in Mr Bennett's position had a strong suspicion that the process of his payments would have the result mentioned above, but took pains to avoid finding out the truth, he could not be said to make them bona fide.""

109. In the light of the legal principles to which I have referred, the profit share payments received by Mrs Callin in relation to the BML interest were also held on trust by Mrs Callin. In the light of the legal principles to which I have referred (and subject to any successful relief from liability defences), if Mrs Callin retains the sum (£574,387.39) received, she must pay it to the Claimant and, if she does not retain it, she must pay equitable compensation in the same amount.

The Roseway interest

110. Neither party sought to call Mr Forer or Ms Laidler to give oral evidence.[7] Neither party served a Civil Evidence Act notice in relation to hearsay evidence contained in Mr Forer and Ms Laidler's emails. Both parties relied on those emails from Mr Forer, and, in the case of Mrs Callin, from Ms Laidler, which they contended supported their case.

111. I will proceed, most favourably to Mrs Callin, on the basis that the Roseway general partner had a complete discretion to whom it might assign the Roseway interest (although, to be clear I was taken to no evidence, such as Roseway's constitutional documents, which corroborates this claim).

112. Nevertheless, the evidence shows that, whether or not they had the right to interests in Roseway, Rosetta's shareholders were, as a class, in the forefront of the Roseway general partner's consideration for the receipt of interests in Roseway (see, for example, Mr Forer's 9 May 2012 email to Clarion and the 15 August 2013 letter to Rosetta's shareholders).

[7] I raised this issue at the pre-trial review and suggested to the parties that they ought to consider, and be prepared to address me at trial on, the appropriate weight to be attached to that evidence.

113. Further, in this case the evidence shows that, had Mrs Callin proposed that she would receive the Roseway interest on the same trusts as she held the Rosetta shares, the Roseway general partner would not have objected, because it (and Mr Forer) always thought of the Roseway interest as the estate's (see, for example, Mr Forer's 4 May 2012 and 9 October 2012 emails to Clarion).

114. This might be a convenient point to note also that, whilst Mrs Callin cannot have thought that she was a trustee of the Rosetta shares at the time they were transferred to her because a petition for an insolvency administration order was in no-one's contemplation, during the period when discussions about what to do with the Roseway interest were taking place she must have appreciated that there was an expectation that it would be available for the estate's creditors and not for her personally, because, for example, when Ms Dean emailed Mr and Mrs Callin on 24 May 2012, she wrote about the estate's interest in Roseway and the whole tone of the email was that the estate (the creditors) should be compensated for Mrs Callin's acquisition of the Roseway interest. Indeed, Mrs Callin's own evidence was that, by Mr Forer's 10 November 2010 email, she understood that she would be receiving the Roseway interest because she was Mr Holroyd's personal representative. As it turns out, she did not pay anything to the estate in relation to the assignment to her of the Roseway interest.

115. On the limited submissions made to me and applying the legal principles I have referred to, I have concluded that Mrs Callin was in breach of the conflict rule when she accepted the assignment to her by the Roseway general partner of the Roseway interest and she has held the Roseway interest on a constructive trust, most recently for the Claimant (as trustee in bankruptcy). Subject to any successful relief from liability defences, in light too of the legal principles I have referred to, Mrs Callin must pay the Claimant the principal sum of £31,859.86 in relation to the Roseway interest.

116. At the time of the assignment to her of the Roseway interest, the Rosetta shares had already been transferred to Mrs Callin. In the light of the conclusions I have already reached, at the time of the assignment of the Roseway interest to her Mrs Callin held the Rosetta shares on trust. She therefore had a duty of loyalty to the beneficiaries of that trust. An assignment of the Roseway interest to her on the same trusts as she has held the Rosetta shares was possible on the evidence and also, on the evidence, is likely to have been approved and agreed to by the Roseway general partner. Instead, Mrs Callin accepted the assignment of the Roseway interest to herself (and has, in fact, retained the profit shares paid in relation to that interest) and thus breached the conflict rule.

117. I turn now to consider the relief from liability defences.

<u>s.61 of the Trustee Act 1925</u>

118. S.61 of the Trustee Act 1925 ("s.61") provides:

> "If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act,

> but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same."

119. Lewin explains, at para.41-150:

> "Before exercising its discretion the court must be satisfied, by proper evidence, that the trustee acted reasonably as well as honestly; and the burden of showing this lies on the trustee seeking relief. It has been authoritatively stated that in considering reasonableness the court will consider whether a prudent man of business would have disposed of the trust property in the manner complained of, had it been his own."

120. It is true that trustees have been relieved of liability when they relied on wrong advice from their solicitors to make an unauthorised distribution (see *National Trustees Co. of Australasia Ltd. v. General Finance Co. of Australasia Ltd.* [1905] AC 373) but, as Lewin notes, at para.41-151, "every case turns on its own facts considered as a whole" and, at para.41-154:

> "Though a trustee acted honestly and reasonably, the court still has to consider whether the trustee should fairly be excused, having regard to all the circumstances. A key factor in that assessment is the effect of the breach on the beneficiaries. That the trustee acted on legal advice is not, without more, a passport to relief. Efforts to recoup the loss are required; it comes at a price and should not be described as an act of mercy on the part of the court. And trustees may be at risk for failure to obtain counsel's opinion instead of relying on their solicitor. We consider that lay persons, unremunerated, ought to be excused where they take decisions within the limits of their experience and knowledge, listen to reason, and do not act irrationally or obdurately. The same can also be said where the actions of the trustee are the subject of technical legal guidance, when the trustee is unaccustomed to problems of such nature…"

121. It will be recalled that Mrs Callin's case is that she relied on advice from Clarion in relation to the assignment to her of the Rosetta shares and the BML interest and she took, and retained, the NPI death benefit for herself because Mercer & Hole advised her in 2010 that it belonged to her.

122. There can be no question of s.61 operating to allow Mrs Callin to retain any of the claimed assets which she continues to retain. The relief which the Claimant seeks in relation to those assets is that Mrs Callin merely does what she is required to do. That relief does not require the Claimant to establish a breach of trust.

123. To the extent that s.61 might operate, the following points are, or may be, relevant.

124. Mrs Callin has appreciated, since shortly after Mr Holroyd's death, that the estate has been (or is likely to have been) insolvent.

125. Within a few months of Mr Holroyd's death, Mrs Callin knew that NPI's position was that the NPI death benefit fell into (was part of) the estate and that she was not entitled to it personally. There is no evidence that Mercer & Hole advised her that she was personally entitled to the death benefit. Indeed, the evidence tends to suggest that such advice was not given, because, Mrs Callin said, Mercer & Hole was asking her for documents to investigate NPI's claim and because, in 2011, Mrs Callin said that the death benefit fell into the estate. In any event, before Mrs Callin instructed Clarion to pay the sum representing the death benefit to her, Clarion had given clear advice that she was not personally entitled to that sum and that she was at risk of a challenge by creditors. She ignored that clear advice. She also did not apparently take up Clarion's suggestion to get a second opinion.

126. Mr Holroyd did not apparently sign a nomination letter in relation to the Guardian policy. There is no record of advice (in particular, legal advice) to Mrs Callin that she was entitled to the Guardian lump sum personally.

127. Mrs Callin was warned, in August 2009, that she should be careful when purchasing estate assets, that she should get professional valuations before doing so and that it would be prudent to seek creditor consent before doing so. She was also advised that she could seek the court's sanction for any proposed transaction.

128. Mrs Callin understood that the Rosetta shares, the BML interest and the Roseway interest were estate assets and is likely to have appreciated that the estate's creditors should benefit from them.

129. Mrs Callin was warned, in May 2012, that, if she took an assignment of the Rosetta shares, the BML interest and the Roseway interest in consideration of forgiving part of the estate's debt to her, she was at risk of being in breach of the 1986 Act and of a claim being made against her.

130. At that time, she apparently believed that she was not an estate creditor and that there could be no debt to forgive as consideration for the transfer to her of the Rosetta shares, the BML interest and the Roseway interest.

131. I acknowledge that, when she entered into the APA, Mrs Callin was pregnant, and had family and caring responsibilities. I have borne these matters very much in mind. However, weighing in the balance all the other points I have set out, I have concluded that, where Mrs Callin has acted in breach of trust in this case she has not acted reasonably and/or it would not be fair to excuse her from liability at the expense of the estate's creditors, so that this defence fails.

Application for a validation order

132. Mrs Callin's oral application, in her closing submissions, for a validation order was limited to the Guardian lump sum. She said that she and Mrs Holroyd had paid the policy premiums. There is no evidence to corroborate this claim which, as I say, was first made by Mrs Callin in closing.

133. Helpfully, the main principles which the court applies when deciding whether to make a validation order are summarised in the Insolvency Practice Direction, as follows:

> "The Court will need to be satisfied by credible evidence that the debtor is solvent and able to pay their debts as they fall due or that a particular transaction or series of transactions in respect of which the order is sought will be beneficial to or will not prejudice the interests of all the unsecured creditors as a class…
>
> Similar considerations to those set out above are likely to apply to applications seeking ratification of a transaction or payment after the making of a bankruptcy order."

134. None of the transactions in this case were beneficial to the estate's creditors. To the contrary, on the evidence, and, in the case of the Guardian policy, in the absence of any evidence to corroborate Mrs Callin's claim that she and her mother paid the policy premiums, I have concluded that each of the transactions prejudiced the estate's creditors. They got nothing (or insufficient) in return for the transactions caught by s.284. For these reasons, it is not appropriate to make any validation order.

The rule in *ex parte James*

135. On this issue, Mr Finlay referred me to *Lehman Bros. Australia Ltd. v. MacNamara* [2021] Ch 1 (see per David Richards LJ at [35]-[69]). More recently, in *Court Enforcement Services Ltd. v. Marston Legal Services Ltd*. [2021] QB 129, Lord Leggatt, with whom Lewison and Lindblom LJJ agreed, said, at [118]-[121], by way of a helpful summary of David Richards LJ's careful analysis of the rule in *ex parte James* in *MacNamara*:

> "There is a further issue on which the court invited written submissions after the hearing. This was whether the court's jurisdiction over officers of the court recognised in the case of *Ex p. James; In re Condon* (1874) LR 9 Ch App 609 and subsequent authorities is applicable and should be exercised in this case.
>
> In *Ex p. James; In re Condon* the sheriff had seized and sold goods under a writ of fi fa and paid the proceeds to the judgment creditor. Afterwards the debtor was adjudicated bankrupt and the trustee in bankruptcy demanded the proceeds of the sale of the debtor's goods from the judgment creditor, who paid the proceeds to the trustee in the mistaken belief that the trustee was legally entitled to them. The trustee sought to retain the proceeds. The Court of Appeal affirmed an order of the registrar which required the trustee to repay the money to the judgment creditor. The court did so, not on the basis that the trustee had a legal duty to repay the money but on the basis that, as an officer of the court, the trustee "ought to set an example to the world by paying it to the person really entitled

> to it" and that the court "ought to be as honest as other people" (per James LJ at p.614).
>
> This decision and cases which have followed it were recently reviewed by the Court of Appeal in *Lehman Bros Australia Ltd. v. MacNamara* [2021] Ch 1. David Richards LJ (with whom Patten and Newey LJJ agreed) at para.35 of the judgment identified the governing principle as being that:
>
> > "the court will not permit its officers to act in a way which, although lawful and in accordance with enforceable rights, does not accord with the standards which right-thinking people or, as it may be put, society would think should govern the conduct of the court or its officers."
>
> Further points made in the *MacNamara* case were these:
>
> (1) The standard is an objective one: the question is not whether the individual concerned is consciously departing from the standard set by the court, but is only whether the conduct of the officer, on an objective basis, falls below that standard: para.38.
>
> (2) The principle is not confined to cases of money paid under a mistake of law but is a general principle applicable to any acts of the court's officers: para.43, citing *In re Tyler; Ex p. The Official Receiver* [1907] 1 KB 865.
>
> (3) The test is not one of unconscionability (as the judge at first instance in the *MacNamara* case had held). It is one of fairness, the underlying principle being that the court will not permit its officers to act in a way in which it would be clearly wrong or improper for the court itself to act: paras.61-68."

I would only add that, in *MacNamara* at [69], David Richards LJ said that the application of the rule in any case "will critically turn on the particular facts of that case".

136. Mrs Callin's case is that the Claimant failed to warn her, properly or at all, of the risks to her of petitioning for, and obtaining, an insolvency administration order.

137. I am afraid that I do not believe that, on all the evidence, society would think that it is inappropriate or unfair for the Claimant to pursue this claim against Mrs Callin and I reject Mrs Callin's claim to rely on the rule in *ex parte James*, even on the assumption that Mrs Callin has established that the Claimant did not properly advise her at a time before he was appointed trustee in bankruptcy.

138. It does not follow that, had an insolvency administration order not been made, the estate's creditors would not have been able to obtain relief equivalent to that which the Claimant seeks in the claim. In this context, it may be worth recalling, as I have already explained, that Mrs Callin was warned by Clarion that taking an assignment

of the Rosetta shares, the BML interest and the Roseway interest without paying market value for them would expose her to the risk of a claim by creditors and that she was advised by Clarion against taking the NPI death benefit for herself.

139. The Claimant did say, in cross examination, that, at the time Mrs Callin was considering petitioning for an insolvency administration order, she was being advised by Gunnercooke LLP. As I have noted, Mrs Callin disputes that Gunnercooke LLP advised her. She contends that she was advised by a different solicitor. I was not told what advice, if any, she received.

140. To the extent that I can consider the further matters I have identified above in the context of Mrs Callin's claim to relief from liability under s.61, they merely reinforce my conclusion.

Set off

141. Although Mrs Callin pleaded a set off defence in the amended defence, she did not address that defence at all at trial or in her skeleton argument for trial. I am afraid I do not understand how a set off could operate in this case. In particular I do not understand how an insolvency set off could operate. An insolvency set off operates where there have been mutual credits, mutual debts, or other mutual dealings between the deceased (Mr Holroyd) and the creditor proving or attempting to prove for a debt (Mrs Callin, on her case), in which case an account must be taken and the sum due from the one party must be set off against the sum due from the other, and the balance only claimed. There is no evidence in this case that there were mutual dealings between Mr Holroyd and Mrs Callin during Mr Holroyd's lifetime. There is no evidence that Mrs Callin was indebted to Mr Holroyd during his lifetime.

142. In these circumstances, the set off defence cannot succeed.

Limitation periods

143. The District Judge permitted the Claimant to amend the particulars of claim on 3 February 2021. It appears that the District Judge was not invited to consider whether any of the amendments the Claimant sought to make were being advanced after the end of a limitation period. Nor was he apparently invited to consider CPR 17.4. As the case was presented to me it was not immediately obvious that these might have been issues which the District Judge might have had to consider. That he might have had to consider them (in relation to the claim by the Claimant to be compensated for most of the Roseway profit shares) has only become apparent to me in the preparation of this judgment. It is hardly surprising therefore that, in the limited time available to the District Judge and in the way the case is likely to have been presented to him, he did not appreciate that a limitation period in relation to the Claimant's claim to be compensated for most of the Roseway profit shares may already have been statute barred by February 2021.

144. The District Judge's decision has not been appealed. As a first instance judge, I am bound by that decision.

145. Any limitation period stopped running (or, in the case of the Roseway interest, is treated as having stopped running, by virtue of the District Judge's decision)[8] when the claim was begun on 7 October 2019, so that if, for example, any of the claims is subject to a six year limitation period, the cause of action (for example, the breach of trust complained of) must have accrued (must have occurred) after 7 October 2013 in order for the claim to have been brought within the limitation period.

146. I cannot ignore the fact that Mrs Callin has not pleaded a limitation defence and so, properly, she cannot rely on the expiry of any limitation period in defence of the claim.[9] [10]

147. In any event, I cannot see, on all the evidence, how Mrs Callin could raise a successful statutory limitation defence.

148. If a six year limitation period applies to the Claimant's claim for the restitution (the transfer to him) of the Rosetta shares and the BML interest, in the light of *Ahmed*, that claim was brought well within time.

149. As I have noted, Mrs Callin received the first relevant profit share payment on 2 December 2014 (and she cannot have disposed of it in breach of trust before then), so within six years of the date when the claim was begun.

150. The sum representing the NPI death benefit was not paid to Mrs Callin until after November 2015, so within six years of the date when the claim was begun.

151. It is true that a sum representing the Guardian lump sum was paid to Mrs Callin on 7 September 2010 but, if she has disposed of it (that is, trust property) after receiving it, it is most likely that she used it for her own benefit, so that no statutory limitation period applies (see s.21(1)(b) of the Limitation Act 1980).

Conclusion

152. It follows that the Claimant's claim succeeds, and that Mrs Callin must:

i) sign a stock transfer form in the Claimant's favour in relation to the Rosetta shares;

ii) complete such documents as it is appropriate for her to complete to allow the Claimant to be registered as the holder of the Rosetta shares and so that the assignment to him of the BML interest can be effected;

iii) pay the Claimant the following principal sums:

a) in relation to the Guardian lump sum, £43,942.97;

b) in relation to the NPI death benefit, £97,481.31;

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[8] See s.35(1) of the Limitation Act 1980.

[9] I alerted her to this omission at the pre-trial review. She took no steps to apply for permission to re-amend the defence.

[10] Because Mrs Callin has not pleaded a limitation defence, I received few submissions on the question of limitations.

c) in relation to the BML profit shares, £574,387.39;

d) in relation to the Roseway profit shares, £31,859.86.

153. From what Mrs Callin told me, this decision will have a calamitous impact on her and her family (including her young children). I do remind myself of the advice and warnings which Mrs Callin received before she carried out the disputed transactions, but I cannot help being troubled about the impact of this decision particularly on her young children. Nevertheless, for the reasons I have given, I am compelled to decide the claim in the way I have done.

154. I will hear further from the parties on all consequential matters.