



Neutral Citation Number: [2023] EWHC 1661 (Ch)

Case No: BL-2021-LDS-000024

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

Leeds Combined Court Centre,  
1 Oxford Row,  
Leeds LS1 3BG  
Date: 3 July 2023

**Before :  
UPPER TRIBUNAL JUDGE MARK WEST  
SITTING AS A JUDGE OF THE HIGH COURT**

**Between :**

**(1) JOHN WALSH  
(2) BRIAN SUTCLIFFE  
(3) KEITH ILLINGWORTH**

**all as trustees of**

**THE ROYAL ANTEDILUVIAN ORDER OF BUFFALOES  
GRAND LODGE OF ENGLAND COMPREHENSIVE TRUST DEED FUND  
(CHARITY NO 220193)**

**THE JOURNAL CHILDREN'S FUND ROYAL ANTEDILUVIAN ORDER  
OF BUFFALOES (CHARITY NO 529575)**

**THE WAR MEMORIAL TRUST DEED OF THE GRAND LODGE OF ENGLAND OF  
THE ROYAL ANTEDILUVIAN ORDER OF BUFFALOES (CHARITY NO 220476)**

**Claimants**

**- and -**

**(1) PETER SPENCE  
(2) PETER COTON  
(3) MURRAY CABLE**

all as representatives of the unincorporated association

**THE ROYAL ANTEDILUVIAN ORDER OF BUFFALOES  
GRAND LODGE OF ENGLAND**

**Defendants**

**Dominic Crossley** (instructed by **Wilson Bramwell LLP**) for the **Claimants**

**Sarah Harrison** (instructed by **Clarion Solicitors Ltd**) for the **Defendants**

Hearing date: 7 February 2023

*Remote hand-down:* This judgment was handed down remotely at 2 pm on 3 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Judgment**

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## **The Parties**

1. In this action the Claimants (“**Cs**”) are the current trustees of the Royal Antediluvian Order of Buffaloes Grand Lodge of England Comprehensive Trust Deed Fund (Charity No. 220193) (“**CTF**”), the Journal Children’s Fund Royal Antediluvian Order of Buffaloes (Charity No. 529575) (“**JCF**”) and the War Memorial Trust Deed of the Grand Lodge of England of the Royal Antediluvian Order of Buffaloes (Charity No. 220476) (“**WMF**”). Those bodies are all registered charities and they will be referred to collectively as “**the Charities**”. Cs have been trustees since April and October 2017 (although the Claim Form gives a date of November 2017).

2. The Defendants (“**Ds**”) are members of the unincorporated association known as the Royal Antediluvian Order of Buffaloes (“**RAOB**” or “**the Order**”). They have been sued as representative defendants in accordance with CPR 19.6(1). They were named as members of the Grand Lodge Management Committee (“**the GLMC**”) to represent all those persons having the same interests as member of the GLMC and/or as members of the unincorporated association the Royal Antediluvian Order of Buffaloes Grand Lodge of England (“**RAOB GLE**”), which is managed in all material respects by the GLMC. D1 is now a former member of the GLMC and D2 and D3 are two of the trustees of the RAOB GLE. A separate entity, RAOB GLE Trust Corporation Ltd, has held title to assets owned by the Charities.

## **The Claim**

3. In these proceedings, commenced as a Part 8 claim, and as more particularly set out in the Claim Form, issued on 6 July 2021, Cs averred that

“2. The GLMC and/or [RAOB GLE] holds and/or controls access to certain papers, records, electronic files, databases, and other information pertaining to the financial affairs of the Charities which the Charities own and/or are entitled to access.

3. Despite repeated requests, the GLMC and/or [RAOB GLE] has failed to provide the Claimants as trustees of the Charities with the said papers, records, electronic files, databases, and

other information and/or appropriate and/or necessary and/or reasonable and/or desirable access thereto.

...

5. The Claimants are unable to discharge their duties as trustees of the Charities without the material requested from the GLMC and/or [RAOB GLE]. In particular, the Claimants are unable fully to prepare or to sign off accounts for the Charities for the 2019, 2020 or 2021 financial years or to instruct their accountants to carry out an audit. Further, as a result of the incomplete financial information the Claimants had following their appointment as trustees, it now appears that the 2018 accounts for the Charities were wrongly stated and approved and need to be restated with the benefit of full information.

...

7. ... it appears that this situation has arisen because, prior to the Claimants' appointment as trustees, the GLMC and/or [RAOB GLE] and/or other persons managing the Charities and the [RAOB GLE] had managed the Charities and the [RAOB GLE] with little regard to their different legal positions and personalities and/or had mixed the Charities' funds with those of [RAOB GLE] and/or other entities, while controlling access to the financial data of the Charities, which appears to have been maintained along with data belonging to other entities and not treated entirely separately by those handling the data, including the former accountants of the Charities".

### **The Relief Sought**

4. As set out in paragraph 9 of the claim form, Cs originally sought

(1) the delivery up of papers, records, electronic files, databases and other information, as specified in the Schedules to the first witness statement of Mr Jonathan Crossley of Brays or access to the same

(2) the service of witness evidence in relation to any documentation which was not so provided

(3) further directions.

5. As originally sought and as set out in the Schedules to the witness statement, Cs required delivery up of the following material:

## **SCHEDULE 1**

### **FOR FINANCIAL STATEMENTS PREPARATION**

#### **Basic Bookkeeping records:**

A detailed list of income with date, amount, and comprehensive annotations including a description, source and income category (preferably from a Sage nominal activity report).

A detailed list of outgoings with date, amount, and comprehensive annotations, including a description, recipient and outgoing category (preferably from a Sage nominal activity report).

A detailed list of money owed to the charity at the year end date (31 March 2019) with amounts, settlement terms, and comprehensive annotations including a description, name of debtor and details of why the money is due.

A detailed list of money owed by the charity at the year end date (31 March 2019) with amounts, settlement terms, and comprehensive annotations including a description, name of creditor and details of why the money is due.

Calculations to support gift aid returns.

Details of any commitments entered into by the charity which are not yet due for settlement.

#### **Basic Prime records:**

Bank statements, cheque book stubs and paying in books.

Agreements and statements for Loans, Credit Cards, Hire Purchase and any other form of finance.

Payroll records

Gift aid returns

Purchase invoices to support items of capital expenditure, unusual transactions, or transaction material to the accounts. It

is standard practice to request further copy invoices following review of the bookkeeping records.

**Other records:**

The Charities founding documents, including any subsequent amendments made to these.

Details of any specific donations or legacies, or any specific funds which have constraints on their use.

A list of transactions with related parties.

Any other records that may become apparent and necessary during the course of the accounts preparation.

## **SCHEDULE 2**

### **FOR AUDIT WORK**

In addition to the above

**Full Bookkeeping records:**

A full copy of the bookkeeping records, including Sage data, supporting spreadsheets, cashbooks etc.

**Full Prime records:**

Original documents to support each individual transaction, such as receipts, invoices, agreements etc.

Supplier statements

Documents to prove ownership of any material assets owned by the charity.

Where income is received by virtue of an agreement, for example a donation being a specific portion of another transaction, a copy of the agreement and documents to support the underlying transaction so the value of the donation can be verified.

In the above example, where the underlying transaction takes place in another organisation, full access to that organisation's financial records will be required in order to verify the 'completeness' of such transactions.

Where there is an organisation acting as an intermediary in a transaction, access to the same financial records of that organisation.

**Other records:**

Correspondence with HMRC

Correspondence with donors

Correspondence with beneficiaries, including grant applications etc.

Minutes of meeting between the trustees and any management committees of the trust.

Any other records that may become apparent and necessary during the course of the audit.

6. By the time of the hearing, however, and as a result of the production of material by Ds, what was ultimately sought by Cs was a much narrower category of documents.

7. In his submissions Mr Dominic Crossley for Cs explained that he now sought

(1) the delivery up forthwith of any documents which were the property of the Charities (which he accepted had not been sought specifically until just before the issue of the proceedings) with liberty to apply

(2) the specific documents identified by Mr Jonathan Crossley in paragraphs 13 to 15 of his third witness statement, namely

(a) an internal audit report produced by Kay Colgrave

(b) a copy of a KPMG report regarding allegations of fraud

(c) a copy of the previous auditors' working papers

(d) details of a police enquiry into allegations of fraud

(3) a full back-up copy of the Sage system. As Mr Dominic Crossley put it in his submissions, the bulk of the dispute was now Sage and the conditions under which Cs were entitled to see it.

8. He submitted that, even if it were not accepted that the information on the Sage database was trust property, it was still disclosable under CPR Part 64. In answer to a question from me, he no longer argued that the Sage database was itself trust property, although the claim had originally been put on that basis.

### **Jurisdiction**

9. The jurisdiction on which Cs relied was either the inherent jurisdiction of the Court and/or CPR Part 64.2(a)(ii) and 64A PD.1(2)(c).

10. Whilst he did not resile from his claim based on the inherent jurisdiction of the Court, Mr Dominic Crossley for Cs very much put Part 64 at the forefront of his submissions. Nevertheless, both grounds of the jurisdiction were still maintained and I shall deal with both of them, the inherent jurisdiction in paragraphs 147 to 179 below and CPR Part 64 in paragraphs 180 to 203.

### **CPR Part 64.2**

11. It is convenient at this part of the narrative to set out the terms of CPR Part 64 so far as relevant. However in the light of what I say below it is opportune to set out more of Part 64.2 and its accompanying Practice Direction than just CPR Part 64.2(a)(ii) and 64A PD.1(2)(c), italicising the particular provisions on which Mr Dominic Crossley relies:

*“Part 64 - Estates, Trusts and Charities*

General

**64.1 ...**



## 1. Claims Relating to the Administration of Estates and Trusts

### Scope of this Section

This Section of this Part applies to claims –

(a) for the court to determine any question arising in –

(i) the administration of the estate of a deceased person; or

(ii) *the execution of a trust*;

(b) for an order for the administration of the estate of a deceased person, or the execution of a trust, to be carried out under the direction of the court ('an administration order');

(c) under the Variation of Trusts Act 1958; or

(d) under section 48 of the Administration of Justice Act 1985.

...

### *Practice Direction 64A*

*This Practice Direction supplements CPR Part 64*

1. Claims relating to the administration of estates and trusts

Examples of claims under rule 64.2(a)

#### **64APD.1**

The following are examples of the types of claims which may be made under rule 64.2(a) —

(1) a claim for the determination of any of the following questions—

(a) any question as to who is included in any class of persons having—

(i) a claim against the estate of a deceased person;

(ii) a beneficial interest in the estate of such a person; or

(iii) a beneficial interest in any property subject to a trust;

(b) any question as to the rights or interests of any person claiming—

(i) to be a creditor of the estate of a deceased person;

(ii) to be entitled under a will or on the intestacy of a deceased person; or

(iii) to be beneficially entitled under a trust;

(2) a claim for any of the following remedies—

(a) an order requiring a trustee—

(i) to provide and, if necessary, verify accounts;

(ii) to pay into court money which he holds in that capacity; or

(iii) to do or not to do any particular act;

(b) an order approving any sale, purchase, compromise or other transaction by a trustee (whether administrative or dispositive); or

*(c) an order directing any act to be done which the court could order to be done if the estate or trust in question were being administered or executed under the direction of the court”.*

## **The Hearing**

12. The hearing of the trial of the action was conducted by video on 7 February 2023. Both sides were ably represented by counsel, Mr Dominic Crossley for Cs and Miss Sarah Harrison for Ds. Although two days had originally been set aside for the hearing, both counsel made their submissions very crisply and succinctly and the hearing concluded within the first day and I am obliged to both counsel for the expeditious way in which they conducted the hearing. To avoid confusion in the narrative between Cs’ counsel, Mr Dominic Crossley, and Cs’ auditor, Mr Jonathan Crossley, I shall refer to the former as Mr Dominic Crossley and to the latter as Mr Crossley. With no disrespect to her, and given that there is no problem with potential confusion, I shall refer to Ds’ counsel simply as Miss Harrison.

## **The Evidence**

13. The evidence was all contained in the witness statements and exhibits filed on behalf of the parties. By order of DJ Greenan dated 31 January 2022, no oral evidence was to be called at trial without the permission of the Court. No application was made by either side that any witnesses should be called to give live evidence. I did not therefore need to hear any oral evidence and the trial was conducted on the basis of the filed evidence on which counsel based their submissions.

14. Cs' evidence consisted of the following witness statements (with exhibits):

(1) the first witness statement of Mr John Walsh (C1) dated 5 July 2021 ("**JW1**");

(2) the first witness statement of Mr Crossley (Cs' auditor) dated 5 July 2021 ("**JC1**");

(3) the second witness statement of Mr Crossley dated 26 January 2022 ("**JC2**");

(4) the second witness statement of Mr Walsh dated 3 February 2023 ("**JW2**");

(5) the third witness statement of Mr Crossley dated 3 February 2023 ("**JC3**").

15. Ds' evidence consisted of the following witness statements (with exhibits):

(1) the witness statement of Ms Louise Dodds (Ds' solicitor) dated 29 July 2021 ("**LD**");

(2) the witness statement of Mr Andrew Taylor (Ds' in-house financial officer) dated 20 December 2022 ("**AT**").

(3) the witness statement of Mr Ian Gill (former auditor of Cs and Ds, now retired) dated 20 December 2023 ("**IG**").

16. Technically, the witness statements of Mr Taylor and Mr Gill for Ds and the second witness statement of Mr Walsh and the third witness statement of Mr Crossley for Cs in response were out of time, but neither side opposed their admission, provided that similar indulgence was granted to the other side and at the

outset of the hearing I relieved both sides from sanctions and admitted the additional evidence.

17. Mr Dominic Crossley for Cs made various submissions about what he said should be the lesser weight to be accorded to the witness statements submitted on behalf of Ds. Given however, that none of the witnesses was called to give evidence or to be cross-examined on the contents of their witness statements, I do not accept the submission that I should give lesser weight to Ds' evidence or to exercise a greater degree of caution when considering it. I do not find it surprising that Ms Dodds should have produced a witness statement as Ds' solicitor. It is apparent that, although Mr Taylor has been in post since 2 July 2018 as the RAOB GLE's Head of Finance, he has acquired knowledge of the role of Watson Buckle from his study of the books and records which he has seen in his role. Nor do I find that it is appropriate, in the absence of cross-examination, to accord lesser weight to what Mr Gill has said on the basis of some alleged or perceived conflict of interest.

18. I have also borne in mind that this is a Part 8 claim seeking particular and specific relief, the ambit of which has been considerably winnowed down in the course of the proceedings. Although the proceedings exist against the background of a number of wider disputes between the parties, this case is not the vehicle for resolving those disputes. Although there is reference to them in the material which I have seen and I explain them below by way of background, they were not within the ambit of the current proceedings and relief was not sought in respect of them. They would, given their contentious nature, have had to be the subject of separate Part 7 proceedings with pleaded statements of case and oral evidence subject to cross-examination. Nor has there been any direction for the service of expert evidence to resolve, for example, disputes about the proper ambit of an audit or the duties of an auditor. In particular, given that there has been no live evidence and no cross-examination, it would be wholly inappropriate to resolve any allegations of fraudulent or improper behaviour, such as are made in some of the witness statements by C1 or Mr Crossley.

## **Background: The Structure of the RAOB**

19. The RAOB is one of the largest fraternal organisations in the United Kingdom and was established in 1822. The RAOB's principal aims are friendship, charitable works, social activity, mutual support and care. The RAOB organisation consists of three principal tiers, in ascending order of size:

(1) Minor Lodges ("**MLs**")

(2) Provincial Grand Lodges ("**PGLs**")

(3) the Grand Lodge of England ("**the GLE**").

20. There are numerous MLs and PGLs and a substantial number have benevolent funds which are registered charities in their own right; they are not part of this action. The Charities' issues arise with the RAOB GLE and with the management of the RAOB GLE, which is largely undertaken by the GLMC. The RAOB GLE is administered by the GLMC, comprising 15 senior member of the RAOB who have individual titles and distinct responsibilities. The head of the GLMC and thus the titular head of the RAOB, known as the "Grand Primo", was D1. D2 and D3 are RAOB GLE trustees.

21. The RAOB GLE operates as an unincorporated association subject to the provisions of a rule book which regulates dealings between the members and different parts of the organisation and has the force of a private contract between the members, who have agreed to be bound by its terms. The rule book is of long-standing origin and is updated from time to time.

22. As explained in more detail by Ms Dodds and Mr Taylor, the rules state that the functions of the RAOB are social and benevolent and its objects are to assist members, widows, partners, orphans and other dependants of deceased members in need and to support external charitable objects as deemed desirable (rule 1.2). Under the rules of the RAOB, the RAOB GLE is the section of the Order which

reserves to itself the right to create MLs and PGLs, to lay down rules to be observed by them, to promote benevolent schemes for the benefit of members and dependants and to raise funds to meet the expenses of such schemes and its administration (rule 1.4). The MLs pay weekly registration dues when meeting at ML level at the sum decided by the RAOB GLE , which are remitted upwards initially to their PGLs and then to the RAOB GLE.

23. The three Charities, the CTF, the JCF and the WMF, are legally separate entities from the Order and are all registered charities.

24. The CTF came into existence under the terms of a Trust Deed dated 2 January 1928. Traditionally it operated convalescent homes for members of the Order and financial support for those homes was provided to the CTF by the RAOB GLE on a voluntary basis. That financial assistance stopped in 2019 when the CTF sold the convalescent homes. The CTF now has separate trustees from the trustees of the RAOB GLE, but that was not the case in the past.

25. By way of summary, and as explained in more detail by Mr Walsh, this litigation arises because of concerns about the Charities' past governance developed by Cs since their appointment as trustees of the Charities in April and October 2017. The concerns go to the heart of the financial relationship between the Charities and the RAOB – specifically the RAOB GLE – and in particular what has happened to the charitable contributions collected by the RAOB GLE on behalf of the Charities.

26. One of Cs' most important duties is to prepare accounts for each of the Charities, as required by their regulator, the Charity Commission. Those accounts must be independently audited. Cs say that they have been unable to do that for the 2019, 2020, 2021 or 2022 financial years because they lack possession of crucial underlying documents and information required for the process. They also allege that the 2018 accounts, signed off by them shortly after their appointment, are likely to need restating because of inaccuracies (of which they were then unaware) caused by a lack of documentation. Historically the Charities and the RAOB GLE had common trustees, although there was no legal requirement for the RAOB GLE to

have common trustees with the Charities, nor to approve the appointment of the latter. Until shortly after the appointment of Cs as trustees of the Charities, the RAOB GLE and the Charities shared the same auditors, Watson Buckle (Mr Gill being a retired partner in the practice who dealt with the auditing of both in the past). As a result of Cs' concerns about Watson Buckle's performance, Brays of Wetherby were retained as the Charities' auditors, with Mr Crossley appointed to the role on 12 September 2019. As a result of the historical situation, many of the Charities' financial records are in the physical possession of the RAOB GLE. In recent years, electronic bookkeeping has become the norm and the RAOB GLE used a system called "Sage" for the Charities and the RAOB GLE; access to that system seems now to be the major sticking point between the parties.

### **Mr Walsh**

27. In his first witness statement Mr Walsh explained the concerns of the trustees:

"11. The Trustees were appointed as such in April and October 2017. We were aware at that time that various issues needed to be addressed within the RAOB organisation because, shortly before our appointment, a report had been commissioned from KPMG which identified 13 specific areas of concern. In summary, former members of the RAOB, in particular a former Grand Secretary Christopher McMahon, appeared to have used RAOB funds for their own private purposes and/or used their positions in order to obtain personal benefits, e.g. by keeping rent artificially low on an RAOB-owned property used as a private residence by Mr McMahon's family. For the court's information a copy of KPMG's report is attached at pages 3 to 21 of Exhibit JW1. The resulting situation is that the Trustees inherited a legacy of issues with the Charities that need to be resolved urgently and which raised questions about the Charities' financial position and their accounts.

12. Subsequently we uncovered several other matters of great concern regarding the operation and behaviour of the GLE/GLMC in relation to the Charities and it appears that there has been considerable confusion concerning the relationship between the Charities and the wider RAOB organisation, the ownership of assets and the separate legal personalities of the various entities and their assets. Insofar as we are aware, the main areas of concern are now as follows, but this remains to be clarified as we have been unable to obtain the Charities'

accounting records, or prepare or audit accounts, and it may be that further documents will need to be sought when we have a clearer picture of the underlying situation.

13. Our first concern is that many years' worth of Charitable Contributions may have gone missing, although the position is not clear. The problem comes because it appears that the Charities' funds and assets have been mixed with GLE's assets, and with a specific fund called the "administration fund", with monies not actually being remitted to the Charities or paid into their bank accounts, but instead retained by GLE and allegedly spent by GLE, or perhaps the GLE Trust, on behalf of the Charities. It may be that the expenditure is all entirely proper, or that improper expenditure is unrecoverable, but at present we cannot even be sure what money should be there and what has been spent, and on what. There may be significant losses but we simply cannot be sure based on the current state of the information available to the Trustees. Obviously, this is an issue that needs to be clarified and appropriate steps taken in consultation with the Charity Commission.

14. Additionally, we are also concerned that some of the Charities' money may have been loaned by or through GLE, or the GLE Trust, to other ROAB entities and not properly secured or recovered, but again we cannot get clarity from the information available. Our specific concern comes from a loan made in 2012 to a social club ("the Gloucester Loan") by the GLE Trust as custodian trustee for "the Order" (see pages 22 to 29 of JW1). This would suggest the GLE Trust was acting as custodian of GLE's assets and loaning those assets, but we fear the source of the monies was in fact the Charities. If the Gloucester Loan was made from the Charities' assets, it remains unclear to us how this could have come about as we think it would not have been proper use of charity funds and would plainly not have been in the interests of the Charities to loan money to GLE or the GLE Trust in order that it might advance any such loans. I am not aware that either the Charities or the GLE Trust would have had the power to do this in any event. On the other side of the scale, we have received monies from the closure of some investments which appear to be the Charities' monies, but GLE claims that it properly belongs to GLE. This seems highly unlikely, but since GLE has the Charities' accounting records and will not release them in the form sought by the Charities' accountants, it may be a difficult claim to address. In the meantime, the Charity Commission has informed us that we should not remit these monies to GLE in any event, as they consider it likely that GLE



owes the Charities a sum that far exceeds this amount. We are therefore at stalemate and need the accounting records to try and make some progress. There is also an ongoing dispute about an investment scheme which GLE claims was run by the Charities and in respect of which it claims the Charities owe certain MLs and PGLs significant amounts of money. We cannot see that the Charities ever received any such money, or were involved in any way in running any such schemes, but the waters are extremely muddy. Again, access to the accounting records should, hopefully, provide some clarity.

15. Finally, there are other potential issues that we have uncovered from the limited information available which suggests there may have been improper use of the Charities' funds including:

15.1 improperly paid expenses;

15.2 purchases made without proper authorisation;

15.3 salaries and expenses relating to companies established by members being paid without authorisation from the Charities' funds (in particular, in respect of a regalia business known as F C Parry);

15.4 further unauthorised loans, e.g. to an RAOB lodge in Bridgend; and

15.5 unexplained transfers of funds between the Charities and the admin fund and/or other third parties.

All of these issues are matters that we cannot progress to resolution, either by establishing that there is no wrongdoing, or sorting out anything that has gone wrong, without access to the records identified by Mr Crossley, including full access to the Sage system and the underlying prime records.

16. Additionally, obviously, we need to have all the Charities' underlying documents and records, which belong to the Charities and should have been handed over to the Trustees when we were appointed. I have to say that we had assumed that we had been provided with all or the bulk of the Charities' underlying records when we took over as trustees but had not understood that there was such a large volume of documentation that had not been brought to light. Both myself and my co-trustees believed we had made it clear, either in person or through Mr Crossley, that we required the Charities'

documentation to be produced so I am surprised that this was not disclosed until now.”

28. He accepted that Ds should have 12 weeks to provide the Charities’ own documents as offered in their solicitors’ letter of 1 July 2021 (as to which see paragraph 57 below).

29. He asserted, however, that

“If the Charities’ records are kept on the Sage system, then surely the Sage system is effectively a trust document which the Trustees are entitled to see”,

a position which, as stated above, was not maintained by Mr Dominic Crossley for the trustees on the hearing of the case.

30. He repeated the Charities’ requirements for the accounting records:

“22. It seems clear from the recent correspondence from GLE at pages 84 to 92 of Exhibit JW1, which includes their latest accounts detailing a sum of £181,078 owed to the Charities, that GLE does acknowledge at the very least that there is a need for an accounting and financial reconciliation between GLE and the Trustees. As I understand it, this must mean that GLE accepts that a sum representing (arrears of) the Charitable Contributions is owed to the Charities, but there is clearly a substantial difference between the sum which the Charities consider is owing and that which the GLE considers to be due. This alone makes it clear how important it is that GLE and the GLMC now hand over the Charities’ documents and records.

23. Unfortunately, the paucity of records means we have been unable to undertake a reconciliation of the Charitable Contributions owed – as well as the other matters to which I have referred in this witness statement. We are not even in a position to assess whether GLE’s position on the contributions is correct. GLE holds all the cards. In particular, as Mr Crossley has noted, we have been denied access to the bookkeeping software package known as “Sage” which should contain full details of all financial transactions between GLE (and other parts of the RAOB organisation) and the Charities, and record the charitable contributions coming in and the expenditure. We

appear to have been denied it precisely because GLE has mixed the Charities' records with those of other entities, which is what has caused many of the problems and just highlights why we need full access to the Sage system as well as provision of the other documents and records. The mixing of data cannot be a reason to deny the Charities' access to trust documents recording its own transactions, especially when the other entities involved do have access to the information. Similarly, the excuse in the 1<sup>st</sup> July 2021 letter that Sage belongs to GLE does not hold water when GLE used Sage to maintain the Charities' records when GLE was in control of the Charities and their assets.

24. The problems caused by this lack of information should be obvious. Just as one example, albeit a very important one, prior to our appointment as Trustees, the Charities were being audited by the same accountants who acted, and still act, for GLE, namely Watson Buckle of York House, Cottingley Business Park, Bingley. Shortly after our appointment, we approved a set of accounts (for the 2018 financial year) prepared by Watson Buckle and presented to us without caveat or comment, without fully realising, or being properly advised, as to exactly what the accounts showed. In fact, those accounts showed the investment scheme monies referred to above as loans made to the Charities, which seems to be clearly wrong – and in respect of which Watson Buckle have not been able to provide any satisfactory explanation, let alone any loan documentation. We appointed new auditors, Bray and Co of Wetherby, and it will be necessary for them (and us) to get to the bottom of this issue and correct or clarify the accounts as part of this process – for which we need access to the records.

25. We now have a situation where the last set of accounts (for the 2018 financial year) filed for the Charities contains inaccuracies, and thus needs to be restated. We are also long overdue for filing accounts for the 2019 financial year, and the 2020 financial year accounts are also due. Fortunately the Charity Commission, which is aware of the general situation, has been exceptionally accommodating to date, but it is clear from their email of 7<sup>th</sup> May 2021 (see page 76 of JW1) that they are losing patience and the issue of the accounts must now be resolved as a matter of urgency. However, I am advised by our auditors that they cannot finalise the accounts, or the audits, for the years to which I have referred without access to the full extent of the accounting records for all of the Charities. In particular, this job would be made a great deal easier by access to the information pertaining to the Charities which is

contained on Sage, and I am advised by the accountants that the limited access that has been offered by GLE to date, which offer is repeated in the 1<sup>st</sup> July letter, is simply not sufficient for the purpose. I also understand that the “packs” offered in the 1<sup>st</sup> July letter again appear to be only the packs that have been offered previously, and provided in respect of the JCF in 2020 and very recently in respect of the WM. Those packs have, I understand, been redacted as explained by Mr Crossley, and are not adequate for the purpose. The letter also makes clear that the pack for CTF, which is in fact the charity with the largest assets and where the largest number of issues arise, will not be ready until August 2021.”

31. He concluded by explaining the purpose of the proceedings in these terms:

“27. I therefore ask the court to make the order sought in these proceedings, or some other appropriate order, so that the Trustees can (i) restate the accounts for the 2018 financial year; (ii) file audited accounts for the subsequent financial years; and (iii) investigate the financial irregularities outlined in this Witness Statement as a matter of urgency. The Charities simply cannot afford to wait any longer for GLE and/or the GLMC to decide to co-operate properly regarding the accounts, and there is little or no indication that waiting any longer will achieve the required result. Hopefully that will not be the case with regard to the additional records offered by the 1<sup>st</sup> July letter, but only time will tell.”

### **Mr Crossley**

32. In his first witness statement Mr Crossley explained what information he needed in order to discharge his duties as auditor of the Charities, including the preparation of accounts, the steps taken to obtain it and the consequences for the accounts and audit process of not having the information:

“7. In order to prepare or audit a set of accounts, we would ordinarily require access to both the prime records and the bookkeeping records.

8. Accurate bookkeeping records enable us to prepare a set of accounts efficiently. In the process of preparing the accounts we would typically carry out a series of analytical procedures designed to uncover and highlight any obvious errors. These

might include agreeing figures included in the bookkeeping records to the prime records, comparing figures with similar figures from previous periods or other organisations, calculating and comparing percentages or ratios, such as gross profit margins. The prime records are used to carry out some of these procedures, and also to correct any errors in the bookkeeping records that are identified by these procedures. An audit is essentially a testing exercise designed to uncover any errors in the accounts once prepared. A proper audit cannot be carried out without access to both the prime and the bookkeeping records, as a full audit requires some testing of one against the other.

9. Although we would ideally have access to both prime records and bookkeeping records, it would still be possible to prepare accounts with just one or the other:

(a) Given the prime records, but no bookkeeping records, it would simply be a case of preparing the bookkeeping records from scratch. This would take longer but would result in an accurate and reliable set of accounts, which could then be audited.

(b) Given bookkeeping records, but no prime records, a set of accounts could be easily extracted. However, we would not be able to undertake any of the usual analytical procedures. Although this would reduce the reliability of the final accounts, so long as the individual reading the accounts was aware of this constraint on our work, it would not stop the accounts from being prepared. It would however mean that an audit could not be carried out.”

33. At this point in the narrative, and to provide the chronological context in which the disputes between the parties were expressed, it is convenient to set out the correspondence between them and their respective solicitors in the immediately following paragraphs before reverting to the evidence of Mr Crossley in his first witness statement.

34. His firm, Brays, originally wrote to Watson Buckle, the RAOB GLE’s previous accountants, on 17 October 2019

“We have been invited by the Trustees of the above-named charities to act as their auditor for the period ended 31 March 2019 and thereafter. The Trustees have given us permission to communicate fully with you.

We write to enquire of any information which could influence our decision as to whether or not we may properly accept the appointment as auditors to these charities. Assuming there are no reasons why we should not accept the appointment, we would be obliged if you could supply the following documents or information in each case:

- a) the last finalised and signed financial statements of the charity
- b) the closing trial balance
- c) such schedules as you may have giving a breakdown of:
  - i. tangible and intangible fixed assets
  - ii. debtors and prepayments
  - iii. creditors and accruals
  - iv. bank and cash reconciliations
  - v. specific charity funds
  - vi. list of related parties and associated balances and transactions
  - vii. any other accounting schedules which you feel may be appropriate
- d) a note of any outstanding matters which it will be necessary for us to deal with
- e) any other information you feel may be of relevance in helping to effect a smooth transfer of instructions.

We would be grateful if you could also inform us if any of the client’s records are in your possession.”

35. Watson Buckle replied to that letter on 5 November 2019 that

“We would like to bring the following matters to your attention which we believe you should consider before accepting the appointment.

On 11 September 2019 a letter was sent to us, signed by the three trustees - John Walsh, Keith Illingworth and Brian Sutcliffe. In that letter they told us to stop all accounts and audit work following discussion with their legal team and the Charities Commission that has been going on for several months. They stated that they had some very serious concerns regarding charity funds, the accounting for funds that no longer exist and issues with loans. This was complete news to us and has never been mentioned to the audit team. Furthermore, all three trustees attended an audit meeting on 5 April 2019 and these concerns were never mentioned despite now stating this has been ongoing for many months.

Our audit of the accounts to 31 March 2019 is almost complete. There are two outstanding amounts:

1) We have requested information on the investments held at St James Place, Coutts and Brewin Dolphin, together with details of the reinvested dividends, additions and disposals, several times. We asked for this information 5 times before we received some of the information requested but this was password protected. We have now received the password but the information was very incomplete. We view this as a limitation of the scope of our audit.

2) Confirmation on the recovery of loans due to/from the charities. This was a point we would discuss at the close meeting.

After considering the above if you decide to accept the appointment as auditors we will provide you with the information requested once a disengagement letter has been signed and our outstanding fees have been paid.”

36. Mr Crossley subsequently emailed Mr Taylor on 8 November 2019

“The trustees have approached our practice to audit the charity accounts for the year to 31 March 2019. In order to help us assess whether we might properly accept this appointment, and to commence planning for the audits, I would be grateful if you could provide us with a back-up of the Sage data covering this period.”

37. Mr Taylor replied to Mr Crossley on 4 December 2019

“Following some discussion within RAOB GLE and the Grand Lodge Management Committee I have not been authorised to release to you a back-up of the Sage system. This is because it contains the whole of the accounting records of RAOB GLE, not only the three separate charities but also the administration fund. What I can release to you is the audit packs prepared for each of the charities in preparation for the audit already carried out by Watson Buckle for the year ended 31st March 2019 together with recently prepared excel trial balances for each of the charities which have been extracted from the Sage accounting system. All manual adjustments made to the figures once extracted from Sage are fully noted on the excel spreadsheet. These papers will be sent by e-mail once the extractions are complete and have been checked. I anticipate sending across the information by Thursday, 5th December at the latest.

You may wish to satisfy yourself that the details extracted are in fact those present within the Sage accounting system and I am sure that we can devise appropriate tests that do not require your firm receiving the whole contents of the Sage back-up.

After Thursday I am away from the office on leave and return on Thursday 12th December. You may wish to book time for a visit to this office to discuss the audit pack schedules and their contents and I’m happy to agree a date with you over the phone over the next couple of days while I am still in the office.”

38. Mr Taylor added on the following day

“This e-mail is just to let you know that correspondence was sent by John Walsh (attached) stating that you have advised that the information I have offered will not be adequate to complete an audit.

As a result I ceased the work required to complete the offered extracts and papers because it appears pointless. I will discuss this issue with the GLMC further when I meet them tomorrow. I will update you with developments when I return from leave next week.”



39. Meanwhile the respective firms of solicitors had become involved and Wilson Bramwell for the Charities wrote to Clarion, acting on behalf of Ds, on 5 December 2019

“In the meantime another issue has arisen that requires your urgent attention. We enclose a copy of an email exchange between Andy Taylor of your client and our client’s trustees. As you will see, Mr Taylor is refusing to allow our client’s accountant to access a copy of Sage. Our client’s accountant requires this in order to audit our client’s accounts, which you will appreciate is a requirement with it being a charity.

Whilst our client’s accounts (and those of the two smaller ancillary charities) have been separated and they are now using Quickbooks, this was only from 1<sup>st</sup> April 2019. Our client’s accountant has made it very clear that he requires access to a copy of Sage in order to carry out the audit. Mr Taylor’s suggestions of “appropriate tests” is insufficient for the audit to be undertaken and our client has to question why access is being denied.”

40. Wilson Bramwell wrote again to Clarion on 13 December 2019

“ ... please confirm that our client’s accountants will be provided with a copy of Sage as this is required to carry out the audit. The Charity Commission are aware of the issue and we can see no reason as to why access is being refused. You will appreciate that the refusal to provide this has alarmed our client’s trustees given the issues of the past few years.”

41. On 18 December 2019 Mr Crossley replied to Mr Taylor

“I understand there are some concerns relating to the Sage data which the charity trustees are currently addressing.

In the meantime, I would be grateful if you could provide any other information relating to the accounts for the year as this will enable me to start planning our work; I understand from Watson Buckle that they had all but finished their audit, so I would hope there isn’t too much additional work required on your part to provide this information.”

42. He followed that up on 14 January 2020 by asking

“I was just wondering if you’ve had an opportunity to look at my email below; we could really do with as much information as possible now, as we are fast approaching the deadline for filing the charities’ accounts.”

43. To that Mr Taylor replied two days later

“Apologies for not responding sooner, I have been focussed on the preparation of management accounts for the nine months ended 31st December 2019 which are required to be completed this week in preparation for Grand Lodge Management Committee meetings next week.

Bearing in mind that I cannot release the SAGE backup I have put more thought into what I can give you. This will include a separate trial balance for each charity together with the supporting papers prepared for Watson Buckle’s purposes. I will need to get clearance from GLMC next week and will start with one of the smaller charities first, probably the Journal Children’s Fund.

That will allow you to review and confirm acceptability for your purposes.”

44. Although it is slightly out of sequence, it is convenient to note here that Mr Crossley sent him a polite chasing email on the last day of January and on 2 March 2020 Mr Taylor replied, enclosing the audit pack in relation to the JCF

“Please find attached the papers as promised for the Journal Children’s Gift Fund which is one of the smaller charities.

You have a trial balance plus details of every transaction for each nominal ledger account and supporting papers where relevant.

#### **Accounting Notes**

I have included some notes on the way that Sage was operated for many years so that you can appreciate the need for adjusting accounting entries outside of Sage in order to prepare a proper set of books.

#### **Other paperwork**

Investment balances are not supported by statements as I have never seen these; John Walsh should have originals.

John should also have a clean set of bank statements for the whole year – the ones I used were downloaded from Bankline and can be scanned and sent if needed.

Once you have had a chance to review the contents would you please confirm if they are sufficient for your immediate audit planning purpose.

If so, I will go ahead with the production of similar packages for the other two charities (when time allows).”

45. Clarion replied to Wilson Bramwell on 7 February 2020

“Regarding the requested access to the accountancy software, our clients have confirmed that they are willing to assist with this and have never suggested otherwise. We are instructed that your clients’ auditor is currently in discussion with the RAOB Grand Lodge Management Committee and it has been suggested that your clients’ auditors are provided with audit packs relating to the RAOB CTF Trust together with trial balances which have been extracted from the Sage Accounting System.

In order to satisfy themselves that the extracted details are in fact present within the Sage Accounting system, the Committee has suggested that appropriate tests can be carried out by your clients’ auditor. The reason that the entire content of the Sage Accounting system back up cannot be provided to your clients’ auditor is that the system contains the whole of the accounting records for RAOB GLE, not just those that relate to your client, together with confidential information relating to the employees of the RAOB GLE for example. It would therefore be inappropriate to share this information with a third party but we understand that the Committee have made alternative reasonable suggestions to allow your clients’ auditors to complete an audit of RAOB CTF Trust. We understand that these suggestions have been rejected.”

46. Wilson Bramwell wrote back to Clarion on 25 February 2020

“As to our client’s request for access to Sage, the position is simple. Our client has consulted its accountant and he requires access to the entire package. There are numerous other issues that concern our client and there is a concern that your refusal

of access to Sage may be linked to this. For example, our client's trustees are concerned that monies [which] have been donated by the membership for the Benevolent Fund have been withheld by your client. Our client's auditor needs to satisfy himself on this. In any event, much of the data on Sage does not belong to your client but to ours. Your client has no right to withhold it.

Furthermore, there is the obvious point that it is going to be difficult to ascertain precisely what monies are owed by whom without access to Sage. This will be disclosable in respect of any subsequent proceedings, so we again ask that access is provided now."

47. There was then a hiatus until Wilson Bramwell sent a formal letter before action to Clarion on 1 June 2020, setting out in some detail the areas of various dispute between the parties, including what were alleged to be "ringfenced" charitable contributions which had been withheld by the RAOB GLE, funds alleged to be owed to the JCF, monies lent by the Trust Corporation to the RAOB Gloucester Social Club (to which the RAOB GLE was not in fact a party), the investment scheme and other alleged but unspecified financial claims. The letter referred to access to Sage in these terms

"Fifth Claim: SAGE

The RAOB GLE and the RAOB GLE Trustees are fully aware that the accounts for the Charities have been processed within the SAGE system, operated by the RAOB GLE. In order for the Trustees to produce "Audited Accounts", a copy of SAGE has been requested on several occasions, but such requests have been refused.

The completion of any Audited Charity Accounts dating from 1<sup>st</sup> April 2018, is reliant on the Charity Trustees obtaining a copy of SAGE. The Trustees will therefore seek appropriate declaratory and/or injunctive relief to this effect."

48. Clarion sent to Wilson Bramwell a formal response to the letter before action on 29 June 2020, again replying in some detail to the various areas of dispute between the parties and referred to access to Sage as follows

"The Fifth Claim: SAGE

Your clients have already been offered access to the SAGE system in order to prepare their accounts. The system belongs to the RAOB GLE Trustees who paid for it. Please clarify what cause of action is being relied upon here. We fail to see how these allegations have anything to do with our clients as trustees. Please also explain why the term audited accounts is in speech marks.”

49. On the same day (29 June 2020) Watson Buckle replied to Brays, after payment of their outstanding invoices in relation to all three charities (in the same terms for each)

“We have received your letter dated 17 October 2019 and enclose the following requested information:

- a) The last finalised and signed financial statements of the charity.
- b) The closing trial balance.
- c) i. Tangible and intangible fixed assets.
  - ii. Debtors and prepayments.
  - iii. Creditors and accruals.
  - iv. Bank and cash reconciliations.
  - v. Specific charity funds.
  - vi. List of related parties and associated balances and transactions.
  - vii. No other accounting schedules are appropriate.
- d) We are not aware of any outstanding matters which it will be necessary for you to deal with.
- e) We know of no other information that you should consider in deciding to accept the appointment.”

50. Matters then lay fallow until Mr Crossley emailed Mr Taylor on 8 February 2021

“Further to your previous email attaching various documents relating to the accounts of the Journal Children’s Fund for the

year to 31 March 2019, I would be grateful if you could forward similar information relating to the Comprehensive Trust Deed and the War Memorial Fund, including any additional information you think might be relevant to the year, such as schedules of debtors, creditors, investments and fixed assets.”

51. To that Mr Taylor replied at lunchtime that day

“I would be happy to. However as I stopped doing any work to put these schedules together due to adverse e-mails received from John Walsh it will take me some time to put them together. I will also need to get approval from the Grand Lodge Management Committee to carry out and then pass on this information.

I take it that you are continuing in your role as accountant/auditor to the three RAOB Charities, CTF, JCF and WMA?

In the meantime is there any further detail that you need on the figures and schedules already provided for the JCF?”

52. Mr Taylor sent a further email to Mr Crossley on 2 March 2021:

“I passed on your earlier request internally and now have a response from the Grand Primo. I am able to prepare and pass on the requested information, but only after I have completed some priority work which will take me to at least the end of March.

I will be able to slot in this work alongside my normal work from 6th April and realistically it will take a few weeks to complete on that basis.

You make reference to the audit packs that I had previously prepared for Watson Buckle and which had been given to them in order to carry out the audit across all four funds. However, those packs took advantage of being able to treat the four funds as one accounting unit (much the same way that Sage did with one trial balance across all four funds) and refer in many places to the three other funds. As I am prohibited from handing over Admin fund details there is a certain amount of work that needs to be done to segregate each pack’s details from Admin and then to check that both JCF and CTF are accurate and complete against the master trial balance that exists in a spreadsheet outside Sage. It is therefore not as

simple as just handing over the packs already prepared. In addition, there are post audit adjustments that took place after the bulk of the audit work that need to be reflected in those packs.

The fact that 15 months has elapsed since I provided a potential way forward in the impasse that we had reached by giving the information for the [JCF] in the format proposed is entirely due to the refusal of your clients to accept that as a solution. As that stance appears to have been withdrawn I am happy to carry out the work required but as the work is provided free of charge it naturally takes a lower priority.”

53. He updated Mr Crossley as to the position on 26 April 2021 to the effect that

“I have started on the WMA pack but have not yet completed it.

As you will know the Admin year end was 31st March and my main priorities this month have been to prepare management accounts for the past year, close off payroll, etc.

I should complete the Admin accounts this week; after which the quarterly VAT return looms.

As things stand now, I will get spare time to complete the WMA pack after 7th May.”

54. On 19 May 2021 he emailed Mr Crossley, enclosing the audit pack for the WMF, the second of the three Charities

“Please find attached the WMA spreadsheet and supporting documents for the year ended 31<sup>st</sup> March 2019.

Let me know if you need any more detail or explanations once you have had a chance to inspect them.

It is likely to be mid-June before I get time to start on the CTF package.”

55. Finally (although out of sequence it is convenient to note it here as it is the last in the sequence of three audit packs produced) Mr Taylor emailed Mr Crossley on 21

March 2022 enclosing the audit pack for the CTF, the last of the three Charities and stating that

“Please find attached the CTF audit pack (zip file).

It contains spreadsheet and supporting documents for the year ended 31st March 2019.

Let me know if you need any more detail or explanations once you have had a chance to inspect them.

We have scanned the CTF invoices but the zipped file is too large for e-mail. Please send an upload link if you need it before your visit.

Also included is an Excel spreadsheet that contains every transaction posted on Sage for the year to 31st March 2019.

This is provided for the purposes of your audit only and is not to be shared for any other reason; it includes Admin transactions (code 400).

At first sight it is unlikely that this spreadsheet will be fully understood and I anticipate taking you or your staff through it at some point.

I understand that you are preparing for an audit visit commencing Monday 28th March and I look forward to seeing you then.

Please note that I will not be in the office until 11:00 am on that day.”

56. Wilson Bramwell wrote to Clarion on 18 June 2021

“As your clients are aware, the Charities are unable to submit audited accounts because the requisite information is being withheld by your clients.

Our client’s accountants must have full and unfettered access to the Sage system together with the underlying prime records in order to prepare the accounts. It is difficult at this stage to give an exhaustive list as your clients have the documentation, but at the very least these will include:



1. all the Charities' contracts, including loan contracts, all conveyancing paperwork and land transfers;
2. all documentation relating to the purchase and management of assets such as F C Parry;
3. all relevant meeting minutes; and
4. all documents recording the charitable donations made or appropriated to the Charities from RAOB member donations.

Our clients also require the delivery up of all the Charities' documents, paper or electronic, held by the GLE or the GLMC or in their power or control without limit of time. These documents belong to the Charities and should have been provided years ago. The Charities' accountant further requires the following:

[here were set out the Schedules 1 and 2 which appear in paragraph 5 above]

The Charities are now under pressure from the Charity Commission to submit their accounts and are not prepared to allow this to drag on any longer. If a complete set of the requested documentation and a full copy of Sage is not provided by 25<sup>th</sup> June 2021, then proceedings will be issued without further notice. If our clients are put the trouble of having to issue proceedings, then they will seek their costs."

57. Ms Dodds of Clarion replied to Wilson Bramwell on 1 July 2021

**"SAGE**

Our clients are becoming increasingly exasperated by the repeated requests regarding SAGE, despite the position have been made clear on numerous occasions.

To briefly repeat what has previously been stated, SAGE belongs to the RAOB GLE and contains the accounting records of the RAOB GLE which your clients, the Charity Trustees, are not entitled to.

Our clients have made clear that they will make available all extracts from SAGE that contain information pertaining to your clients and our clients have also said that your clients' accountants can attend the RAOB offices and verify that the extracted information is complete.

### **Charity Records**

Our clients wish for it to be made clear that the reason that they would still hold these records is that this is the first time that they have been asked to provide them. They would therefore counter to say that, if anything, your clients should have requested these records years ago.

Your letter contains an extremely long list of requested records. Asking our client to provide these to your clients, with just one week's notice is absurd.

The documents requested are stored in boxes and our clients will need to secure additional labour to give them time to sort through and segregate all historic records that belong to your clients. Secondly, they will also need to arrange collection or delivery of what is likely to be a large van load of boxes. Our clients will need to obtain quotes for these services and obtain agreement from your clients that they will pay such expenses before the documents can be provided.

Realistically, our clients should be in a position to provide these documents (subject to your client agreeing to pay reasonable expenses) within the next twelve weeks.

### **Records for the preparation of Audited accounts for the y/e 31<sup>st</sup> March 2019**

Our clients instruct us to say as follows in relation to these records.

Since early 2020, our clients, have corresponded with your clients' Accountants (specifically Jonathan Crossley of Brays Accountants in Wetherby).

We understand that what is required is essentially a sub-set the numerous charity records requested within your letter of 18 June 2021. The Head of Finance at the RAOB GLE, Andy Taylor, has been providing Brays with packs of documents in order to do this.

He prepared an initial pack for the JCF charity, which was sent to Brays in February 2020. We are instructed that, due to the hostile reaction from your client, Mr Walsh, our client stopped all work on preparing packs for the other two charities.

Our client heard nothing further for from your client or Brays for 12 months but on 8 February 2021 he received a request from Jonathan Crossley asking him to provide similar packs for both the WMA and the CTF.

Our client explained to Mr Crossley that although he could provide the information and would work on it as time permitted there was no way to say with certainty when it would be ready. He sent the WMA pack on 19 May 2021 with a note saying that the earliest he was likely to get time to work on the final CTF pack was mid-June 2021.

To be clear therefore, your clients' accountants are waiting for one pack of documents, not three. There is of course nothing to stop them preparing and filing accounts for two of the three charities right now.

As things now stand our client cannot reasonably envisage him getting time to complete the last pack until August 2021.

We note the threat of proceedings being issued and consider this to be wholly unreasonable. If proceedings were issued, we consider that your clients would be placed at considerable risk of being ordered to pay costs. Our clients are happy to provide your clients with all documents that they are entitled to see, but a realistic approach needs to be taken as to the time it will take to provide such records. Many of these records could have been requested by your clients long ago and it is not the fault of our clients that they appear to have only made these requests under pressure from the Charity Commission.

We therefore ask you to confirm:

- 1) You will not be issuing unnecessary proceedings; and
- 2) Your clients are content to receive the requested information within twelve weeks."

58. To revert to Mr Crossley's evidence it was his case that

"14. ... What is being offered by Mr Taylor, or rather what he has been authorised by the GLE and the GLMC to release, seems unlikely to be sufficient to prepare and audit the accounts for the CTF even if it ever appears. What has been produced for JCF and WM is certainly insufficient. Even the audit packs that I was initially offered now appear not to be on the table – Mr Taylor's email of 2<sup>nd</sup> March 2021 indicates that he cannot give me what he gave to Watson Buckle and that the packs I have been sent for JCF and WM and will hopefully be sent for CTF will have been edited or redacted, on the instructions of the GLE and/or the GLMC.

...

16. To confirm, we have yet to receive a comprehensive set of either prime or bookkeeping records for any of the Charities for the years which we are instructed to consider, namely to 31<sup>st</sup> March 2019 and 31<sup>st</sup> March 2020. Some information has been provided, but it has been selective and/or consisted of extracts from Sage the veracity of which we have been unable to verify.

17. In respect of the prime records, we have received bank statements for accounts in the name of each of the Charities. Unfortunately, these are not particularly useful, as the majority of the transactions are with a central CTF bank account, and the statements do not reference what the transactions relate to. As such, it is impossible to interpret these bank statements without access to the other prime records or accurate bookkeeping records.

18. For CTF we have received completion statements in respect of property sales, and some information relating to CTF's investments. We have received no other prime records.

19. For JCF we have received some, but not all, of the purchase invoices.

20. For WM we have received no prime records other than the bank statements noted above.

21. In respect of bookkeeping records, as indicated above we understand from both Watson Buckle and the GLE that these were prepared using Sage. This is an electronic bookkeeping package which is comprehensive package, if used properly, and with which we are very familiar. Full access to the Sage records for all the Charities would significantly improve our ability to prepare the accounts, assuming that they have been used correctly, but this seems to be precisely what the GLE and the GLMC is keen to prevent. It is not clear why, as the explanation that the records are mixed with those of the "administration fund" would not seem to be a good reason to give the records to the GLE but not to the Charities. I understand that the GLE's position now is that it can have access to the full package as it owns Sage, but the Charities cannot, as explained in the 1<sup>st</sup> July 2021 letter referred to above."

59. He added that

“22. I cannot comment on the legal position of mixing records in this way, but although this is certainly not good accounting practice, particularly given the value and volume of transactions involved, it would be quite possible to isolate the information we need if we were given access to the entire package. Furthermore, given the strict ethical guidelines by which we, as a firm of chartered accountants registered with the Institute of Chartered Accountants in England and Wales, are required to abide, including with respect to handling confidential information, we can see no reason why we should not be given access to this information. It is not at all unusual for us to handle information of this nature.

23. For JCF we have, as stated in Mr Taylor’s emails, received some Microsoft Excel spreadsheets containing information which we were told has been extracted from Sage. I have been able to use this information to prepare draft accounts for JCF, copies of which are attached at pages 28 to 44 of Exhibit JC1, although I should stress that these cannot properly be finalised (let alone audited) without access to the original documents and data on Sage since it is only then that we would be able to verify the information provided. As it stands, these accounts are no more than a conversion of the spreadsheets into accounts format. They cannot be relied upon as they cannot be tested or verified. Speaking as an accountant, if I were a trustee asked to sign these accounts as a true and fair account of the Charities’ position, I could not do it.

24. For CTF we have been given no bookkeeping records at all. I cannot even begin to do the cosmetic exercise done for JCF. For WM, I was provided with a pack in the same form as the JCF pack on 19th May 2021 – see the email at page 23 of JC1. This means that I am likely to be able to achieve the same result as for JCF, with the same deficiencies identified above, if necessary. However, I have not spent time doing that exercise at present, as it seems a waste of charitable resources if this application is going to result in the provisions of proper records from which I can prepare true and full accounts ready for audit.

60. He then went on to set out the information which he needed to carry out an audit:

“25. We are not just instructed to prepare accounts. We are also instructed to audit them, an essential exercise for the Charities, who need to ensure that the accounts are not merely

a cosmetic exercise. Carrying out an audit is far more onerous than preparing a set of accounts.

26. In carrying out an audit, the auditor must undertake whatever procedures they deem necessary to obtain 'reasonable assurance' that the accounts are free from 'material misstatement', which could be caused by errors or fraud.

27. The exact procedures undertaken as part of an audit will be determined with reference to the auditor's judgement of the risk that such 'misstatements' exist. In this case, the apparent mixing of information on Sage and the refusal to provide access to those bookkeeping records, together with the failure to offer complete prime records, increases the risk that any accounts may contain inaccuracies, which would mean that I would want to carry out more stringent tests than in a very low risk case. The auditor then designs appropriate procedures to test the accuracy of statements made in the accounts and gain sufficient assurance that this risk is reduced to an acceptable level. It should be noted that the scope of an audit extends beyond the basic financial information that people generally concentrate on, to include accounting policies, judgements and estimates used when preparing the accounts, statements made in the Trustees' Report, and notes included within the accounts.

28. In order to assess the risk that a misstatement might arise, the auditor first needs to understand the systems that are in place relating to the finances of the organisation; for example, who is responsible for doing what, how do they do it, and who checks what they have done. None of this is clear in respect of the Charities for the period while the GLE/GLMC/Mr Taylor had control of the finances and the records. If there are areas where one individual alone exercises significant control over the organisation's finances, this might indicate a higher risk of error or fraud. In such cases more assurance would be required, and tests might focus on specific transactions in that area. I simply do not know whether that applies and if so to which transactions.

29. If there are controls in place to reduce the risk of error or fraud, such as transactions needing to be approved by two parties, then perhaps the risk of a misstatement is reduced. In this case detailed testing of transactions may not be required to the same extent. However, in such cases it would be necessary to test that those controls were indeed being implemented before relying on them for assurance. Again, I have no idea if there were such controls, or if they were being implemented.

30. It is clear that, to understand and test the systems and controls within an organisation accurately, wide access beyond the prime and bookkeeping records is required. This is also the case when reviewing statements made in the Trustees' Report and any notes to the accounts, for which access to meeting minutes and correspondence may be required.

31. Given the wide scope of an audit, it is impossible to give a comprehensive list of the information required, as the list can vary significantly from one audit to the next – and can change dependent on what is discovered in the prime and bookkeeping records. However, it is certain that both the prime records and the bookkeeping records would be required as a bare minimum, and it is fair to say that, provided an auditor can demonstrate how the information might be linked to the accounts, they should have access to all of the organisation's records.

32. Where an auditor is not provided with access to the information they deem necessary to obtain 'reasonable assurance' that the accounts are free from 'material misstatement', they will not be able to sign off a 'clean' audit report. Where the issue in question is restricted to one area of the accounts, and the auditor is satisfied with the other areas of the accounts, it may be possible to produce an audit report that draws attention to the specific issue or highlights a limitation on the audit's scope. However, where the issue(s) are too wide ranging, it is likely that no positive audit report can be signed. The issues may be wide-ranging in respect of the Charities, or they may be narrow, but I cannot even begin to assess the situation on present information.

33. As a sample, I attach a copy of an audit report prepared by Watson Buckle on the CTF accounts for the 2018 financial year at pages 45 to 47 of Exhibit JC1. I have to say, based on the information available to me, I could not sign off an audit report in that form for any of the Charities. I simply do not have the information available to say that, in my view, the financial statements give a true and fair view of the state of the Charities' affairs. If Watson Buckle did have the necessary information to provide that sign off, I cannot understand why the GLE will not allow me or the Charities to see that information, or provide it in respect of the 2019 financial year.

## **Audit of the Charities**

34. In the case of the Charities, we have little if any information regarding the systems that were in place during the years in question, namely 2019 and 2020 and as noted earlier, we have very limited access to any prime or bookkeeping records. This means we are not in a position to carry out the initial stage of assessing the risk associated with the audit, which is necessary before the audit procedures can be designed. It is these procedures that would then determine what other information is required.

35. I am concerned that it is now more than 18 months since we first requested the relevant information from Watson Buckle, and the GLE/GLMC in the form of Mr Taylor, yet they have still not provided the full information required for an audit. It seems clear from the correspondence that the GLE/GLMC have not authorised either Mr Taylor or Watson Buckle to provide the information that they do have, and what has been promised by Mr Taylor rarely materialises. The continued delay is of great concern because the Charities are now very late in filing their accounts for the 2019 financial year (and accounts for the 2020 financial year are also due), although I understand that the Charity Commission is aware of the circumstances and has been relatively sympathetic thus far, although they are now losing patience. I also understand that the Charity Commission is also expecting to receive a restatement of the Charities' accounts for the 2018 financial year once Brays have been able to review the full extent of the data. Again, this is very late. This really cannot wait any longer to be resolved amicably, especially since there appears to be no real will on the part of the GLE/GLMC to assist to the degree necessary."

### **Ms Dodds**

61. In her witness statement Ms Dodds explained by way of background

"9. Traditionally, income has been generated by the PLs and the MLs by way of the payment of weekly dues from members of the Order. The RAOB GLE determine, in relation to the dues payments, (usually in September each year) how to allocate funds to the running costs of the RAOB GLE, the PLs and (in the past) to the financing of the convalescent homes. As the RAOB GLE does not own any homes but the CTF did, traditionally the RAOB GLE designated a sum as it considered appropriate to be credited to the CTF to fund the convalescent homes. These sums have varied from time to time. In 2019, the payments ceased as the CTF sold its homes.



10. It is relevant to understand how the finances of the RAOB GLE and the Charities have operated over the years. Each entity maintains its own bank account. Monies paid into the bank account of the RAOB GLE ("the Administration Fund") which were intended for the other entities would be paid across so that that entity would pay its own bills.

11. For many years, the RAOB GLE and the Charities have used one SAGE trail balance for all accounting records, but still operated separate bank accounts. In the main, PLs and MLs would make payments (including items such as dues and any additional charitable donations) into the Administration Fund, although, sometimes, donations were made directly to the Charities.

12. On paying into the Administration Fund, the lodges would usually provide a breakdown of the different elements of those payments. If they did not, then the accounts staff would ask for details of the payments made. Notes would then be entered into the SAGE system by use of codes to indicate to whom each payment belonged. Instead of those payments being paid over to the different entities, where funds were allocated to the Charities, those funds would then be retained within the Administration Fund and used to pay the liabilities of the Charities (again with such expenditure being coded).

13. To prepare the accounts and financial statements of each entity, the auditor Watson Buckle (who acted for all of these entities) would then allocate the income and expenditure of each entity at the end of each accounting period. This meant that the audited accounts and financial statements of each entity were accurate and reflected the correct ultimate position. All of the accounts prepared by Watson Buckle (including the 2018 accounts) were signed and approved by the relevant trustees including the Claimants as trustees of the Charities. Mr Walsh now suggests that the 2018 accounts of the Charities may need to be re-prepared. This simply appears to be because (as he admits in his witness statement) they include an acknowledgment that the CTF owes the RAOB GLE more than £3m in relation to loans lent to it from an investment scheme administered by the RAOB GLE. The CTF now claims that this is incorrect and it does not owe this money. That is not a reason to re-prepare accounts. The debt claim will be dealt with by litigation as to whether the monies are owing.

14. As part of that accounting process, Watson Buckle would determine whether the income received and the payments

made for each entity balanced. If, as was the case in every year except 2017, the sums paid out for benefit of the Charities exceeded their income paid into the Administration Fund, then this would be written off by the RAOB GLE and treated as a charitable donation to that charity. That would then be shown in that charity's accounts as income. The only year in which payments made for the Charities did not exceed the income allocated to them was in 2017. The deficit in that year was £107,810. However, the payments made from the Administration Fund in 2018 for the benefit of the Charities cancelled out this deficit.

15. Since 1 April 2019, a different system has operated whereby all monies due to the Charities from payments received into the Administration Fund have been paid over to them on a regular basis. They now discharge their own liabilities and they operate their own separate accounting systems. This occurred at the request of the Charity Trustees. Mr Walsh acknowledged this in his email dated 4 December 2019 (page 2 of LD2) where he stated that You must understand that the accounts information for the gle funds(adm/n, ctf, jcgf and wma) up to 31 March 2019 was contained in 1 system (sage). The charity accounts for the ctf, jcgf and wma have now been separated into Quickbooks from 1 April.

16. The consequence of all accounting records being in one SAGE trial balance is that whilst the SAGE system is owned by the RAOB GLE, it also contains data which relates to the Charities. The Charities do not own the SAGE system.”

62. She commented on the evidence of Mr Walsh and Mr Crossley that

“33. ... it can be seen that the rationales for the application set out in the witness statements of Mr Crossley and Mr Walsh are quite different. Mr Crossley complains that he has insufficient information to prepare audited accounts for the Charities. It can be seen from the correspondence that Mr Taylor has offered to produce audit packs for each Charity which would allow its accounts to be prepared. Mr Crossley has in fact managed to produce draft accounts on the basis of the pack provided in relation to the 'CF. His real complaint appears to be that he is unable to audit the figures, but, this ignores the fact that the RAOB GLE has repeatedly offered (including in the Letter of Response) to give Mr Crossley full access to the SAGE system to test the figures provided. That offer has never been taken up nor (as I am informed by Mr Taylor) has Mr Crossley ever

spoken to Mr Taylor, in particular about how the accuracy of the system can be tested to his satisfaction. The only reason why the pack for the CTF has not been completed long ago is because Mr Walsh said they were unacceptable and then Mr Crossley failed to confirm that he was satisfied with them.

34. The correspondence shows that the requests for information by the Charities have been highly sporadic. It was only in late June 2021 that the issue was suddenly pressed and proceedings were issued after 7 days. This was (if a cause of action existed) totally unreasonable given the breadth of what was sought. The response of the RAOB GLE was that packs would be provided and access to the SAGE system would be provided to Mr Crossley, as had always been the case since 2019. However, by then proceedings had been issued.

35. In contrast Mr Walsh hints at wider issues between the Charities and the RAOB GLE in vague terms. At paragraph 27 of his statement he says that documents are required "to investigate the financial irregularities set out in this witness statement". He makes the following allegations:

35.1 many years of charitable contributions "may' have gone missing although those monies may have been spent properly on behalf of the Charities. In the Letter of Claim it was alleged that such contributions had been taken by the RAOB GLE. This was denied in the Letter of Response;

35.2 Charities' funds may have been lent to other entities;

35.3 there may have been improper use of Charity funds; and

35.4 he considered the past accounts to be inaccurate as they show the Charities to owe a debt in relation to the investment scheme. This ignores the fact that the debt was clearly shown and he approved those accounts. Moreover this was the case in relation to accounts for years before that, which Mr Walsh also signed. Mr Walsh further obscures the issues by referring to a report by KMPG which has nothing to do with the present issues. In any event, all of the relevant allegations have been dealt with in the Letter of Response.

36. Therefore, Mr Walsh seems to be suggesting that there is a wider purpose to the application, namely to seek documentation to identify whether the Charities have claims against the RAOB GLE for misappropriation of funds. I would submit that Mr Walsh's statement indicates there is at least a

secondary intention behind this application which is to seek pre-action disclosure. However, no attempt has been made to make this application under CPR Part 31.16 or to meet its very strict requirements. In fact such an application would fail as the Charities have already produced a Letter of Claim alleging misappropriation of what they call Charitable Contributions.

37. In the Claim Form it is stated that accounts need to be prepared for the years to 2019, 2020 and 2021 and that the accounts for 2018 are "wrongly stated". However, as I have said, Mr Crossley says that he has only been retained to deal with the figures for 2019 and 2020. What has not been made clear in the evidence produced by either witness is that the Charities have maintained their own and independent accounting records since 1 April 2019. Therefore, it is difficult to understand why they claim to need access to the SAGE system and the documentation sought from after that date. This gives the impression that the real purpose of this application is not to produce accounts but to seek evidence for intended litigation and to conduct a fishing expedition.

38. ... if a cause of action exists, what is sought by way of production of documents is simply too wide. An examination of the Schedules shows that the Claimants are attempting to secure copies not only of the data relating to the finances of the Charities but the internal records of the RAOB GLE. They have no conceivable relevance to the preparation of their accounts. For example, they seek:

38.1 documents to prove the ownership of the assets of the Charities. Despite it being stated in Mr Walsh's statement that no Order was sought for production of records of the Charities (of which delivery up has already been agreed), much of Schedule 2 is a request for records such as their governing documents and minutes, I am instructed that the RAOB does not hold charity minutes and my understanding is that the Charities do not have management committees;

38.2 where there are underlying transactions in place with another organisation, full access to that organisation's financial records; and

38.3 where an organisation has acted as an intermediary in a transaction, access to the financial records of that organisation."

63. She then made an open offer (as of the date of her witness statement on 29 July 2021) on the following basis:

“39. Despite all of this, as can be seen from the correspondence, the stance of the RAOB GLE has always been that the Charities can have access to information needed to produce their accounts. However, they were not prepared to agree to giving the Charities complete and unfettered access to the entire SAGE system because it includes all of the information about the finances of the RAOB GLE as well as confidential information about its staff and their remuneration. Moreover, the demand for unfettered access would have involved access being given without limit as to time, allowing records to be examined for years for which the Charities already have audited accounts.

40. The RAOB GLE has no desire to spend the funds of its members on litigation of this kind and it has never denied the right of the Charities to information to prepare its accounts. For those reasons, it offers on an open basis to provide an electronic copy of a report from the SAGE system covering all financial transactions from 1 April 2018 to 31 March 2019, but, with any confidential information relating to its staff deleted and on the basis that:

40.1 the copy is only to be produced to Mr Crossley and the trustees of the Charities who will use the information provided for the purpose of preparation of accounts only;

40.2 the recipients of the information agree and undertake to the Court that they cannot disclose to any third party any of the data contained in the copy relating to the affairs of the RAOB GLE.

41. In addition, the RAOB GLE have no objection (as offered before) to Mr Crossley having direct access to the SAGE system in order to complete his audit (including being able to run, for himself, the report referred to in paragraph 40 above) and, as is already offered in the audit packs, any supporting documentation will be provided on request. Mr Taylor is also willing to answer any further relevant queries which Mr Crossley may have.

42. The opening trial balance as at 1 April 2018 has already been provided to Mr Crossley by Watson & Buckle.

43. The report from the SAGE system being offered is the same as those Watson & Buckle were provided with when they were engaged to prepare accounts for and audit all of the four entities. Also, it will be noted that a copy of SAGE was what the Charities' solicitor had stated was required until June 2021, albeit they demanded unfettered access. Therefore, it is clear that such a report is sufficient for the purposes of the audit.

44. It is currently unclear why it is claimed that the Charities need information from after 1 April 2019 when they set up their own system. If this can be explained, then the offer above would extend to the year to March 2020 and 2021. However, there can be no basis for re-opening the 2018 accounts which Mr Walsh and the other trustees approved and signed. The inclusion of the loans in those accounts was perfectly plain.”

## **Mr Crossley II**

64. In his second witness statement, Mr Crossley replied to Ms Dodds' evidence as follows

“8. If the suggestion in Paragraph 37 is that we do not need information from the Defendant for the 2019 accounts because the Charities kept their own records from April 2019, that is incorrect. The 2019 accounts are based on records from 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2019, so this information is required, being pre-April 2019. In respect of the scope of the work I am engaged for, the 2019 and 2020 accounts/audit are the subject of my initial engagement, and as part of my audit of the 2019 accounts I need to gain assurance as to the various balances at the start of the year to 31 March 2019, which effectively means reviewing the 2018 accounts and accounting records, and those for earlier years if necessary to satisfy myself properly of the accuracy of the figures. I am not allowed to take the previous years' figures at face value just because the accounts have been signed: I need to check them. In many cases, the figures having been audited would provide significant assurance but as concerns have been raised regarding their accuracy, more work is needed.

9. The point about what is said in the initial part of Paragraph 38 is that the amalgamation of the accounting records of the Charities with those of the Defendant widens the scope of what might be needed for the audit – this is unfortunate but could have been avoided had the records been kept separate, which would have been best practice. I have already commented on this point in my first Witness Statement.

10. The suggestion in Paragraph 44 that there is no basis for reopening the 2018 accounts is both incorrect and rather concerning. Of course, if it subsequently comes to light that a set of accounts has been signed off on the basis of an incorrect assumption (for example because the underlying documentation contained inaccuracies) then it is important that those accounts are restated accurately. It is not my place to comment on the legal duties of the Trustees, although from my experience I would expect that those duties include, in broad terms, keeping accurate records and preparing accurate accounts of the Charities' financial transactions. In this case, I have been made aware by the Trustees that incorrect reference to loan monies owed by the Charities was made in the 2018 accounts based on inaccurate information. In those circumstances, my professional advice is that the 2018 accounts should be restated; to do this, I will need to see the appropriate documentation referred to in my previous witness statement.

11. In respect of Paragraphs 40 and 41 and the offer that has been made by the Defendant, the problem is that outlining the exact specification of the report required for an audit is impossible to do at the outset, as the information needed will invariably evolve as the audit progresses. It is possible that an audit could be carried out with supervised access to Sage together with ongoing requests for information, but this would take an incredibly long time, particularly given the lack of priority afforded to such requests so far by the Defendant. In any event, it is not clear to me from LD's statement exactly what is being proposed, for example in relation to my ability to utilise the information I require outside the Defendant's own premises. I also note that the offer only relates to the period 1 April 2018 to 31 March 2019.

12. I would also point out that the Trustees are obliged to maintain financial records for 7 years. HMRC requires financial records to be kept for 6 years from the end of the accounting period, so this is effectively 7 years for annual accounts. The Trustees need a copy of Sage in order to comply with this statutory requirement. However, it is possible for HMRC to go back as far as 20 years where they suspect fraud, so it is prudent for trustees to maintain records for longer."

## **Mr Gill**

65. In his witness statement Mr Gill explained by way of background that

“7. I personally have been involved with the preparation of the accounts for the Administration Fund and the Charities for a period of over 40 years. My personal involvement with the auditing process ended in 2016 when I ceased being a registered auditor and started working on part-time basis. The last accounts where I was involved in the audit and accounts preparation for the Administration Fund and the Charities were for the year ended 31 March 2016. My colleagues at Watson Buckle have therefore carried out the audit of the accounts for the Administration Fund and the Charities since this time. I did however review subsequent years accounts when they had been finalised and discussed these with the Management Committee and Charities’ trustees. My comments in this statement about the Administration Fund and the Charities and what information is necessary to prepare and audit accounts for the Charities are therefore based on my own knowledge of how the Charities and the RAOB GLE operate gained from the time when I was personally involved in this process. I am not and never have been a member of the RAOB GLE.

8. Prior to Andrew Taylor joining the RAOB GLE as Head of Finance, the financial records for the Administration Fund and the Charities were maintained by bookkeepers employed by RAOB GLE. I recall that paper records were held until approximately 2000 when the RAOB GLE started using the SAGE accounting system to record the financial matters for the Administration Fund and the Charities. At this time, Watson Buckle would be provided with access to the financial records and from these would produce and audit the four sets of accounts. During this process, any errors in the accounting records were identified and corrected and reconciled as part of the accounts preparation and audit process.

9. Following the employment of Mr Taylor, who is a qualified chartered accountant, he would produce an audit pack for the Administration Fund and the Charities to enable Watson Buckle to prepare the accounts. Watson Buckle would then subsequently devise the tests that they required to audit those accounts. Watson Buckle would be provided with information from the Sage system and any documentary evidence required in order to carry out this process.

10. As mentioned above, from 2019 onwards, Watson Buckle have been instructed on behalf of the Administration Fund only and responsible for preparing and auditing those accounts. I am aware that the Charities have instructed Brays to prepare and audit their accounts.”



66. As to the information and documents sought by the Charities were concerned, he stated that

“11. Clarion have provided me with a copy of the audit pack which Clarion informed me Mr Taylor prepared and sent across to Brays to enable them to produce accounts for the CTF for the year ending March 2019. Having reviewed the contents of the audit pack, I consider that the information provided is similar to that which was previously provided to Watson Buckle.

12. The only required information which is missing from the audit pack which prevents a set of accounts from being prepared is a list of the CTF’s investments and valuations of the same. I suspect that this is because Mr Taylor does not have access to this information following the separation of the Charities from the RAOB GLE. I anticipate that this information, in relation to the CTF, would be summaries of the sales and purchases of investments by Brewin Dolphin. This could be obtained by the CTF directly from Brewin Dolphin given that it relates to their own investments.

13. I understand from Clarion that audit packs containing the same information have been prepared by Mr Taylor and sent to Brays in relation to the JCF and the WMF.

14. In my view, together with the information which should already be held (or if not, is obtainable) by the Charities themselves, Brays have all the information required in order to prepare a set of accounts for the Charities for the year ending March 2019. All that they then need to do is audit the accounts by devising and carrying out the tests they consider appropriate in order to verify the accounts.

15. I understand from Clarion that Brays have also been offered to access to SAGE at the RAOB GLE’s offices and to inspect any original documents held by the RAOB GLE. I also understand that a report from SAGE has been provided by Mr Taylor to Brays detailing all financial transactions (including those relating to the Administration Fund) between 1 April 2018 and 31 March 2019. I further understand from Clarion that, subject to the provision of an undertaking, Brays have been offered a report from SAGE detailing all transactions (including those relating to the Administration Fund) between 1 April 2017 and 31 March 2019. Whilst in my view this is beyond the scope

of what Brays are required to do, this will enable Brays to verify the information contained within the audited accounts for the year ended 2018. The information which has been provided to date is certainly no less than what Watson Buckle was provided with in order to prepare and audit the accounts.”

67. In significant measure what he went on to say about Mr Crossley’s Schedules has been overtaken by events, but for the sake of completeness I set out his comments for the record:

“Schedule 1

16.1 The first category of documents sought is ‘Basic Bookkeeping records’. In relation to the CTF, I consider that all of the various items listed under this category, where applicable, are contained with the audit pack that I have seen. The audit pack contains a detailed list of all transactions which have also been categorised. It also contains a detailed list of the income and outgoings. Mr Taylor has prepared and included schedules of debtors and creditors which therefore provides details of the money owed by the CTF and the money owed to the CTF along with any commitments entered into which are not yet due for settlement. Based on my own understanding of the operation of the CTF, the category of gift aid returns would not be applicable as the charity is, I believe, not registered for ‘Gift Aid’.

16.2 The next category of documents is ‘Basic Prime Records’. In relation to this, the trustees of the Charities should have the bank statements, cheque book stubs and paying in books as they relate to their accounts which they were managing at this time. If they have not got all of the required information, I would expect that they could request this from their bank. The only loans that featured on the 2018 accounts for the CTF were in relation to the Minor Lodge and Provincial Grand Lodge Investment Scheme (“**the Investment Scheme**”) Loans and all of the information relating to that is in the audit pack. The Charities should also have their own payroll records. Again, in relation to purchase invoices, the Charities should have these as they were managing their own financial affairs at this time. In relation to the other information listed here, such as hire purchase agreements, I appreciate that if applicable, Brays would need the information. However, based on my understanding of the situation and based on the 2018 accounts

for the Charities and the accounts prepared in prior years, they will not all be applicable.

16.3 In relation to the documents listed within 'Other records', the founding document for the CTF is the Trust Deed which the trustees have a copy of. Details of any specific donations or legacies in relation to the CTF were included within the audit pack prepared by Mr Taylor and I assume that the same will be the case for the WMF and the JCF. With regards to funds which have constraints on their use, restricted funds were recorded on the last set of accounts and the details in relation to the CTF were included within the audit pack prepared by Mr Taylor. Again, I would assume that Mr Taylor has done the same in the relation to the audit packs for the WMF and JCF. In relation to transactions with related parties, these were recorded on the 2018 accounts and Mr Taylor has also provided the required information within the audit pack for the CTF.

## Schedule 2

16.4 In schedule 2, Mr Crossley states that, for audit work, 'Full Bookkeeping records': "A full copy of the bookkeeping records, including SAGE data, supporting spreadsheets, cashbooks, etc." are required. It is my understanding that Mr Taylor has provided full spreadsheets from SAGE from the relevant period and offered access to SAGE at the RAOB's office. Brays do not need all of this documentation delivered to them; all of it simply needs to be available so that they can check what transactions they need to once they have come up with their test parameters.

16.5 Schedule 2 then refers to 'Full Prime Records'. As stated above, I would have thought that the trustees of the Charities would have these given that they were managing the financial affairs of the Charities for the year ending 2019. I am however aware that Mr Taylor has offered access to Brays to the RAOB's offices to check these documents. Additionally, as stated above, Brays do not need all of these delivered to them; just to check the sample transactions highlighted by their audit tests. With regards to documents to prove ownership of any material assets owned by the charities, again, I would expect that these would be held or obtainable by the trustees for the Charities. Within this section, Mr Crossley also refers to the need to gain access to another organisation's financial records. In my experience, you would never get or expect access to another organisation's financial records as part of the exercise

to prepare and audit accounts. Instead, you might just want to see evidence to back up the nature of the transaction.

16.6 The final section of documents is headed 'Other records'. I would have thought that the Charities' trustees would have all this information listed here as they were dealing with these matters throughout the year ended 31 March 2019."

68. By way of conclusion he commented that

"17. In my opinion, as Brays have sufficient information to prepare the 3 sets of accounts for the Charities, as I have stated above, all that they then need to do is determine how they wish to audit the accounts. The normal practice to do this is to work out the tests they need to do on the systems and controls. The way that this is usually done is by identifying certain transactions and verifying the accuracy of them by looking at the prime documents. In relation to assets, you would devise other specific tests to verify that the information and value was correct. For example, in relation to property, you would normally obtain the title details to verify that the property was owned by the entity. If the asset was showing on the accounts at a certain value, you would request a copy of the valuation from the surveyor.

18. In carrying out an audit of a particular set of accounts, you would not usually check every single transaction against each prime record or document; you only check the ones that the audit tests have identified.

19. I have no reason to believe that Brays would use a markedly different methodology to Watson Buckle in order to audit accounts.

20. I also believe that it is worth stating that for the year ended 2019, I suspect that the amount of transactions for the CTF will have also decreased significantly due to the fact that the convalescent homes had all been sold prior to this financial year.

21. I would also add that since the accounts prepared in 1926, to the best of my knowledge, the Administration Fund has never held investments. The Administration Fund simply administers the Order. The Charities should therefore have details of all material assets and investments they hold.

22. Since the Investment Scheme was set up in the 1960s, the accounts for the RAOB GLE Administration Fund have never included the Investment Scheme Funds. The reason for this is that the underlying records showed that the funds were paid into the CTF bank account. The Investment Scheme has always been reflected in the accounts of the CTF and this was the basis upon which the accounts have always been prepared since the beginning of the Investment Scheme and right up until 2018. To the best of my knowledge and belief, the trustees of the CTF have always signed and approved the CTF annual report and accounts (including the Investment Scheme being shown as a liability on the balance sheet) since the Investment Scheme commenced in the 1960s. If the Investment Scheme funds were a liability of the Administration Fund, the audit report would have been qualified accordingly as this would have been classed as a significant error within the Administration Fund.

23. As stated above, I am informed by Clarion that Mr Taylor has produced and provided audit packs for the WMF and the JCF containing the same information for those charities and that access has been offered to documents and information held at the RAOB's offices and on SAGE. In summary, if this is the case, in my opinion Brays have (or have access to) everything they require to prepare accounts for the Charities for the year ending 2019 and to audit those accounts."

### **Mr Taylor**

69. In his witness statement (served on the same day as that of Mr Gill) Mr Taylor explained by way of background that

"11. Traditionally the CTF has had two sources of income from the Order: ad-hoc, voluntary payments intended for the CTF and secondly, subject to a determination by the RAOB GLE, a donation of a proportion of the dues remitted within the Order to the RAOB GLE. The dues have always been distributed by the RAOB GLE as provided for by the Rules. Previously, the RAOB GLE decided to allocate a proportion of the dues received for charitable purposes but the position has changed from time to time. Funds were only due and payable to the CTF once the RAOB GLE resolved to donate them. This has however now stopped.

12. For the Court's assistance, I will briefly describe how the financial records of the RAOB GLE and the Charities have been maintained over the years. For many years, the RAOB

GLE and the Charities have used the SAGE accounting package as a combined system recording all of the RAOB GLE's and the Charities' transactions together within one trial balance for convenience. Each transaction is marked with a code to identify the owner of each transaction so that the trial balance can be separated for the purpose of preparing individual accounts for each of RAOB GLE and the Charities. At all times, however, separate bank accounts have been kept for each of RAOB GLE and the Charities. Although on occasion, ad hoc donations by cheque made out to one of the Charities and sent to RAOB GLE by the ML and PGL's were banked directly into the Charities bank accounts, normally the PGLs and MLs would make cheques out to the RAOB GLE (including dues) for payment into the RAOB GLE's bank account ("**the Administration Fund**").

13. Upon banking receipts into the Administration Fund, a breakdown of the different elements of those banked monies were obtained (if not already provided by the paying lodge) and relevant codes and descriptive notes would be entered into the SAGE system to indicate the purpose of each receipt. In this way it was possible that monies intended for eventual charity donation could be retained within the Administration Fund and used to pay the liabilities of the Charities (again with such expenditure being coded), instead of actually being paid over to the relevant charity. Such a transaction effectively being both a donation by RAOB GLE to the charity and at the same time a direct payment in settlement of the charity liability."

70. He went on to explain the historic involvement of Watson Buckle as accountants

"14. Up until 2018, Watson Buckle were the accountants and auditors for the RAOB GLE and the Charities and prepared the accounts and financial statements of each entity. In order to prepare the accounts and financial statements for each entity, Watson Buckle would, using the codes and information on SAGE, determine the income and expenditure of each entity at the end of each accounting period and prepare balance sheets based on the assets held by each entity. This meant that the audited accounts and financial statements of the Administration Fund and each charity were accurate and reflected the correct ultimate position.

15. As part of that accounting process, Watson Buckle would determine if funds expended on behalf of each charity

exceeded the intended donations retained within the Administration Fund. Where this occurred, then instead of the charity being asked to pay for what had been expended on its behalf, the Administration Fund accounts simply included an additional donation from the RAOB GLE to that charity to clear any balance due to the Administration Fund. That sum would also be shown in that charity's accounts as additional income.

16. As already referred to in Louise Dodds' statement dated 29 July 2021, for the CTF, the only year in which payments made for the charity from the Administration Fund did not exceed the funds intended for the CTF but which was retained within the Administration Fund was in 2017.

17. In order to prepare the accounts and financial statements for each entity and then carry out an audit on the financial statements each year, Watson Buckle would be provided with the following:

17.1 a backup copy of the SAGE accounting system which Watson Buckle could use to transfer summary balances onto their own internal accounts production software and use to investigate or report on individual transactions recorded within SAGE as required; and

17.2 documents and schedules of information not normally contained within SAGE, but which would be needed to help carry out the audit or prepare the financial statements. For example, copy bank statement reconciliations prepared by RAOB GLE staff, investments statements from third parties, copies of all fixed asset purchase or sales invoices, leasing contracts entered into during the year, a breakdown of expenditure analysed within "sundry costs", information on staff joiners or leavers, etc.

18 Watson Buckle, when visiting the RAOB GLE offices, would have access to, and would copy, any accounting or other document in connection with that year's audit. They could carry out audit tests, either by selecting transactions at random or high individual value, to ensure that the accounting controls and processes in place at RAOB GLE were operating as designed and could be relied upon to provide correct accounting information. They could also ask pertinent questions of accounts staff and compare what they were told with documentary evidence.

19. Watson Buckle were employed as accountants and auditors to the RAOB GLE and the Charities for many decades

and have built up an in-depth understanding of the way the organisation operates and the strengths and weaknesses of the accounting system and procedures in place. They will know where to look for likely accounting errors and how to deal with and correct any errors that arise. For these reasons Watson Buckle could be satisfied that the accounts prepared for all entities using information extracted from the SAGE backup copy could be relied on to show a true and fair view.”

71. He then explained in some detail what information and documentation had been sought by Brays and what had been provided or offered in return up to the date of his witness statement in December 2022:

“20. Either within the claim or by correspondence prior to and in connection with it, Brays has requested the following information and records to date for each of the Charities:

20.1 A backup copy of SAGE:

20.1.1 Brays has requested a backup copy of the SAGE accounting system containing all bookkeeping records held in SAGE for all prior years to 31 March 2019. That backup copy contains records going back approximately six years for both the RAOB GLE and the Charities.

20.1.2 Whilst this may first appear to simply be a request for the same information as was previously given to Watson Buckle for their audit, when such information was given to Watson Buckle, it was done at a time when Watson Buckle were expected to act for RAOB GLE and the Charities in preparing accounts for the year ended 31 March 2019. When it became clear, at a late stage, that the trustees of the Charities wished to change auditors to Brays, Brays then requested a copy of the SAGE accounting system. As this contains not only the accounting records of the Charities but also a far larger volume of accounting transactions related to RAOB GLE for all years from April 2013 up to that year ending 31 March 2019; giving Brays a copy is, in my opinion, excessive and moreover, not essential for Brays to carry their role as auditors. There are sufficient alternative means of extracting a listing of the transactions related to the charities for the year to be audited. I explain this further, and provide details of what has been provided and offered in relation to SAGE, below.

20.2 The prime accounting records:



20.2.1 The prime accounting records include all documents addressed to or from the relevant charity, purchase invoices, bank statements, paying-in-slips, income records, etc. In short, all charity-related documentation. For the audit of the year to 31 March 2019 this will cover all documents that relate to transactions in that year and possibly also any documents relating to the prior year which ended on 31 March 2018.

20.2.2 Specific prime accounting records which have been identified and requested by Brays have been copied and sent across to them. The prime accounting records for each of Charities remain at the offices of RAOB GLE and it has been confirmed to Brays that they are open to inspection and copying by Brays at any time. As these paper records cover at least a seven-year period to March 2019 they are voluminous, being estimated at 6 pallets. They were offered to the Charities' trustees for collection over a year ago, subject to an agreement to pay our reasonable costs in segregating, collating, and boxing these records. No reply in connection with this offer has yet been received

20.3 Information from Watson Buckle:

20.3.1 Information from the previous auditors, Watson Buckle, asking for certain information, including accounting schedules together with any relevant entries from SAGE.

20.3.2 I am aware that Brays have written to Watson Buckle to request this information, but I am not aware what Watson Buckle has provided to them. The RAOB GLE has no objection to Watson Buckle releasing any such information held to Brays.

20.4 The charity audit packs:

20.4.1 This request was initially made by Brays on the assumption that full audit packs had already been prepared for each of RAOB GLE and the Charities for Watson Buckle to prepare accounts for each entity and then audit those accounts for the year ended 31 March 2019.

20.4.2 That assumption was incorrect; just one combined audit pack had been prepared for Watson Buckle to use in connection with their audit. The supporting schedules in that pack contained many schedules with both RAOB GLE and Charity information. At the time of the initial Brays request the RAOB GLE information for that year was not intended to be shared because the combined audit pack contained information to which Brays were (and still are) not entitled.

20.4.3 My proposed solution was to create three separate Charity audit packs using the initial combined pack and splitting the transactions and information contained therein. This was done for the WMF and provided to Brays in February 2020 but work on the other two packs was suspended because initial feedback from Mr Walsh was that this approach was not acceptable. A copy of the audit pack for the WMF can be seen at pages 1 to 14. However, Brays requested the outstanding audit packs in February 2021 and the pack for JCF was sent in May 2021 and the (larger) final pack for the CTF in March 2022. Copies of the audit packs for the JCF and the CTF can be seen at pages 15 to 40 and 41 to 174 respectively. All three charity audit packs could have been provided a lot sooner had Mr Walsh not rejected this approach. The time taken to create these packs has been lengthy as it was done in addition to my normal duties at RAOB GLE and all packs and supporting details have been provided at no charge.

20.4.4 To confirm, these audit packs consist of a complete and balanced trial balance including all nominal accounts, a complete list of transactions which make up each of the nominal account balances for the entire year and supporting documentation (where held by the RAOB GLE) for all balance sheet items and selected income and expense items. I have confirmed to Brays that access to supporting papers is and would be available when they visit to carry out the actual audit visit (as is typically the case).

20.4.5 As offered in Louise Dodds' witness statement dated 29 July 2021, on 21 March 2022 along with the CTF audit pack, a copy of a report from the SAGE system, in Excel spreadsheet format, covering all financial transactions (including those relating to the Administration Fund) from 1 April 2018 to 31 March 2019 was sent to Mr Crossley. As, to date, we have received no agreement or undertaking that it will be used for the purposes of the preparation of accounts only and not be disclosed to any third party, I requested that it was not released to the Charities' trustees. A copy of my email of 21 March attaching the CTF audit pack and spreadsheet can be seen at page 175.

20.4.6 Brays have been offered the opportunity to run the same extraction report from SAGE that was used to create the transaction list provided to Watson Buckle in their combined audit pack. Brays could therefore devise audit tests to check

that the Charity transactions presented in each Charity pack are complete by reference to the combined transaction list.

20.4.7 We have also offered to Brays a report of all transactions recorded in SAGE including those relating to the Administration Fund covering the two-year period from 1 April 2017 to 31 March 2019. This offer has been made subject to an undertaking that the report provided will be used only for the purpose of the charity audits for the year to 31 March 2019. No such undertaking has however yet been received.

## 20.5 Further documentation and information:

20.5.1 Brays has commenced work on the JCF audit and a visit to the RAOB GLE was made on 26 April 2022 by Jamie Dowse-Holmes for background information and more details in relation

to the JCF transactions. Following that visit a list of 16 classes of further documentation and information, some of which was general and the rest specific to the audit of the JCF charity was requested from the RAOB GLE.

20.5.2 The majority of the information and documentation requested has been provided in so far as they are relevant to the audit process. Some items have not been provided, such as a draft report prepared by KPMG some years ago but we are aware that the Charities' Trustees are already in possession of this as it has been enclosed with previous correspondence sent to Clarion. All of these requests have been answered and I am not aware of any outstanding information requests in relation to the JCF. A schedule of the list of information requested and the information provided in response can be seen at pages 176 to 177 and 178 to 269 respectively.

20.5.3 With regard to the WMF, on 26 August 2022, Mr Dowse-Holmes wrote on behalf of Brays requesting similar supplementary information to that requested in respect of the JCF audit. Brays were not specific over exactly what information was being requested, but because the WMA and the JCF are similar charities, a response was prepared from the RAOB GLE

giving similar information as that received for the JCF. The response was sent on 7 October 2022 together with a request to let us know when any further audit visits were planned. To date, I have received no response to this from Brays. Copies of my emails exchanged with Mr Dowse-Holmes between August 2022 and 7 October 2022 can be seen at pages 270 to 272.

Copies of the documentation provided with my email of 7 October 2022 can be seen at pages 274 to 300.

20.5.4 In relation to the CTF, I suspect that supplementary information may well be asked for in respect of Brays audit for the CTF but because the charity is so different from the JCF and WMF, I am unable to guess what additional questions might be asked so I am waiting until Brays actually start their audit of the CTF so that they can let me know what further questions, if any, need answering.”

72. In response to Mr Crossley, he explained what he considered to be the purpose of an audit and the role of an auditor:

“22. An audit is an inspection of the accounts and financial statements of an organisation typically by an independent body. The main role of the auditor is to provide a report on the truth and fairness of the financial statements, such a report will form part of the published annual report of that organisation. To give a ‘true and fair’ view, financial statements must not be materially misstated and must be prepared, in all material respects, in accordance with accounting standards and legal requirements.

23. To do this an auditor will build up a detailed understanding of the business so that they can highlight and assess the key areas in the financial statements most at risk of material misstatement. Using that risk assessment, they plan their evidence gathering efforts to look for (and ideally arrange correction of) any material misstatements in the accounts and financial statements.

24. Auditors will typically seek to establish who is responsible for preparing the accounts, how the books and records are maintained, what the accounting systems are and how well they are controlled. They will do this by asking questions of staff concerned and carrying out tests on individual transactions (selected either at random or high risk in nature) to determine how reliable the underlying accounting systems are. This element of audit work generally establishes how reliable the income and expenditure totals are for the year leading up to the balance sheet date. So, for expenditure such as staff salaries an auditor might check in detail the payroll records for one month and then multiply the result by twelve to see how

that compares to the total for the year. If it is significantly different, then the auditor would need to see evidence why.

25. The auditors' approach to balance sheet items is different. Balance sheet figures exist as at the year-end date and represent assets or liabilities at that date. Here the auditor must consider each asset in the context of what it represents at the balance sheet date. So, for an asset like money in the bank, they would most likely check it against a statement from the bank. For a liability such as an amount owed to a supplier, the auditor would ask to see a statement from the supplier and may also check that the supplier was paid that amount after the year end. Such audit work on balance sheet items will be focussed on those assets that are materially significant.

26. The role of an auditor is to report on the financial statements that are presented in each year. The role of an auditor is not to investigate if the financial statements for every preceding year also showed a true and fair view. In the absence of evidence to the contrary the auditor is entitled to rely on the brought forward balances from the prior year.

27. While each set of published accounts covers one year in terms of transaction totals for income and expenditure, and one balance sheet date for assets and liabilities, it also contains comparative figures for the previous year and balance sheet date. So, there should be no reason to need access to accounting records from SAGE that go back more than two years bearing in mind that each previous year of transactions and year-end balances has already been audited by an independent firm of accountants."

73. Mr Taylor moved on to consider the audit work which would be expected of Brays and the role of the RAOB GLE in that work:

"28. A draft set of accounts can be prepared from the information provided to Brays in each of the charity audit packs that they have been given. As an exercise, this has already been done by Brays for the JCF. This is apparent from Jonathan Crossley's Witness Statement dated 5 July 2021 and can be seen at pages 28 to 44 of the exhibit JC1.

29. What is not possible merely from the audit packs provided is to "audit" those draft accounts so that an audit opinion can be formed on the truth and fairness of the information presented therein. The auditors must consider if the accounts make sense

in the context of what they know about the relevant entity and ensure that the accounts show a true and fair view to its readers.

30. The audit work that Brays will undertake is to obtain such further information and explanations regarding the various figures disclosed in the accounts. For example, any bank account balance as at 31 March 2019 can be reconciled against the bank statement at the same date. Similarly, any investments can be agreed to third party statements of holdings. If looking at income or expenditure totals, then selected items can be checked back to any supporting documentation to show that the transaction is correctly recorded. Charity grants provided, for example, can be checked to whatever supporting paperwork is relied upon by the trustees before agreeing to make the grant. Not all the supporting paperwork will have been provided in the audit pack because to do so would be prohibitively time-consuming and the auditor is free in any case to ask for what he or she wants to see.

31. It is essentially up to the auditors to decide what tests to carry out and if there is available evidence for them to provide an opinion. The role of RAOB GLE as the previous bookkeepers for the Charities is to provide whatever relevant supporting detail is requested and that we have access to.

32. There is the question of completeness that arises because the accounting system that is used to record all normal transactions is SAGE and that system (owned by RAOB GLE) incorporates all four entities in one trial balance. An audit test will need to be devised which ensures that all transactions recorded on SAGE that belong to a specific charity can be traced through to the list of transactions in the relevant audit pack. For this purpose, the RAOB GLE have already confirmed that access will be given to the SAGE system to Brays so that all transactions entered on SAGE and dated in the year to 31 March 2019 can be downloaded and used to evidence those transactions that appear on each separate charity trial balance.

33. The Charities' trustees will also need to decide if they are happy to sign the accounts that Brays will (in time) prepare. This means that they will probably need access to any paperwork or explanations given to Brays as part of their audit. The only thing preventing this is refusal by the Charities' trustees to date to give the agreement and undertaking requested that they will not disclose the information to third

parties and the information will only be used in connection with the preparation of the Charities' accounts.

34. To date, Brays has received more information than Watson Buckle had initially received to prepare the accounts and conduct the audit. Based on my knowledge as a chartered accountant, Brays either has, or has access to, everything needed to prepare the accounts and conduct their audit.

35. Brays appear to be suggesting that access to the full records within SAGE going back as far as possible to any prior year, in detail, is required as part of their role as auditor. However, the auditor's duty is to report on the transactions during the year under audit and the balance sheet assets at the year end. While it is conceivable that accounting errors arising in prior years might possibly have an impact on the current balance sheet asset or liability values, until the 2019 audit is carried out, in my opinion, the cart is being put before the horse.

36. It appears to me that Brays have accepted the assertions made by their clients that the Charities' accounts for previous years are wrong and need to be corrected before taking the opportunity to carry out the audit for the year ended 31 March 2019. However, if the figures from SAGE can be inspected in full for both years to 31 March 2018 and 31 March 2019 and an audit conclusion reached that the Charities' accounts produced show a true and fair view then, without evidence, there is no reason to suppose that the accounts in prior years were incorrect.

37. I am waiting to hear from Brays what testing they wish to undertake to check the accuracy of the records already provided. Our position has moved significantly forward from that in 2020 in that unfettered access to SAGE covering the two-year period from 1 April 2017 to 31 March 2019 has been offered to Mr Crossley (and his colleague from Brays) at the offices of the RAOB GLE. This has been done in order try to reach a point which balances the interests of the Charities to complete an outstanding audit against the desire to protect RAOB GLE transaction information to which the Charities are not entitled. However, this offer is contingent upon an undertaking that the Charities' trustees will not disclose this information to third parties and that it will only be used in connection with the preparation of the Charities accounts. However, no undertaking has yet been provided. The only assumption I can draw from that is that the Charity Trustees wish to use the information for the purposes of other disputes

between the RAOB GLE and the CTF and this exercise is simply a fishing expedition.”

74. Mr Taylor made a number of comments on the two witness statements of Mr Crossley. With regard to the first of those statements he stated that

“40. At paragraph 9 of his witness statement, Mr Crossley accepts that it would still be possible to prepare accounts without access to the book-keeping records (i.e. SAGE) although it would be time consuming and costly to do so. We are not however preventing access to SAGE. We have offered Brays full access to SAGE at the RAOB GLE’s office and the ability to run whatever type of reports are required and appropriate to prepare the accounts. Additionally, as stated above, a copy of a report from the SAGE system covering all financial transactions (including those relating to the Administration Fund) from 1 April 2018 to 31 March 2019 has been provided to Brays. Subject to the undertaking being provided as requested, the RAOB GLE is also willing to allow Brays to run and retain a report of all transactions recorded in SAGE including those relating to the Administration Fund covering the period from 1 April 2017 to 31 March 2019.

...

43. At paragraph 13, Mr Crossley goes on to state that I offered him “a more limited audit pack and trial balances extracted from the Sage System. This meant that [he] was not being offered either the prime records or the bookkeeping records, but extracts of book-keeping records entered into an Excel spreadsheet.” He then states his opinion that “These could not be tested in any meaningful way, in [his] view, and [he] would have to take them on trust, which is not the role of an auditor, especially where there are concerns about whether the historic accounts are accurate and/or have been prepared properly which [he] understood to be a concern in the case of the Charities.” In my view, the comments of Mr Crossley in this paragraph are simply incorrect. Firstly, just by way of example, the extracts could be tested by running a report from SAGE covering the period in question and then to check the Excel spreadsheet used to split the transactions of each entity. As at 5 July 2021 however, Mr Crossley had not engaged with me at all to discuss ways in which the information could be tested. Secondly, the RAOB GLE were offering unfettered access to any of the prime records of the Charities held by RAOB GLE and supervised access to SAGE if they carried out their audit at



the RAOB GLE premises. Finally, as I have set out above, it is not the role of an auditor to investigate whether the historic accounts have been properly prepared and are wrong; their role is to carry out the audit for the year ended 31 March 2019. If the figures from SAGE can be inspected in full for both years to 31 March 2018 and 31 March 2019 and an audit conclusion is reached that the charity accounts produced show a true and fair view then, without evidence, there is no reason to suppose that the accounts in prior years were incorrect. An auditor, working upon normal instructions, would therefore not need to do anything further.

45. At paragraph 14, Mr Crossley states that “what has been produced for JCF and [WMF] is insufficient”, however what he appears to be referring to is the audit packs which, at paragraph 23 he acknowledged were sufficient to prepare a draft set of accounts and this is what he had done for the JCF. According to his own statement therefore, what he had was sufficient to prepare the accounts but testing and verification would be required. This has never been disputed and this is why access to Brays to the RAOB GLE’s offices, the SAGE system and supporting documents has been offered. The RAOB GLE assumed that Brays would attend our offices in the same way that Watson Buckle did.

46. At paragraph 16, Mr Crossley states that Brays “have yet to receive a comprehensive set of either prime or bookkeeping records for any of the Charities for the years which we are instructed to consider, namely 31 March 2019 and 31 March 2020”. As stated above Brays now have a copy of each charity audit pack for the year to 31 March 2019 which contain scans of many of the prime records for that year together with complete lists of transactions relevant to each charity originally entered into the SAGE accounting package. Any supporting documentation is available at our offices for Brays to inspect and make copies of as required. I am confused by the reference made to the year ended 31 March 2020 because with effect from 1 April 2019, RAOB GLE ceased to act as bookkeepers to the Charities. Although we may therefore have some prime records (invoices, etc) dated later than 31 March 2019 they will only be for the first few months of the year and as noted above, Brays are welcome to inspect and copy these at the RAOB offices.

47. At paragraph 17, Mr Crossley confirmed that Brays had “received bank statements for accounts in the name of each of the Charities” but went on to say that they were not “particularly

useful, as the majority of the transactions are with a central CTF bank account, and the statements do not reference what the transactions relate to.” As Brays have now received a copy of the report from SAGE listing the transactions for the year ending 31 March 2019, Brays will be able to see what the transactions relate to and interpret these bank statements. At paragraph 18, Mr Crossley states “For CTF we have received completion statements in respect of property sales, and some information relating to CTF’s investments, we have received no other prime records.” As stated above, the Charities’ prime records that we hold at our premises, or in storage offsite, amount to some 6 pallets worth and we await confirmation from the Charities’ trustees that our reasonable costs of segregation and delivery will be met by the Charities. At the present time these records can however be inspected and copied by Brays with no restriction whatsoever.

49. At paragraph 19 of his statement Mr Crossley, in connection with the JCF, states that they have “received some but not all of the purchase invoices”. I believe that all invoices were copied and sent in the JCF audit pack. I have never been supplied with a list of missing items. I am aware that the RAOB GLE have certainly supplied all the JCF items requested in the information request list following the visit to our offices by Jamie Dowse-Holmes of Brays on 26 April 2022 as noted in paragraph 20.5.2 above and that included all JCF invoices for the previous year to 31 March 2018.

50. At paragraph 20 of his statement, Mr Crossley states, in connection with the WMF, that they “have received no prime records other than the bank statements noted above”. The WMF invoices should have been included in the original WMF audit pack sent to Brays. In any event we have a scan of the invoices which we can send if they cannot be found. In any case, I would expect them to be asked for during the normal WMF audit process once Brays start doing that audit. There are no other prime records for WMF unless they mean the grants paperwork, which the charity trustees already have a copy of. We would not refuse a request from Brays to look at any administrative paperwork prepared by RAOB GLE in relation to WMF grants but, strictly speaking, they are RAOB GLE records and not charity records.

51. At paragraphs 21 and 22, Mr Crossley refers to SAGE. At paragraph 21 he states “Full access to the Sage records for all the Charities would significantly improve our ability to prepare the accounts” and at paragraph 22 he states that “it would be quite

possible to isolate the information we need if we were given access to [SAGE]”. On the basis that unfettered access to SAGE has been offered to Brays at the RAOB GLE’s offices and that the RAOB GLE is also offering a report from SAGE covering all transactions by all entities for the two years up to 31 March 2019 (once the undertaking has been provided), based on Mr Crossley’s own comments, there would appear to be nothing that the RAOB GLE are doing or withholding which would prevent them from preparing the accounts and conducting their audit. The only cause for the delay is Charities’ trustees failure to provide the undertaking requested.

52. As mentioned above, at paragraph 23, Mr Crossley confirms that the audit pack for the JCF was sufficient to enable him to prepare draft accounts for the JCF. All that remains is for Brays to carry out their testing of the information and conduct their audit; something which they can do with the access they have been granted to SAGE.

53. At paragraph 24, Mr Crossley refers to no bookkeeping records for the CTF having been provided however this is no longer the case as I provided the audit pack for the CTF to Brays in March 2022.

54. At paragraph 25, Mr Crossley confirms that they have not just been instructed to prepare accounts but also to “audit them”. I have explained above how this process is done. However, it is not a normal part of the audit process to investigate all previous accounts to look for ‘material misstatements’ and certainly not before the actual audit of the accounts for the year in question has been carried out.

55. At paragraphs 28 and 34 of his statement, Mr Crossley explains that Brays will need to understand the systems that are in place in relation to the finances of the organisation to assess the risk of misstatement and to plan their testing. Prior to the issue of the Claimant’s application, I had offered to speak with Mr Crossley and discuss matters numerous times but he never contacted me. At the end of numerous emails that I sent to Mr Crossley, I invited him to contact me with any questions or queries arising. Mr Dowse-Holmes from Brays subsequently visited me at the RAOB GLE’s head office on 26 April 2022. During this meeting, I explained our systems in detail and showed them the SAGE system. This has enabled them to plan their testing and verification of the JCF’s accounts. I anticipate that there will be further meetings to complete the exercises for the CTF and WMF.

56. At paragraph 30, Mr Crossley refers to “wide access beyond the prime and bookkeeping records” being required. A normal audit would request board minutes to review and any correspondence related to a particular transaction or issue. We have offered the six pallets worth of documentation relating to the Charities which we are holding to the Charities’ trustees. Any of the documentation therein can be inspected by Brays but as regards to minutes, these would be the minutes from meetings of the Charities’ Trustee meeting minutes which we do not keep. That is information which Brays will need to obtain from the Charities’ trustees. There would be no reason, as part of the audit, for Brays to see minutes from the meetings of the RAOB GLE’s trustees.

57. At paragraph 31, Mr Crossley states that “provided an auditor can demonstrate how the information might be linked to the accounts, they should have access to all of the organisation’s records”. I think that it is fair to say that an auditor would expect access to anything linked to the accounts but only those records of the relevant charity; not to records of the other charities or those of the RAOB GLE.

58. At paragraph 33, Mr Crossley refers to an audit report prepared by Watson Buckle on the CTF accounts for the 2018 financial year. He states that “based on the information he has available to [him], [he] could not sign off an audit report in that form for any of the charities. [He] simply [does] not have the information available to say that, in [his] view, the financial statements give a true and fair view of the state of the Charities’ affairs.” Since this statement, Brays have provided with a great deal of information and documentation. They have also been provided with unfettered access to SAGE and any supporting documents held at the RAOB GLE’s offices. In my opinion, Brays have sufficient information and access to prepare accounts for all of the Charities for the year ended 31 March 2019, carry out a full audit of the same and verify the accuracy of the accounts for the year ended March 2018. In my view, they simply do not require anything over and above what the RAOB GLE has already offered and/or provided.

59. I consider that it is inaccurate of Mr Crossley to state that “there appears to be no real will on the part of the [RAOB GLE] to assist to the degree necessary” at paragraph 35 of his statement. In my view the RAOB GLE have been more than willing to agree to the degree necessary in order to enable Brays to prepare and audit accounts for the Charities. The RAOB GLE is not however willing to produce the sheer extra amount of information and documentation the Charities’

Trustees having been seeking under this guise and allow the Charities' trustees to go on a fishing expedition for evidence which may support litigation against the RAOB GLE in connection with other ongoing disputes between them.”

75. Finally, he commented on Mr Crossley's second witness statement

“64. At paragraph 8 of his second statement, Mr Crossley has stated that he requires access to information to verify the 2018 accounts. For the reasons I have set out above, I do not agree that this is required for the purposes of a normal instruction to prepare and audit a set of accounts. However, the RAOB GLE are now offering, subject to receipt of the requested undertaking, to provide a full list of all of the transactions for all entities (the Charities and the RAOB GLE) for the two years to 31 March 2019 to Brays. This should enable Brays to check the figures and increase the reliance they can place upon the opening figures for the year ending 31 March 2019.

65. At paragraph 9 of his second statement, Mr Crossley refers to it being unfortunate that the accounting records were amalgamated. I was not working for the RAOB GLE at the time and none of the current trustees of the RAOB GLE were in office when this occurred. I understand that the amalgamation into just one trial balance for all four entities happened as part of the move to computerised records in the early part of the century. If I had been involved at the time, I would have put in the necessary accounting controls to make sure that cross funding, where it occurred, was recorded automatically as part of the accounting double entry rather than relying on the work done by Watson Buckle at the year end. Those required controls are now in place and deal effectively with any ongoing funds passed to RAOB GLE.

66. In paragraph 10, Mr Crossley states that the suggestion in Louise Dodds' witness statement at paragraph 44 that there is no basis for re-opening the 2018 accounts “is both incorrect and rather concerning”. As I have stated above, unless and until Brays have conducted their audit for the year ending 31 March 2019, they will not be aware as to whether there is any misstatement and therefore need to investigate the position of previous accounts. As I have stated above, it appears that Brays

have already accepted the assertion that the historic accounts are incorrect prior to them having conducted their audit. It is the contention of myself, the trustees and the management committee of the RAOB GLE that there is no reason to restate

the 2018 accounts. This is one of the reasons why the RAOB GLE is happy to share the full list of transactions for all entities within SAGE for that year so that Brays can check the figures.

67. In paragraph 11 of Mr Crossley's second statement, Mr Crossley states that the difficulty with the offer the RAOB GLE made as was set out in Louise Dodds' witness statement is that it is impossible to say from the outset what information they will need "as the information needed will invariably evolve as the audit progresses". I do not agree with this statement. I have no difficulty in outlining the report which Brays require from SAGE. The information needed is that on every single transaction in the relevant year. No matter how the audit requirements evolve, they cannot go beyond all the available data contained within SAGE for that year.

68. At paragraph 12 of Mr Crossley's second statement, Mr Crossley states that the Charities' trustees "need a copy of Sage in order to comply with their" statutory requirement to keep financial records for 7 years. This is incorrect. What they may need in this context is 7 years' worth of extracts from SAGE but I do not believe that these would be required when the prime accounting records are all available and SAGE was merely used to record them. Any other accounting package could be used instead as referred to in Mr Crossley's first witness statement at paragraph 6."

## **Mr Walsh II**

76. Mr Walsh's second witness statement was served very shortly before the trial.

In it he stated

"9. Mr Taylor's insistence that any information that he provides cannot be shared with anyone outside of Brays causes a great deal of difficulty for us. Charity Trustees are required to submit Accounts to the Charity Commission, and any member of the public can ask to see a charity's accounts. We are also required to keep the documentation on record for a period of time, but here the Defendants are refusing even to let us see it.

10. Also, our auditors' regulators can require Brays to disclose copies of any work they have done and I imagine if Brays have to explain to their regulators that they have carried out an audit without allowing the client (or the regulator or any other third party) to see the documentation, then that would be a red flag and an obvious problem for them as well as us.

11. The background to the audits is that we were appointed as trustees as long ago as 2017, only to discover over time that things were even worse than we had feared. Unlike the GLE, which is just an unincorporated association, we are bound by our duties as charity trustees. There have been two police investigations into the Charities, one prior to our involvement, and myself and the other two Claimants were appointed in order to try and sort out the mess (that led to the second police investigation), so we are very concerned that the Charities' auditors are able to carry out their duties appropriately.

12. Another glaring issue is that the Charity Commission may require access to the information, especially if it were to implement a formal investigation. As I understand it, this still being considered.

13. In all the circumstances, myself and my co-trustees wish to ensure that we are not hamstrung by Mr Taylor's refusal to allow us to see the documentation, so that we can ensure that the audited accounts are factual and true. We have to sign off the accounts and we wish to be very sure of our position before they are signed off.

14. As to SAGE, I understand that one of the reasons that Mr Taylor and/or the GLE have put forward justifying their refusal to allow us access to what is essentially a database is that their system may identify people by name and that this might be in breach of GDPR. There are however numerous entries (with names) on the Charities' bank statements (presumably mirroring SAGE) and which clearly identify funds being paid to beneficiaries, for example, so we most likely have this information already.

15. Another reason cited by the Defendants is that the information is mixed up generally and that it will take time to sort this out and that the Charities ought to pay the cost of this. This does not seem at all reasonable – the GLE has organised and had possession of these documents so why should charitable funds be incurred to meet the GLE's administrative costs of organising documents it has had exclusive possession of? We do not wish to be unreasonable and are very willing to be practical, but we have been asking for this information for years, not weeks or months, and the GLE has had ample time to sort these documents out. I would hope that this can be resolved prior to trial.

16. For many years, transactions relating to Charity Accounts were completed by the GLE's staff (including Mr Taylor), who entered the transactions into the Sage system. The sorts of transactions that might identify an individual by name would be:

- a) Grant payments to beneficiaries
- b) GLE staff wages
- c) Donations/payments made to one of the charities by individual members
- d) Payments being made to third parties such as suppliers

17. In all of these examples, the charities are entitled to know where the funds came from (or paid to) especially where lump sum payments have been made with no breakdown, (e.g. staff wages). For example, we need to know whether the "staff" figure includes wages paid to the GLE's staff as our understanding is that the Charities have never employed any staff directly. If there is a discrepancy or some other explanation, then we would need to reconcile that but we need to see the documentation in order to understand it.

#### **Donations to the Charities**

18. In practice, most MLs or PGLs raise funds on a quarterly basis. This is paid (or supposed to be paid) to the Charities as a donation, with the name of the ML or PGL so we can easily see which lodge has made a donation. Historically, each ML or PGL would record donations manually on sheets of paper (often handwritten). As I understand it, the Defendants wish to withhold these.

19. The donations would comprise a share of the subscriptions paid by each member but also each lodge would routinely raise additional charitable donations for each of the three charities. The Charities have never required each member to explain precisely what sums they have personally donated – practically it was all done through the lodges so this should be relatively easy to work out (there would be a written record for each lodge, called "the PGL return"). Members would make a donation into a collection box or bowl at some time during an ML or PGL meeting, or another event such as a raffle but these would be gathered together and recorded as one sum.

20. Members can also make donations direct to the charities in their own names. This would be classed as entirely separate to the donation made by the ML or PGL but the monies should have gone direct to the Charities. The GLE is not a charity so if the members have made a charitable donation, they can only ever have intended a charitable donation to be made to the



charities. I cannot understand why our auditors are being denied this information.

21. It is therefore, in my view, wrong for Mr Taylor and/or the Defendants to say that they wish to protect the identity of the donors by withholding SAGE, as the vast majority of the donations were made by the lodges, not individuals.

22. In any event, the Charities, the Claimants and our advisers are all subject to the requirements of GDPR. I do not see that the GLE should be able to somehow claim that it is an exception to widely accepted accountancy principles just because they claim to be protecting the identity of certain individuals per GDPR.

23. MLs, PGLs and the GLE are unincorporated organisations and have no legal identity, and as I understand it, GDPR cannot be applied to donations that are made in the name of the ML, PGL or GLE.

24. Whilst I do not wish to stray too far from the claim that is to be decided by the court, myself, Brian and Keith all feel that we have been put under undue pressure by the Defendants. We have all been dismissed from the RAOB in the past year, clearly only because we are trustees of the Charities and have been subject to personal abuse in person at meetings and on social media. This has been greatly distressing and upsetting to all three of us and our families particularly when we are only seeking to act in accordance with our duties as charity trustees. The RAOB is supposed to be a social club with the GLE acting as its administrative arm (though in reality it too is just a social club run by volunteers).

25. This undue pressure continues. I received a letter dated 19<sup>th</sup> January 2023 (from Clarion) a copy of which is exhibited as pages 11 to 16 of JW2. Whilst I appreciate that this is not relevant to the issues that the court is being asked to decide at trial, it seems more than coincidental to me that it has been sent just two weeks before the trial. In short, my PGL, Windsor and Uxbridge, moved from the GLE to another RAOB banner, namely the Grand Middlesex Banner. The GLE have then demanded that the PGL hands over hundreds of thousands of pounds worth of assets to them, even though the GLE of course has never held any of these assets or contributed to them. Despite what Clarion say in their letter, I do not consider that the Rulebook does in fact provide for this situation as the PGL has not closed down – it has simply shifted allegiance to another banner. This has happened on numerous occasions

before without it being an issue or the GLE threatening court proceedings. Frankly the Defendants appear to be more interested in litigation than overseeing a network of social activities, which at heart is what they are supposed to be doing. They are just a glorified administrative body that is supposed to be helping others.

26. This situation should never have arisen. The GLE should have been accounting for the Charities separately and kept its records in order. It is not our fault that the GLE has apparently intermingled its documentation but in any event it has had since 2018 to sort this out. In saying this, we accept as trustees that we are where we are, and wish to take a practical approach but we feel very strongly that we are being met with excuses and that there may be something to hide. Terminating our membership of the GLE and bad mouthing us to the membership at large just heightens our suspicions but regardless of our speculation the point here is that we are required to submit audited accounts to the Charity Commission which we intend to do as soon as possible.

27. This claim only relates to historic issues. Since April 2019, the Charities have been operating separately from the GLE, and the accounts are held in a separate system, so there should be no further impact on the GLE.

28. A further frustrating issue is that since April 2019, the GLE has withheld around £300,000 from the Charities. This has been admitted in reports sent to the membership. Despite owing the Charities approximately £300,000 (the amount appears to fluctuate with each quarterly report for unexplained reasons) the GLE is refusing to repay this debt. The Charities have repeatedly requested that the GLE at least pays the amounts it admits are due and owing. The GLE has cited the delay in submitting the accounts as an excuse for not paying this sum.

29. For our part, we simply wish to finalise the accounts. The Defendants' counsel has claimed in previous submissions that this is a "fishing expedition" on our part and was, in effect, the first salvo in a wider claim. This is wrong and for the avoidance of doubt, we have suggested a means of resolving the issues that she refers to in open correspondence. We would hope that can also be resolved but in the meantime the charities have to submit their accounts."

77. With regard to Mr Gill's statement Mr Walsh commented that

“30. I note that Mr Gill claims that he “would have thought” that we (the Claimants) have been given documentation at the time of our appointment but this is not the case. We have never been provided with this documentation by the GLE and indeed there was a great deal of resistance to the suggestion that we would need to restate the accounts for the year 2017/2018 which was concerning. Furthermore, I note that even though he was the accountant for the charities and GLE for many years, he says that the charity trustees have always signed off the accounts, but my understanding is that this is not necessarily the case and that they were routinely signed off the by Grand Primo (the titular head of the GLE) in front of the Grand Lodge Management Committee. This was however not done with the 2017/2018 accounts which were signed off without any formal presentation.

31. In fact, errors in the 2017/2018 accounts were reported by us to the Charity Commission in 2018, and it was they who said they wanted the accounts restating. This why we appointed Brays, not least as Mr Gill and Watson Buckle appeared to have a conflict (a decision that did not go down well with Watson Buckle at the time).”

### **Mr Crossley III**

78. In his third witness statement, also served very shortly before the trial, Mr Crossley began by stating what he regarded as the overarching issue:

“4. I think the overarching issue is that GLE have, historically, exercised control over the charities as if GLE were the charity trustee. This has led to GLE being in possession of documents and other information which would, ordinarily, be in the possession of the trustees. Where the trustees of a charity might be more inclined to freely provide such information to the charity’s auditors, GLE are failing to fully co-operate now that they have lost control over who the auditors are. As auditors, we are required to exercise professional scepticism. With this in mind, one possible reason for GLE’s failure to fully co-operate is that they are covering something up.

...

8. As I trust is clear to the court, our role requires us to be sceptical. Given the particular circumstance of this audit, with the suggestion of fraud having taken place, there is no limit on how sceptical we should be.

9. Finally, I want to make reference to the fact that we are independent auditors. We have not been engaged by the trustees to undertake a “fishing exercise”; we are engaged by the trustees to carry out an audit in line with internationally agreed standards, as overseen and regulated by our Institute (ICAEW). The trustees have engaged us, but they do not direct how we carry out our work. Our audit report is addressed to the trustees, but ultimately our work is for the benefit of all stakeholders in the charity, including donors, who want to ensure their donations are being put to good use, beneficiaries, who deserve to know the charity’s assets are being utilised well for their benefit, the Charity Commission, who must ensure the trustees are running the charity properly, and the general public, who want assurance that charities are acting appropriately and to advance their chosen good cause.”

79. He accepted, however, that Mr Taylor had been cooperative, but said that the form of the undertaking sought by the RAOB GLE was unworkable:

“11. We have had some fruitful conversations with Andy Taylor, both in person and via email, and much of the information we have requested has been provided. I think it is important to note that we feel Andy Taylor has been as helpful as possible within the constraints set by his employers. However, there are some key omissions, and there remains the problematic condition attached to the provision of this information as follows:

*“the previous restriction that it (additional paperwork provided by Andy) should only be seen by Brays employees is lifted. Access can be given to the Charity Trustees to allow them to be in a position to satisfy themselves on signing the Charity accounts. Further disclosure to outside bodies such as the Charity Commission should be specifically requested but will not be unreasonably withheld.”*

12. This condition is not workable for us; there is a high chance that, in the normal course of our work, this information will need to be shared with, amongst others, the Charity Commission, the Institute of Chartered Accountants in England and Wales, third parties engaged to undertake hot and cold audit file reviews, future charity auditors...etc. All of these organisations would be bound by the same levels of confidentiality as us, so this restriction is unnecessary. Furthermore, we cannot afford

to risk statutory and regulatory non-compliance on GLE's promise to act reasonably. As such, whilst this condition remains, we cannot complete our audit."

80. He then set out the matters which were still in issue between the parties and the documents of which disclosure was still sought:

"13. We have had a response to all formal requests for information. Some information has been refused. One document is a copy of the internal audit report produced by Kay Colgrave – this was denied to us because it is not accepted as reliable by GLMC at the time and was not progressed or acted upon in any way.

14. If an internal audit was carried out, and a report was produced by someone within the finance function of the organisation(s) describing the internal procedures and highlighting potential weaknesses in these procedures, it would be extremely useful for the organisation's auditor to have access to this report, particularly as the current Head of Finance was not in post for the full year of accounts making up the comparatives to the year we are auditing. The fact that the report was not accepted as reliable by GLMC is irrelevant – auditors are perfectly qualified to determine reliability for themselves. Unfortunately, Kay has passed away since preparing this report, so we are unable to speak to her about its contents directly. Other documents are:

- A copy of a KPMG report regarding allegations of fraud – this was refused on the grounds it could be obtained from the trustees directly.
- A copy of the previous auditor's working papers which the Head of Finance has confirmed are in his possession – these were refused on the grounds that we should request them directly from the previous auditor.

15. A common audit approach is to obtain the same information from multiple sources, which helps to corroborate the information. This information was readily available and could have been provided without undue cost, so the only reasons to refuse would appear to be 1) something to hide or 2) a desire to be awkward. As auditors, we are required to exercise professional scepticism and must therefore assume this is because something is being hidden. This obviously increases

the risk of the audit and therefore increases the detail of the testing needed.

- Details of a police enquiry into allegations of fraud – the GLE’s response was that they have no separate details and the enquiry was requested by the CTF trustees.”

81. With regard to the issue of the charitable donations he stated that

“18. A verbal request was made to review the completed schedules of dues detailing the donations made by individuals at PGL and minor lodge meetings. This request was verbally denied on the grounds that we have no right to this information.

19. Individuals make cash donations to one or more of the charities at PGL and minor lodge meetings. We understand these donations are recorded on the schedules of dues and passed to GLE, with funds also deposited/transferred to GLE. GLE later pays these donations over to the appropriate charity. The donations are recorded in the charity’s financial statements at the point at which GLE deposits them in the charity bank account. GLE assert that this is the correct point at which the donations should be recognised as an asset of the charity, and we therefore have no right to the details of individual donations.

20. Our position is that donations should be recorded in the charity’s financial statements at the point at which they are made by the individual donor. This position is supported by the Charities SORP (FRS 102) which sets out how charity accounts should be prepared (please see pages 30-245 of JW3). The SORP includes rules for income recognition and discusses donations at paragraph 5.10:

- ***Income from donations or grants is recognised when there is evidence of entitlement to the gift, receipt is probable and its amount can be measured reliably.***

21. If the donation has been recorded on the schedule of dues there is evidence of entitlement. If the funds have been handed over at the meeting, and the minor lodges, PGLs and GLE commit to passing on all donations to the appropriate charity, the receipt is probable. If the donation has been recorded and paid, it can be measured reliably. As such, I think it is clear that income should be recognised at the point of donation, not the point at which GLE chooses to pass it on.

22. It is of course possible that all donations made by individuals in a given financial year were paid over to the charities within that financial year. It is also possible that substantial sums were donated but not paid over to the charities and remain within GLE's account. We, as auditors, and the charity trustees, have no way of confirming this. The income, and by extension assets, of the charities cannot be properly measured without access to the details of individual donations made.

82. Mr Crossley then turned to the issue of the Charities' records:

"23. An offer has been made by Andy Taylor to provide the charities' prime records subject to an agreement from the trustees to pay their "reasonable costs". We have offered to collect the records from the office in which they are held, which is very close to our own office. It is for the charity trustees and GLE/their legal representatives/the court to agree/determine what is meant by "reasonable costs"; but we have made it clear that we are willing to collect these from Mr Taylor and as far as I am concerned we would be happy just to pick them up ourselves."

83. He then explained why he needed access to Sage:

"24. Ultimately, with full access to the charities' prime records and other financial and non-financial information (as detailed in previous witness statements) we do not strictly speaking need Sage to complete the work. It is important to note that some of these records and some of this information is currently being withheld as noted above. It is also important to note that full information might include what GLE considers to be GLE records. If, because of the way the records have been maintained, we need access to GLE records in order to obtain charity information, this access will, unfortunately, be required.

25. Although, subject to full provision of other information, access to the Sage data is not strictly necessary, it would certainly make the audit engagement more straight forward and less costly. GLE have offered supervised, on-site access to Sage. Whilst this is better than no access, it is not ideal; a copy of the Sage data would allow us to review transactions to our own timetable, without making an appointment and without the pressure of time limits. We would be able to work on the audit at our discretion and use Sage to quickly answer any ad-hoc,

unexpected queries within 5 minutes of them arising. The current offer would involve making an appointment and waiting for a mutually convenient date and time to visit the GLE office for 5 minutes of work, which would result in increased costs and further delay.

26. Furthermore, the offer of supervised access introduces an intimidation threat to our independence. The ICAEW code of ethics identifies various threats to an auditor's independence, one of which is intimidation. It does not matter whether intimidation is actual or perceived if it affects the work of the auditor. The code of ethics defines an intimidation threat as follows:

- ***the threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the accountant***

27. It is clear that an individual auditor may feel intimidated attending the office of an apparently hostile organisation to work under their supervision. Faced with this situation, the individual may feel it necessary to cut corners or not exercise sufficient professional scepticism. If this situation can be avoided to protect the independence of the audit then it should be. It is fair to say that those representing GLE are trying to influence how our audit is carried out, and they are quite insistent that our work is undertaken on their premises.

28. The main objection from GLE is that the Sage data contains transactional information that we should not have access to. This information is only there because GLE chose to store it in the same place as the charity information. Furthermore, and as noted in previous witness statements, we may actually need access to this information in order to complete our audit because of the way charity transactions were routed through the GLE bank account. Ultimately we are required to keep such information confidential, so the GLE argument is superfluous.

29. In exercising our professional scepticism, we must ask why GLE are creating this obstacle, and one possible conclusion is that there is something to cover up.”

84. He made the following comments on Mr Gill's evidence

30. The ICAEW code of ethics noted above identifies five categories of threat to independence; self-interest, self-review,



advocacy, familiarity and intimidation. A familiarity threat is defined as follows:

- ***the threat that due to a long or close relationship with a client, or employing organisation, a professional accountant will be too sympathetic to their interests or too accepting of their work***

31. At paragraph 7 Mr Gill highlights his 40 year association with GLE; whilst we have no reason to doubt Mr Gill's integrity, this long association represents a clear threat to his independence.

32. At paragraph 11 Mr Gill notes that Clarion have provided him with the charity audit packs; what attributes has Mr Gill demonstrated that permit him access to the confidential information of the charities, whilst we are not permitted access to the same for GLE?

33. Mr Gill makes several references to documents which he assumes are in the possession of the trustees; this might ordinarily be a reasonable assumption, but of course it is not the case here, otherwise we would not need to be asking GLE for this information.

34. Mr Gill also references spreadsheets produced by Andy Taylor, and work previously carried out by Watson Buckle, that we should be content to reply on. Professional scepticism, and the circumstances of this particular case prohibit us from doing this.

35. Finally, Mr Gill comments on how he expects us to carry out the audit, including details of sample sizes etc. These views are no doubt formed from his involvement in Watson Buckles long association with this case. However, we must make our own judgement as to how the audit should be undertaken; this may be a different approach to Watson Buckle. Our approach is determined based on our accumulated knowledge of the case, which will certainly be different to Watson Buckle's. It may be that they were unaware of the allegations of fraud, and so no account of this was made in their approach to the audit. It may be that they were aware of the allegations, but they were also given access to information currently withheld from us which allowed them to reassure themselves that their approach remained sound. Ultimately, for us to be independent in our audit, we must be allowed to carry out the audit as we see fit, and not as directed by someone else.

85. He then turned to the evidence of Mr Taylor and stated

“36. At paragraph 13, Mr Taylor notes that charity funds were regularly received into the GLE bank account and used to meet charity liabilities without ever being remitted to the charities themselves. As such, many charity transactions did not flow through the charity bank accounts. It is therefore impossible to test/check/verify these transactions without access to GLE bank transaction details and supporting records.

37. In paragraphs 14 and 15 Mr Taylor outlines some of the steps taken by Watson Buckle in preparing the accounts. The accounts preparation work appears to have been quite detailed, which potentially introduces a self-review threat to the independence of their audit. Furthermore, although Mr Gill confirms he was not a member of RAOB, I have been told that, at least at times during their long engagement, other members of the audit team/department were RAOB members; if true this introduces the potential for a possible self-interest, advocacy and/or intimidation threat. It may well be the case that Watson Buckle were able to sufficiently mitigate any threats to their independence. However, our approach to this audit has been compared with that of Watson Buckle at various points. Given our differing relationships with RAOB, I would suggest that these comparisons are not appropriate.

38. At paragraph 19 Mr Taylor notes that, due to their long engagement and in-depth knowledge of the organisation, Watson Buckle would know where to look for likely accounting errors. The corollary to this is that anyone within the organisation looking to perpetrate a fraud would also know where Watson Buckle were going to look, and could therefore work out exactly how to conceal a fraud. Our approach to this audit should not be compared with that of Watson Buckle.

39. To clarify a point made by Mr Taylor in paragraph 20.1.1; we did not request Sage data containing “all prior years to 31 March 2019”. We simply requested the Sage data, which happens to contain information relating to prior years. Having said that, we are required to audit the opening balances and comparative information when auditing a set of accounts. Given the high level of professional scepticism we are required to exercise, this information may indeed be necessary to audit the assets and liabilities contained within the balance sheet, which may well have accumulated over a number of years.

40. At paragraph 26 Mr Taylor states ***“in the absence of evidence to the contrary the auditor is entitled to rely on the brought forward balances from the prior year”*** In this case there has been a police investigation into allegations of fraud, the trustees have confirmed that, subsequent to their approval of the prior year financial statements, they now have reason to believe they contain misstatements and need to be restated, and there is an internal audit report potentially containing details of finance system weaknesses. This seems like more than enough evidence to suggest that we cannot rely on the opening balances.

41. The sentiments of paragraph 26 are echoed at various points throughout Mr Taylor’s Statement. Mr Taylor suggests it is wrong to consider errors in the opening balances until the audit of the 2019 transactions has been carried out. It may well be that there are no transactional errors within the 2019 accounts. However, if the opening balances are incorrect, the accounts will be incorrect. Mr Taylor no doubt has confidence in the records he has maintained, and he is not responsible for the records that predate his involvement, so it is perhaps easier for him to dismiss the trustees’ concerns over historic figures, particularly as he is not required to give an audit opinion supported by work carried out in line with the framework set out in the International Standards on Auditing. Contrary to Mr Taylor’s statement, we are not accepting the trustees’ assertions regarding prior year figures, we are exercising professional scepticism and seeking to undertake enhanced procedures in line with our perceived audit risk. Such risk is certainly increased in light of the trustees’ concerns and the reluctance of GLE to provide us with certain information.

42. In paragraph 37 Mr Taylor mentions the desire to “protect RAOB GLE transaction information”. I am not sure why this information warrants such protection, or indeed from what it is being protected. However, it seems that if the information was so sensitive that it could not be disclosed to a firm of registered auditors, then it should not have been recorded in the same place, and so tightly entangled with, information about three other independent organisations.

43. At paragraphs 38 to 68 Mr Taylor raises objections to various points raised in my previous witness statements. I will not address these in detail, but many of the events noted by Mr Taylor took place after my statements was submitted. As such, if the purpose of this exercise was to discredit the truthfulness of my previous statements then it is misleading.

44. Mr Taylor's comments at paragraph 67 demonstrate a fundamental lack of understanding of what is actually required of an auditor. He states ***"they cannot go beyond all the available data contained within SAGE for that year"***; this is simply not true. What about the data that is not contained within Sage? What about the data which is being withheld and/or concealed from the auditor? We do not currently know whether any such data exists in this case, but we are required to ask the questions necessary to satisfy ourselves that this is not the case.

86. Finally he concluded as follows

"45. With respect to our audit work, the main point which needs to be resolved is access to the records needed to determine what donations were made to the charity during the year. The current position of GLE is not supported by accounting standards for charities (Charities SORP FRS 102). Furthermore, we believe that an individual making a donation would reasonably expect that donation to be recorded in the charities' accounts at the time the donation is made.

46. We are attempting to undertake an independent audit in line with International Standards on Auditing (ISAs), the code of ethics issued by our Institute (ICAEW) (see pages 246 to 449 of JC3), to give an opinion on whether the accounts give a true and fair view, and are prepared in accordance with applicable accounting standards (SORP). We feel that representatives of GLE are seeking to affect how our audit is carried out which, unless challenged, undermines our independence.

47. We are required by the ISAs to exercise professional scepticism. Any assertion that we should simply accept representations made by representatives of GLE at face value, without questioning their validity, are contrary to this requirement.

48. Ultimately, if we feel unable to carry out our work independently and in accordance with the appropriate regulations/framework, we will be forced to resign as auditors."

### **Cs' Submissions**

87. Mr Dominic Crossley submitted that Cs' claim was a very straightforward one. Cs sought provision of such documentation as their auditor considered that he required to complete financial statements and audited accounts for all of the Charities, including restating their 2018 accounts. The originally required documents

were set out at Schedules 1 and 2 attached to Mr Crossley's first witness statement the draft order submitted with the claim anticipated that, were the Court minded to make an order of the type sought by Cs, schedules in that form could be attached. As I have explained above, the relief which Mr Dominic Crosslet sought on the day was of a much narrower compass.

88. He submitted that the claim went no further than provision of that documentation and it was surprising that it had been opposed so vehemently by Ds, the Acknowledgement of Service simply stating their opposition to the claim without further comment. That had only fuelled Cs' suspicions that Ds had something to hide, when considered against the background set out in Mr Walsh's first witness statement. Cs drew attention to the fact that no evidence has been given by any of the RAOB GLE officers nor by any of the named Ds in response to Mr Walsh's evidence. Following provision of the latest evidence by Ds, the claim had become virtually an argument between accountants as to the requirements of, and correct procedure for, an audit.

89. The Court was asked to make an order pursuant to CPR Part 64.2(a)(ii) and/or under its inherent jurisdiction. Although Ds stated that that was incorrect procedurally, questions of procedure and the Court's jurisdiction had not been substantially in dispute between the parties. Paragraph 8 of the Claim Form set out the basis on which Cs sought the order – namely an order which the Court could make if the Charities were being administered under the Court's direction.

90. The claim arose in the first place because of Ds' obstructive attitude towards Cs' requests. It was anticipated that it would be necessary to go through much of the correspondence attached to the various witness statements in order for the Court to reach an understanding of the delays and obstruction which Cs had faced.

91. Following issue of the claim, some progress had been made, with Mr Crossley and his assistants having attended the RAOB GLE's premises on a number of occasions. In particular (in terms of the relief sought in the claim) full access to the

Charities' hard copy records had now been offered openly and it was understood that the parties were negotiating over costs. That appeared to be a significant move from Ds' initial position, as characterised in Ms Dodds' witness statement, which continued the obstructive stance which Cs had experienced from Ds since the onset of the dispute. The 'offer' contained in that statement offered limited access to Sage and did not offer full access to hard copy documentation – rather it offered provision of “supporting documentation...on request”.

92. Provision of access to Sage now appeared to be the main sticking point between the parties. It was understood that Ds' position was now that Cs could have supervised access at the RAOB GLE's premises, but that Cs' auditors were not permitted to have a copy of Sage, due to data protection concerns (even with relevant professional undertakings). Mr Crossley explained in his third witness statement that, without being given a copy of Sage to work with, his task as auditor became much slower and more expensive.

93. Cs noted that, while a degree of cooperation from Ds had been forthcoming following issue of the claim, that had been accompanied by a number of attacks against them personally by the RAOB GLE, including their removal from the RAOB Order and the commencement of other litigation, seemingly in response to these proceedings (in respect of Mr Walsh). Whilst those were not matters before the Court, Cs drew attention to the conduct of the RAOB GLE (whose representatives Ds were) in that regard.

94. In summary, Cs had originally sought provision of the documents in Schedules 1 and 2 Mr Crossley's first witness statement on the basis that those were documents and information which properly belonged to the Charities, but for historical reasons were not in their possession, but the relief which he now sought was of a much narrower ambit.

95. Lest it be thought that counsel's submissions were short, I should make clear that he served a full skeleton argument and supplemented his written submissions

with oral submissions at the hearing. He made submissions in four parts: jurisdiction, general submissions underlying the case, elements of the chronology and the remedies sought in the light of developments. In the case of his general submission, he made 5 particular submissions, relating to the Charity Commission, the background as set out in the letter of claim and the letter of response, the credibility of the various witnesses (with which I have already dealt above), the purpose of the litigation and the purpose of an audit.

96. Counsel on each side made oral submissions of roughly equal length. Miss Harrison's oral submissions closely mirrored her written submissions, which I have set out immediately below.

### **Ds' Submissions**

97. Miss Harrison submitted by contrast that in the Claim Form the legal basis for the claims was stated to be

(1) the inherent jurisdiction of the Court, and,

(2) CPR Part 64. Specific reference was made to CPR64.2(a)(ii) and PD 64A 1(2) (c). In Mr Walsh's witness statement it was stated that "surely the SAGE system is effectively a trust document which the Trustees are entitled to see." He also appeared to assert that any document including figures which relate to the Charities was thereby a trust document.

98. The witness evidence filed in support of Cs' application showed that the true rationale behind the application was not to secure production of documentation necessary to prepare accounts, but to conduct a general search through the records of the RAOB GLE in connection with different disputes between the parties. Therefore, the substratum of the present application was that Cs and their new auditors, Brays, refused to accept that the Charities' signed and approved accounts from previous years were accurate or that the trial balances provided to them for use in their 2019 accounts were accurate. In turn they claimed that that meant that they

needed to trawl through the records of the RAOB GLE and the Charities for as many years as they chose to ascertain the “*true*” position.

### *Background*

99. The Order was a social and benevolent organisation and its objects were to assist members, widows, partners, orphans and other dependants of deceased members in need and to support external charitable objects as deemed desirable. It was an unincorporated association. The RAOB GLE, the Provincial Lodges (“**PLs**”) and the Minor Lodges (“**MLs**”) were all bodies established under the Rules of the Order.

100. The CTF was a legally separate entity which came into existence under the terms of the Trust Deed dated 2 January 1928 and it was now a registered charity. It had separate trustees from the trustees of the RAOB GLE, but that was not the case prior to 2015. The JCF and the WMF were also registered charities which were legally separate entities from the Order. RAOB GLE Trust Corporation Limited had held the title to assets owned by the CTF, JCF and the WMF.

101. Traditionally, income had been generated by the PLs and the MLs by way of dues paid by members of the Order. Those dues had been split between the MLs and the RAOB GLE. The RAOB GLE had in turn provided funds as it considered appropriate to the Charities as well as other charities in its discretion.

102. For many years, and up to around 2004, the position was that the RAOB GLE and the Charities maintained their own bank accounts and that monies paid into the bank account of the RAOB GLE (“**the Administration Fund**”) which were intended for the Charities would be paid across so that each entity would pay its own bills.

103. In or around 2004 the RAOB GLE purchased a SAGE accounting system. The RAOB GLE and the Charities used that same SAGE database, even though they maintained separate bank accounts. Therefore, the Charities had all data in their possession relating to their own bank accounts. In the main, PLs and MLs would



make payments (including items such as dues and any additional charitable donations) into the Administration Fund, although, sometimes, donations were made directly to the Charities.

104. On paying into the Administration Fund, PLs and MLs would usually provide a breakdown of the different elements of those payments. If they did not, then the accounts staff of the RAOB GLE would ask for details of the payments made. Notes would then be entered into the SAGE database by use of codes to indicate to whom each payment belonged. Instead of those payments being paid over to the different entities, where funds were allocated to the Charities, those funds would then be retained within the Administration Fund and used to pay the liabilities of the Charities (again with such expenditure being coded). In every year except 2017, the sums expended for the Charities exceeded the funds to which they were entitled which were held in the Administration Fund.

105. To prepare the accounts and financial statements of each entity, the auditors Watson Buckle (who then acted for all of the entities) would allocate the income and expenditure of each entity at the end of each accounting period. All of the accounts prepared by Watson Buckle (including the Charities' 2018 accounts) were signed and approved by the relevant trustees (including Cs since 2017).

106. Since April 2019, the Charities had maintained their own separate accounting system and they paid their own liabilities. In 2019 the Charities dispensed with the services of Watson Buckle and they engaged Brays (of whom JC was an employee) to prepare their audited accounts for 2019 onwards.

#### *Witness Evidence*

*Mr Walsh*

107. Mr Walsh stated that

(1) the application had been brought in order to put the Charities on a proper footing with accurate, audited accounts and to regularise their position with the Charity Commission (para 6)

(2) part of the dues paid by members of the RAOB were “earmarked” for charitable purposes and he referred to them as “Charitable Contributions” (para 10)

(3) part of the dues paid by members of the RAOB were “earmarked” for he referred at para 11 to a report produced by KPMG in relation to actions of former officers of the RAOB. It was submitted that that had no connection to the issues relating to the present application and was a red herring

(4) the Charities were concerned that many years of Charitable Contributions “may” have gone missing. However, it might be that the expenditure made by the RAOB GLE on behalf of the Charities was all entirely proper. That was an issue “which needs to be clarified” (para 13)

(5) they were concerned that some of the Charities’ money might have been lent through the RAOB GLE or the Trust Corporation to other entities (para 14). He referred to a loan document involving the Trust Corporation and not the RAOB GLE. However, C1 “fears” charity money was used. They needed the accounting records “to make some progress”.

(6) there was an ongoing dispute with the RAOB GLE about an investment scheme. Access to the accounting records “should hopefully provide some clarity.” (para 14)

(7) there were other potential issues as set out in para 15. They could not establish if there had been wrongdoing “without access to the records ... including full access to the SAGE system and the underlying prime records.”

(8) at para 23 he complained that the Charities had been denied access to the SAGE accounting system which should contain full details of all transactions between the

RAOB GLE and the Charities and they needed full access as those were trust documents recording its own transactions.

(9) the prior accounts prepared by Watson Buckle wrongly show the Charities as owing money in relation to an investment scheme (para 24). They needed access to the records to “get to the bottom of this issue”.

*Mr Crossley*

108. Mr Crossley had produced witness statements setting out the documents which he said were necessary to audit accounts for the Charities. That he wished to carry out a process way beyond a standard audit was clear from his second statement. At para 5 he claimed that it was part of the role of the auditor to check whether the trustees had been safeguarding the Charities’ assets and that would involve verifying if all donations had been received. At para 8 Mr Crossley claimed that he needed to gain assurance as to the various balances in the Charities’ own records as at 31 March 2019 and that would involve him reviewing the 2018 accounts and possibly earlier years. He would not take signed and approved accounts at face value. At para 10 he said that he had been made aware by Cs that incorrect reference to loan monies was included in the 2018 accounts and that they should be restated.

109. In opposition to the application, Ds relied on witness statements by Ms Louise Dodds of Clarion Solicitors, Mr Andrew Taylor, who was the Head of Finance of Ds and Mr Ian Gill, who was the auditor of the RAOB GLE and the Charities for many years.

*Ms Dodds*

110. Her witness statement set out the background to the application. In para 39 of her statement she confirmed that the RAOB GLE had always said that the Charities could have access to information needed to produce accounts, but not unfettered access to the entire SAGE system which included the records of the RAOB GLE itself. An open offer was made in para 40 that a copy of the SAGE system for the year to March 2019 would be provided, but with confidential data about staff

removed (provided suitable undertakings as to the use of the report were given). Those undertakings had never been offered. Complete access to the system was also offered to Mr Crossley.

*Mr Taylor*

111. His witness statement set out the very extensive information which had been provided by the RAOB GLE to the Charities. At paras 12 and 13, Mr Taylor set out how records had been generated within the RAOB GLE. In paras 17 and 18 he explained out the process by which Watson Buckle prepared accounts for the Charities and the information which they used. In para 20 he set out the extensive information and documentation already provided to Brays. At para 28 and onwards he set out his view that Brays had sufficient information to prepare accounts and that it was for them then to set up their own audit testing system, which they had not attempted to do. The remainder of his statement commented on the assertions that Mr Crossley had insufficient information to prepare accounts.

*Mr Gill*

112. His witness statement set out how Watson Buckle used to prepare the accounts of the Charities and recorded his view that Brays had had more information than was required to prepare the accounts.

*The Present Application*

113. The Charities and Brays had been provided with very extensive information and co-operation by Mr Taylor in order to prepare their accounts. It remained unclear why they claimed documents beyond April 2019 when they had maintained their own completely separate accounting data base since that date. Despite that, it was alleged that Brays needed very extensive documentation to prepare accounts for the years 2019, 2020 and 2021. As set out above, Mr Gill (formerly of Watson Buckle) had confirmed in his statement that Brays had already had far more information than was provided to Watson Buckle or was needed to prepare the Charities' accounts.

114. An examination of the evidence of Mr Walsh and Mr Crossley revealed that the true basis of the application was that Cs and Brays did not accept the previous accounts of the Charities or the financial information with which they had been provided. That was because of the impact which that might have on allegations the Charities wished to make against the RAOB GLE. They also wanted to search for documentation to help them to pursue those other allegations.

115. Firstly, the Charities alleged that a portion of the dues paid by each member of the Order were ringfenced or earmarked for charitable purposes and belonged to the Charities. Mr Walsh alleged in his statement (para 13) that some of such funds “may” have gone missing. In fact the Charities’ solicitors produced a Letter of Claim in relation to that allegation as long ago as June 2020 alleging that more than £6.4m of Charitable Contributions were missing. No proceedings were ever issued. A Letter of Response was sent dated 29 June 2020 which explained the following:

(1) each member of the Order paid dues of £2 per week. Traditionally the Grand Lodge had allocated 20p of each of those dues to charitable purposes by passing a resolution to that effect, but the position had changed from time to time. Nothing would belong to the Charities until that allocation had occurred. That arrangement ceased in 2019.

(2) the legal relationship which existed between the members of the Order was purely contractual and the terms of that contract were set out in its Rules. There was nothing in the Rules which provided that a certain figure from subscriptions was to be applied for the benefit of the purposes of the Charities.

(3) even if there were such provision, it would be for a member of the Order to sue complaining of any breach of the Rules in that regard. However, they would have suffered no loss due to any such breach. The Charities could not sue in relation to any breach of the Rules as the intended recipients of such payments as they would be volunteers. An intended donee could not enforce an imperfect gift

(4) a *Quistclose* analysis could not apply. That would require each member to have specified the use to which his dues would be put and such funds would always have needed to be kept separate from the general funds of the RAOB GLE. Moreover, even where a *Quistclose* trust arose, insofar as the monies were not applied for the specified purpose, they would fall to be repaid to the donor and not the intended recipient.

116. Secondly, the Charities' signed and approved accounts to date acknowledged that the Charities owed more than £3m to the RAOB GLE. They wished to rewrite their 2018 accounts (and possibly further back) to remove that admission. C1 stated that the last set of accounts "contains inaccuracies and needs to be restated." From the 1960s, the RAOB GLE operated an investment scheme under which individual members of the Order would invest money and which would then be lent to the Charities. That was so that the Charities could generate investment income free of tax. In the vast majority of cases, the monies being invested were paid directly into the accounts of the Charities. Repayment had now been sought from them. In relation to the 2018 tax year, the Charities already had audited accounts which Cs signed and approved. Cs claimed that the 2018 accounts needed to be "restated" because they included an acknowledgment that the Charities owed the RAOB GLE more than £3m. That acknowledgment had actually appeared in every set of audited accounts of the Charities since at least 2012. Therefore, trying to rewrite the 2018 accounts to suit the current position of the Charities was pointless. They were relevant evidence which already existed.

117. Thirdly, the Charities alleged that their money "may" have been lent to other RAOB entities by the Trust Corporation and gone missing (statement Mr Walsh para 14). He stated that they "need the accounting records to try to make some progress" and that the auditors need "to get to the bottom of this issue." (para 24). What a transaction to which the RAOB GLE was not a party had to do with the SAGE system remained a mystery and unexplained.

118. Fourthly, C1 stated that unlimited access was sought to the RAOB GLE's system and records so that the Charities could ascertain whether other claims existed.

119. That that was the true rationale behind the present application was clearly stated in Mr Crossley's second witness statement. He claimed that it was the role of an auditor to check whether the trustees of the Charities were safeguarding their assets including donations; that was to ascertain the legal question as to whether donations of members of the Order in fact belonged to the Charities. That was self-evidently no part of the duties of the auditor as that would involve him determining legal issues which needed to be considered by a Court. Mr Crossley also went on to state that he had been told by Cs that previous accounts of the Charities incorrectly referred to loan monies being owed. It was on this basis that he appeared to be unprepared to perform the usual duties of an auditor, despite having been given extensive information to do so. Mr Crossley could not determine the legal dispute about that debt.

#### *Cause of Action*

120. An examination of the Schedules showed that Cs were attempting to secure copies not only of data relating to the finances of the Charities, but also wider material including the internal records of the RAOB GLE. They had no conceivable relevance to the preparation of their accounts. For example, they sought

(1) documents to prove the ownership of the assets of the Charities. Despite it being stated in C1's statement that no Order was sought for production of records of the Charities (of which delivery up had already been agreed), Schedule 1 and Schedule 2 included reference to the Charities' own records such as their governing document and minutes. RAOB GLE held no such documents.

(2) where there were underlying transactions in place with another organisation, full access to that third party organisation's financial records

(3) where an organisation had acted as an intermediary in a transaction, access to the financial records of that third party organisation.

121. It was Ds' primary position that the proceedings disclosed no cause of action entitling Cs to the relief sought. Reference had been made in paragraph 8 of the Claim Form to the inherent jurisdiction of the Court or the claim being brought under CPR Part 64.2. There was no inherent jurisdiction of the Court which allowed a party to extract data from the database or documents of a third party. Disclosure of information and documents was dealt with as a matter of statute or Court rules; there was no room for an inherent jurisdiction to exist.

122. Moreover, CPR Part 64 related to internal trust applications, which would include beneficiaries seeking disclosure of trust documents from trustees. Whilst Cs were suing as trustees (and it was unclear whether they had obtained a *Beddoe* order before doing so), the present application did not relate to the internal trusts and administration of the Charities (which would require the consent of the Charity Commission as charity proceedings). It was in substance an adversarial claim brought by people who happened to be trustees against third parties for delivery up of documents and information.

123. Therefore, this was not a case involving beneficiaries seeking production of trust documentation against trustees of a trust. Trust documents were documents

(1) in the possession of trustees as trustees

(2) which contained information about the trust which the beneficiaries were entitled to know

(3) in which the beneficiaries had a proprietary interest. If any parts of a document contained information which the beneficiaries were not entitled to know, such parts could not be said to be integral parts of a trust document (see *Re Londonderry's Settlement* [1964] EWCA Civ 6).



124. Whilst in ***Schmidt v Rosewood*** [2003] UKPC 26, [2003] 2 AC 709 the Privy Council indicated that a proprietary interest need not be shown for the Court to order production of trust documents in its discretion (and as part of its supervisory jurisdiction over trusts), it did not suggest any different definition of what a trust document is. It approved the proposition that “The beneficiaries’ rights to inspect trust documents are founded not upon any equitable proprietary right which he or she may have ... but upon the trustees’ fiduciary duty to keep the beneficiaries informed and to render accounts.”

125. This case involved Cs seeking to extract data from a database and documents which did not belong to it. The fact that they were trustees was irrelevant for that purpose. Such a form of application could only be dealt with by a subject data access request under the Data Protection Act 2018 and not by Court proceedings. The SAGE database belonged to the RAOB GLE and it was maintained by its staff. A data access request was actually made by Cs after that very point was made at the Case Management Conference. The only material sought in these proceedings which belonged to the Charities were their own records. The first time they asked for delivery up of those documents was on 18 June 2021 and proceedings were issued 7 days later without further notice. Ds rapidly offered delivery up of them on 1 July 2021 (before it was known that proceedings had in fact been issued), but this offer had never been accepted. They constituted around 6 pallets of documents.

126. It was alleged in Mr Walsh’s witness statement that the SAGE system was a trust document. That was wrong. The system did not belong to the trustees of the Charities and it was not purchased or created by them in connection with the trusts of the Charities. It was the external accounting system of a third party. If that analysis were correct, a trust relationship would exist every time a contractor produced an invoice or anyone recorded any financial information about a third party.

127. What this actually seemed to be was a disguised attempt to obtain pre-action disclosure of documents, which was a completely different jurisdiction from the

supervisory jurisdiction which the Court assumed in relation to trusts to ensure that trustees complied with their duties. As was stated in *Lewin on Trusts* “The court’s jurisdiction to supervise and where necessary to intervene in the administration of a trust by ordering disclosure of documents or information is limited to cases where disclosure is sought by a beneficiary...in his capacity as such and does not enable a stranger to the trust to obtain disclosure as a form of pre-action disclosure for the purpose of hostile proceedings against the trustees.” In this case, trustees were trying to obtain disclosure of documents which they did not own from a third party and that had nothing to do with the trust jurisdiction. On that basis, the requirements of CPR 31.16 would need to be met, which Cs had not attempted to do. It was submitted that, even if this present application had been brought as an application for pre-action disclosure, it would have failed as Cs had already produced a Letter of Claim in relation to their allegations in June 2020. Moreover, the classes of documents were far too wide and exceeded what would ever be ordered by way of disclosure during proceedings.

#### *Requests for Information*

128. If the Court considered that a cause of action did exist, Ds’ secondary position was that Cs and Brays had been provided with more than sufficient information simply to prepare audited accounts and that these proceedings should never have been brought. Prior to the issue of these proceedings, the Charities’ solicitors had made sporadic requests for a copy of the *entire* SAGE database, but months would pass without the issue being mentioned again. Mr Taylor had explained in his witness statement that that request would have involved production to them of all records between 2013-19 for all entities including the RAOB GLE. He took the view that it was appropriate for the data relating to each Charity to be extracted and provided to them by way of an audit pack and trial balances. That offer was first made by him in 2019.

129. In that context Miss Harrison relied on the chronological documents which I have set out above in the course of setting out the evidence in Mr Crossley’s first witness statement, which I do not need to repeat here.

130. A proper pre-action process was not undertaken. Having completely changed what was being sought and asking for very extensive documentation in June 2021, Cs issued proceedings on 7 days' notice. Since then, their approach to the litigation had been desultory, which undermined the alleged urgency of the application. As set out above, in reply to the application, the following offers were made in Ms Dodds' statement:

(1) a copy of the relevant year in the SAGE records with staff data removed on the provision of undertakings as to the use of the records. That offer was never responded to.

(2) Mr Crossley was offered free access to the SAGE system and to run off reports from it. He had never availed himself of that offer.

131. The audit packs produced by Mr Taylor in relation to each of the charities appeared in the trial bundle. They were made up of a complete and balanced trial balance including all nominal accounts, a complete list of transactions making up each nominal account balance and supplemental documents held for all balance sheet items. Mr Taylor also confirmed that access to all supplemental documents would be provided on the audit visit.

132. Mr Taylor summarised in his witness statement at para 46 and following the position in relation to the provision of information to Brays as follows

(1) they had had audit packs in relation to each Charity and a trial balance. The packs included scans of many prime records and lists of transactions. Brays had been offered access to check the supporting records. On 5 August 2022 Mr Taylor chased them to arrange an audit visit.

(2) Brays had all bank statements which the Charities already held

(3) delivery up of all prime records had been offered since the start of proceedings. That amounted to 6 pallets, but the Charities had ignored all requests to collect them at their own cost. Brays had already had the specific prime records for which they asked. They had also been offered the facility to inspect and copy the prime records which remained uncollected.

(4) In March 2022 they were given a copy of the SAGE report for the period between 1 April 2018 and 31 March 2019 (which was offered in the statement of Ms Dodds) despite the failure to provide the undertaking sought.

(5) they had been offered access to the Sage system to run off an extraction report. They had also been offered a report of all transactions on the SAGE system between 1 April 2017 and 31 March 2019 provided they undertook that the information would only be used for accounting purposes. That undertaking had not been provided.

(6) a meeting took place between Mr Taylor and Brays on 26 April 2022 in which he explained the accounting systems used.

(7) the queries raised by them in relation to the WMF and JCF had been answered in writing. They had not raised queries in relation to the CTF.

133. It was submitted that it was clear that Brays had sufficient information to prepare accounts. They did in fact prepare accounts in relation to the JCF. What then needed to happen was for audit tests to be devised by them. For reasons best known to themselves, they had done nothing to arrange that, even though it was first suggested by Mr Taylor in 2019. If the aim of this application was simply to allow Brays to prepared audited accounts, that would have long since happened. However, what Cs actually wanted was an unlimited fishing expedition through the records of the RAOB GLE for an unlimited period in the hope of finding information to sue the RAOB GLE in relation to other matters

134. That point was clear from the Schedules produced by Mr Crossley. An examination of the Schedules showed that Cs were attempting to secure copies not only of the data relating to the finances of the Charities, but also wider material including the internal records of the RAOB GLE. They had no conceivable relevance to the preparation of their accounts.

135. Miss Harrison therefore submitted that the present application should be dismissed.

#### *Ds' Supplemental Submissions*

136. In the light of the late submission of the supplemental witness statements from Mr Walsh and Mr Crossley, Miss Harrison produced a supplemental skeleton argument to deal specifically with the issues raised in that evidence.

#### *Cause of Action*

137. Ds' primary case was that Cs were not entitled to access Ds' records and database. Cs' case was that the Court had an inherent jurisdiction to authorise that or that these were proceedings relating to the administration of a trust in respect of which the Court could direct acts to be undertaken. No authority had been advanced for either proposition. It was noted that DJ Greenan stated at the Case Management Conference that "it is far from clear to me what the basis of this claim is and it will be interesting to see what is made of that by a trial judge."

138. The supplemental evidence produced by Cs included a letter from the Charity Commission dated 7 October 2022. It appeared that (long after the issue of the present proceedings) Cs sought the permission of the Commission to bring them as charity proceedings. In fact, even if such permission had been given, that would not have availed Cs as such permission had to be obtained before proceedings were issued or they were a nullity. The request appeared to have arisen after His Honour Judge Davis-White QC had queried by letter, when vacating the original trial date in August 2022, whether these were charity proceedings. The solicitors for Cs replied that they were not and that the Commission had been consulted.

139. What the Commission stated was that permission was not needed as the proceedings were “not related to the internal administration of the relevant charities but relates to a property related claim.” That was absolutely correct and it simply confirmed that CPR Part 64 had no application in the instant case as these were not proceedings relating to the administration of a trust. It was provided by s. 115 of the Charities Act 2011 that no charity proceedings were to be entertained without the authority of the Charity Commission. The term “charity proceedings” was defined as meaning proceedings brought under the Court’s jurisdiction relating to the charities or trusts in relation to the administration of a trust for charitable purposes.

*Mr Crossley*

140. Mr Crossley’s third witness statement made even clearer what the real agenda behind the present application was. There had been a considerable shift in the tone and nature of his evidence, which had become considerably more aggressive and which suggested that his clients wanted information to raise allegations of wrongdoing or fraud by Ds. However, equally he admitted at para 11 that Mr Taylor had been as helpful as possible to him within the constraints set by his employers.

141. The statement included the following relevant matters:

(1) he asserted that one explanation for Ds’ approach to the issue of disclosure was that Ds were “covering things up” (para 4). Therefore, he stated that “the suggestion of fraud having taken place, there is no limit on how sceptical we should be.” The only suggestion of fraud by Ds came from the unproven assertions of his own clients.

(2) the offers made to provide Brays with information and documents could not be accepted if they could not produce them to third parties as they wished (para 11). That ignored that Brays were told consent would not be unreasonably withheld in that regard.

(3) the documents of which Brays were now being deprived were the KPMG report, an internal audit report of a former employee of the Ds and the notes of Watson Buckle, the previous auditors (para 14). Whilst it was difficult to understand how Brays needed those documents to conduct an audit, somewhat embarrassingly for Cs, the KPMG report was already exhibited to the first witness statement of Mr Walsh. An examination of that report showed that it related to monies allegedly taken by two former officers which had no relevance to the allegations which Cs had been trying to make. In relation to the notes of Watson Buckle, it was confirmed in Mr Taylor's statement that the Ds had no objection to Brays asking Watson Buckle for the latter.

(4) he must "assume something is being hidden" (para 15). Mr Crossley believed that the only reason why Ds would refuse to hand over all of their records to a third party was that there is "something to hide or...to be awkward.... we must assume that something is being hidden"

(5) at paras 18-22 Mr Crossley complained that he had been given details of donations to Cs at the point of receipt by the Charities and not earlier. Both he and Mr Walsh in his evidence were confusing donations made by members (Ds had been told are to be passed on to the Charities) or those parts of member dues which were allocated to Cs once Ds had passed a resolution to that effect. In any event Mr Crossley seemed to be suggesting that Ds might have misappropriated charity funds.

(6) at para 23, Mr Crossley accepted that Cs had been offered their primary records and that they remained uncollected. That offer was made by Ds on 1 July 2021, having first been asked for these records the week before. It was incredible to make an application to Court complaining about the absence of primary records when it had been within the power of Cs to have them all along. Mr Taylor confirmed in his witness statement that "The prime accounting records for each of Charities remain at the offices of RAOB GLE and it has been confirmed to Brays that they are open for inspection...They were offered to the Charities' trustees for collection over a year ago subject to an agreement to pay our reasonable costs...No reply in connection with this offer has yet been received."

(7) at para 24, Mr Crossley accepted that, if he had access to Cs' primary records and other information, he did not strictly need access to the SAGE system. He said that the information being withheld was that noted above, being the KMPG report (which Cs already had), the records of Watson Buckle (which Ds had agreed to them obtaining) and an internal audit report which had no conceivable relevance to their task.

(8) at para 25-27 Mr Crossley complained that it was not ideal to be offered on site access to the SAGE system as he could not work when he wanted to. He then claimed that "the offer of supervised access introduces an intimidation threat" as it would be in the offices of "an apparently hostile organisation." Mr Crossley went on to say "It is fair to say that those representing GLE are trying to influence how our audit is carried out." Those assertions were beyond belief. Auditors usually worked in third party offices and no one had shown hostility to Mr Crossley. He accepted that Mr Taylor had been as helpful as possible and he had offered to let Mr Crossley conduct whatever tests and generate reports from the SAGE system he wanted.

(9) in para 29 Mr Crossley alleged again that an explanation for Ds' conduct was that the Ds have "something to cover up."

(10) at para 32 he complained that Mr Gill was shown the relevant audit packs before making his statement. Mr Crossley also had them. In any event, Mr Gill had already examined the relevant records when his firm were preparing the 2019 accounts before Cs terminated the retainer of Watson Buckle.

(11) at para 36 Mr Crossley claimed that he would need to examine all of Ds' own records to see if funds had been mixed.

(12) at paras 37-8 he made the bizarre allegation that the audits of Watson Buckle might not have been independent as some members of their team were members of the Order (although Mr Gill was not). He also claimed that their long involvement made it easier for fraud to be hidden from them.



(13) at para 40 Mr Crossley alleged that there had been two fraud investigations by the police. Issues did arise in relation to past officers of the Order. However, as could be seen from the draft KMPG report, that had nothing to do with the issues of suspicion raised by Cs.

(14) paras 39 and 41 of his statement made clear that the problem in the case was that Mr Crossley refused to accept the opening balances with which he had been provided. That was without him having made any effort to test and look at the information offered to him.

142. The conclusion of all of that was that Mr Crossley had now admitted that he did want to trawl through all of the records of Ds to see whether he could find anything which he considered to be evidence of fraud or wrongdoing. That was entirely based on the suspicions of Cs and his belief that, if a third party did not want to open all of its records up to a stranger, that it must be hiding something. The pretence that he simply wanted to inspect data relating to Cs and to prepare their accounts had been exposed. What was also clear from that evidence was that Mr Crossley had made no effort whatsoever to

(1) collect the prime records offered 19 months ago and look at them

(2) use the access to the SAGE system which he has been offered and run off reports as was offered

(3) devise audit tests to test the veracity of the information given to him in the audit packs.

143. Mr Crossley had exhibited hundreds of pages of audit standards. What he had failed to understand was that they related to how the audit was conducted in relation to the documents of their client, not the documents belonging to a stranger.

144. It could be seen from the transcript of the Case Management Conference that Ds sought an adjournment of the proceedings for 3 months to allow ADR to be

undertaken by Mr Crossley coming to Ds' offices, looking at documents offered and the system and then discussing matters with Mr Taylor. He failed to do any of those things in that period. Instead Cs had chosen to proceed to trial.

*Mr Walsh*

145. Mr Walsh said the following:

(1) at paras 3 and 5 he alleged that Counsel for Ds offered Cs access to all information which they wanted at the Case Management Conference and that they could share documents with others. Even a cursory reading of the transcript revealed that what was actually said was "we have said you can have access to the Sage database on conditions of confidentiality...and that offer has been ignored...it is wasteful of the Court's resources...to race to a final hearing before he actually avails himself of that offer." Therefore, this was a repetition of the offer of access already made in the statement of Ms Dodds.

(2) in contrast to Mr Crossley, he claimed that Mr Taylor had not been co-operative (para 5)

(3) he referred to police investigations which he knew perfectly well had nothing to do with the present issues. He then stated that the Charity Commission might require access to documents to implement a formal investigation (para 12). The Commission had no authority to investigate using the records of a third party. Ds were not a charity. That also makes it perfectly clear that Cs had brought the present application for different reasons and to trawl through Ds' records so they could make accusations against them or to seek to persuade the Commission to direct the taking of proceedings.

(4) he complained that Ds wished to protect the confidentiality of the data on their systems. That included the confidential information of their employees.

(5) at para 15, he appeared to be saying that Cs had not collected the prime records offered to them as they did not want to pay for their assembly or delivery. Instead they chose to spend money on legal costs seeking production of documents. He also

asserted that they had sought those records for years. That was incorrect. The first request was made 7 days before proceedings were issued. All previous requests were for a copy of the entire SAGE system belonging to Ds.

(6) at paras 18-20, he was again mixing up the concept of direct donations by members or lodges and the dues allocated by the RAOB GLE for charitable purposes in their discretion.

(7) at para 27 he accepted that the Charities had had their own separate accounting system since April 2019. Therefore, it remained a mystery as to why the present proceedings also sought records from 2019 onwards.

(8) at para 30 he asserted that the accounts of the Charities had not always been signed by its trustees. However it was a fact that the 2018 accounts which he wanted to rewrite were signed by Cs.

(9) at para 32 he accepted that the proceedings were not charity proceedings i.e. they did not relate to the internal administration of the Charities.

146. In short, submitted Miss Harrison, the evidence of Mr Walsh made the agenda of Cs perfectly clear and that they could have had sufficient information for their auditors if they had accepted the offers made by Ds.

## **Analysis**

### **I Inherent Jurisdiction**

147. As I explained in paragraph 10 above, whilst he did not resile from his claim based on the inherent jurisdiction of the Court, Mr Dominic Crossley for Cs very much put CPR Part 64 at the forefront of his submissions. He accepted that the inherent jurisdiction did not add to the Court's powers under CPR Part 64. Nevertheless, both grounds of the jurisdiction were still maintained and I shall deal with both of them. Although it is not of itself decisive of the correctness or otherwise

of his submissions, I noted that he was not able to cite any decided authority in support of his submissions as to the jurisdictional bases of his claim.

148. So far as the inherent jurisdiction of the Court is concerned, the law on the disclosure - by trustees to beneficiaries - is set out in chapter 21 section 3 of Lewin on Trusts (20<sup>th</sup> edition):

**“21-020** Before the Privy Council’s decision in *Schmidt v Rosewood Trust Ltd* the general rules were, as stated in earlier editions of this work:

(1) As an incident to the beneficial enjoyment of his interest, a beneficiary has a right to call upon the trustees for accurate information as to the state of the trust and the trustee was bound to be constantly ready with his accounts.

(2) A beneficiary has a right at all reasonable times to inspect the documents relating to the trust, and at his own expense to be furnished with copies of them.

The second general rule did not, however, mean that a beneficiary had a right to inspect all documents owned or held by the trustees in their capacity as such. There were exceptions, formulated in *Re Londonderry’s Settlement* and later cases, to the right of disclosure in the case of documents relating (in particular) to the reasons for trustees’ decisions on the exercise of their powers and discretions, and other documents relating to the conduct of their trusteeship.

...

**21-023** In *Schmidt v Rosewood Trust Ltd* the Privy Council reviewed and restated the law concerning disclosure by trustees on demand by beneficiaries. This was in the context of an offshore discretionary trust. The Privy Council reversed the decision of the Isle of Man appellate court which had declined to order any disclosure in favour of an object of a fiduciary power on the ground that the claimant lacked a sufficient proprietary interest entitling him to disclosure. The general principles so stated are these:

(1) A beneficiary has a right to seek disclosure of trust documents.

(2) That right, although sometimes not inappropriately described as a proprietary right, is best approached as an aspect of the court's inherent jurisdiction to supervise, and where appropriate intervene in, the administration of trusts. This jurisdiction is referred to in this Chapter as the trust supervisory jurisdiction.

...

*Disclosure under the court's supervisory jurisdiction as a precursor to hostile litigation*

**21-027** The court's jurisdiction to supervise and where necessary intervene in the administration of a trust by ordering disclosure of documents or information is limited to cases where disclosure is sought by a beneficiary (or other person interested under the trust) in his capacity as such and does not enable a stranger to the trust to obtain disclosure as a form of pre-action disclosure for the purpose of hostile proceedings against the trustees or indeed enable trustees to obtain disclosure against a person otherwise than in his capacity as a beneficiary (or other person interested under the trust) as a form of pre-action disclosure. In such a case disclosure may be obtained only if a proper case is made for pre-action disclosure under a quite different jurisdiction from that now under consideration.

149. As the footnotes in Lewin make clear, the propositions that

(a) the Court's jurisdiction to supervise and where necessary intervene in the administration of a trust by ordering disclosure of documents or information is limited to cases where disclosure is sought by a beneficiary (or other person interested under the trust) in his capacity as such and does not enable a stranger to the trust to obtain disclosure as a form of pre-action disclosure for the purpose of hostile proceedings against the trustees

(b) the Court's jurisdiction does not enable trustees to obtain disclosure against a person otherwise than in his capacity as a beneficiary (or other person interested under the trust) as a form of pre-action disclosure

are derived from cases in Jersey, namely *Re CA Settlement* 2002 JLR 312, Jers RC; *Re Internine Trust and Azali Trust* [2006] JCA 093, JLR 195 at [25] and *Re A Settlement* [2010] JCA 231 at [34(ii)]. Nevertheless, it was not suggested to me that the law of Jersey is in those respects any different from the law of England and I am satisfied that the propositions in the text of Lewin do represent the state of the law in England. I shall return to the Jersey cases in the context of CPR Part 64 below.

150. In her submissions Miss Harrison cited the judgment of Salmon LJ in *Re Londonderry's Settlement* at p.938D-F (which should, of course, now be read in the light of *Schmidt*):

“Trust documents do, however, have these characteristics in common: (1) They are documents in the possession of the trustees as trustees; (2) they contain information about the trust which the beneficiaries are entitled to know; (3) the beneficiaries have a proprietary interest in the documents and, accordingly, are entitled to see them. If any parts of a document contain information which the beneficiaries are not entitled to know, I doubt whether such parts can truly be said to be integral parts of a trust document. Accordingly, any part of a document that lacked the second characteristic to which I have referred would automatically be excluded from the document in its character as a trust document.”

151. She also cited from the decision of the Privy Council in *Schmidt*:

“45. The House of Lords [in *O'Rourke v Darbishire* [1920] AC 581] dismissed Mr O'Rourke's appeal, primarily because he had not made out even a prima facie case that the will and codicils were invalid, or that the communications had been promoting fraud. Viscount Finlay (at p 603) referred to Mr O'Rourke's reliance on a “proprietary right” and Lord Sumner (at p 617) referred to “what has been called the ‘proprietary’ ground”. Lord Parmoor said (at pp 619–20):

“A cestui que trust, in an action against his trustees, is generally entitled to the production for inspection of all documents relating to the affairs of the trust. It is not material for the present purpose whether this right is to be regarded as a paramount proprietary right in the cestui que trust, or as a right to be enforced under the law of

discovery, since in both cases an essential preliminary is either the admission, or the establishment, of the status on which the right is based.”

46. It is on what was said by Lord Wrenbury that Mr Brownbill most relied. Lord Wrenbury said at pp 626–7:—

“If the plaintiff is right in saying that he is a beneficiary and if the documents are documents belonging to the executors as executors, he has a right to access to the documents which he desires to inspect upon what has been called in the judgments in this case a proprietary right. The beneficiary is entitled to see all trust documents because they are trust documents and because he is a beneficiary. They are in this sense his own. Action or no action, he is entitled to access to them. This has nothing to do with discovery. The right to discovery is a right to see someone else's documents. The proprietary right is a right to access to documents which are your own.”

...

52. Their Lordships are therefore in general agreement with the approach adopted in the judgments of Kirby P and Sheller JA in the Court of Appeal of New South Wales in *Hartigan Nominees Pty Ltd v Rydge* (1992) 29 NSWLR 405. That was a case concerned with disclosure of a memorandum of wishes addressed to the trustees by Sir Norman Rydge (who was in substance, but not nominally, the settlor). Kirby P said at pp 421–2:

“I do not consider that it is imperative to determine whether that document is a ‘trust document’ (as I think it is) or whether the respondent, as a beneficiary, has a proprietary interest in it (as I am also inclined to think he does). Much of the law on the subject of access to documents has conventionally been expressed in terms of the ‘proprietary interest’ in the document of the party seeking access to it. Thus, it has been held that a cestui que trust has a ‘proprietary right’ to seek all documents relating to the trust: see *O'Rourke v Darbishire* (at 601, 603). This approach is unsatisfactory. Access should not be limited to documents in which a proprietary right may be established. Such rights may be sufficient; but they are not necessary to a right of access which the courts will enforce to uphold the cestui que trust's entitlement to a reasonable assurance of the manifest integrity of the administration of the trust by the trustees. I agree with

Professor H A J Ford's comment, in his book (with Mr W A Lee) *Principles of the Law of Trusts*, 2nd ed (1990) Sydney, Law Book Co, at 425, that the equation of rights of inspection of trust documents with the beneficiaries' equitable rights of property in the trust assets 'gives rise to far more problems than it solves' (at 425):

'... The legal title and rights to possession are in the trustees: all the beneficiary has are equitable rights against the trustees ... The beneficiary's rights to inspect trust documents are founded therefore not upon any equitable proprietary right which he or she may have in respect of those documents but upon the trustee's fiduciary duty to keep the beneficiary informed and to render accounts ...'.

(Although a decision of the Privy Council, **Schmidt** was accepted as setting out the correct position in English law in **Breakspear v Ackland** [2008] EWHC 220 (Ch), [2008] WTLR 777.)

152. In particular she relied on Lord Wrenbury's statement that the right to discovery is a right to see someone else's documents; the proprietary right is a right to access to documents which are one's own.

### **The Charities' Own Documents**

153. There was no significant dispute between the parties that the Charities were entitled to their own documents since they were the property of the Charities themselves. The substantive dispute was as to the question of payment for their collation and/or delivery.

154. The only material sought in these proceedings which belongs to the Charities are their own records (consisting of about 6 pallets of documents). As Mr Crossley accepted, Cs first asked for delivery up of those documents on 18 June 2021, proceedings being issued 7 days later without further notice. Ds offered delivery up of them as early as 1 July 2021 (before it was known that proceedings had in fact been issued), subject to the payment of reasonable expenses, but that offer was never accepted.



155. Since it does not seem to be in dispute between the parties, I shall therefore order delivery up of the Charities' own records (consisting of about 6 pallets of documents).

156. Mr Dominic Crossley sought delivery up of those documents forthwith, in contrast to Ds' original offer of delivery up of those documents within 12 weeks as set out in Clarion's letter of 1 July 2021. It is not clear to me whether and to what extent some degree of extraction and separation of the Charities' own documents may have taken place between 1 July 2021 and today in anticipation of the need to deliver up those documents and whether as much as 12 weeks is still needed for that process if it has not yet been commenced. It seems to me that to order delivery up of 6 pallets of documents forthwith is far too precipitate an order to make given the volume of material and the need to sort through it and collate it and that Ds should be given a reasonable time to produce the documents to be delivered up. If the parties cannot agree a reasonable time, I will need to hear argument on that matter in due course.

157. I agree with Mr Dominic Crossley's submission that the parties should be given liberty to apply in relation to the production and delivery up of the Charities' own documents to obviate the need for any separate application in the event of any dispute between the parties as to what is produced and delivered up.

158. As to the question of who should pay for the extraction or collation and delivery of the Charities' documents and records, the only authority cited to me was the reference in Lewin at 21-020 that a beneficiary has a right at all reasonable times to inspect the documents relating to the trust and at his own expense to be furnished with copies of them, but without authority being cited for that proposition. That that is the position is in fact confirmed by *Ottley v Gilby* (1845) 8 Beav 602, *Re Bosworth* (1889) 58 LJ Ch 432 and *Re Watson* (1904) 49 Sol Jo 54. This is not the case of beneficiaries seeking inspection as against the trustees of documents relating to the trust of which they are beneficiaries, but third parties seeking delivery up of their own

documents, but in principle I see no reason why the position as to payment should be different from that as between beneficiaries and trustees.

159. Again, if there is any dispute as to what are reasonable costs, that matter can be addressed under the liberty to apply provision which I will insert in the final order.

### **The Other Documents and the Sage Database**

160. That still leaves the question of the other documents identified by Mr Crossley in paragraphs 13 to 15 of his third witness statement (which I have set out in paragraphs 7 and 80 above) and access to the Sage database. Given that it was by far the major bone of contention, I shall deal with access to the Sage database first before turning to the other documents.

161. Although in paragraph 20 of his first witness statement Mr Walsh argued that the Sage database was “effectively” a trust document, in response to a question from me Mr Dominic Crossley no longer maintained that the Sage database was a trust document. He nevertheless submitted that the information contained on it which related to the Charities was trust property and that he was entitled to access to it.

162. It seems to me that counsel was right to resile from the position that the Sage database was trust property. Although it was initially asserted by Mr Walsh in his first witness statement that the Sage system was “effectively” a trust document, that submission was untenable. The Sage system was not created by the trustees of the Charities nor was it purchased, either by them or by anyone else, with trust monies in connection with the trusts of the Charities. The Sage system does not therefore belong to the trustees of the Charities. It is the external accounting system belonging to a third party, as Cs now appear to accept.

163. As to the recast submission, that the information contained on it which related to the Charities was trust property and that the Charities were entitled to access to it, I am bound to say that I find even that latter proposition to be a surprising one. As Miss Harrison said, if that were right, the inclusion of her details on an electricity bill

would by some process of osmosis render the information her property and give her a right of access to it (and apparently the rest of the utility company's database) outwith the particular scope of a subject access request under the Data Protection Act 2018

164. If it were the case that the Sage system belonged to the trustees simply by virtue of the fact that it contained information about the trust or that the information on it was trust property, a trust relationship would exist on every occasion in which a contractor produced an invoice or anyone recorded any financial information about a third party. On the contrary, the Sage database belongs to the RAOB GLE and is maintained by its staff. The reality is that the information relating to the Charities on the RAOB GLE Sage database is just that – information. It is not the property of the Charities, in contrast to the position with their own documentation, which is their own property (and which was the subject of correspondence for the first time in the letter of 18 June 2021 and delivery up of which was offered on 1 July 2021).

165. It seems to me that the correct position as to the status of the information is as stated by Lord Upjohn in *Boardman v Phipps* [1967] 2 AC 46 at pp.127F-128B:

“In general, information is not property at all. It is normally open to all who have eyes to read and ears to hear. The true test is to determine in what circumstances the information has been acquired. If it has been acquired in such circumstances that it would be a breach of confidence to disclose it to another then Courts of Equity will restrain the recipient from communicating it to another. In such cases such confidential information is often and for many years has been described as the property of the donor, the books of authority are full of such references; knowledge of secret processes, "know-how", confidential information as to the prospects of a company or of someone's intention or the expected results of some horse race based on stable or other confidential information. But in the end the real truth is that it is not property in any normal sense but Equity will restrain its transmission to another if in breach of some confidential relationship.”

166. Moreover, I am satisfied that Miss Harrison is correct and that the Court does not have an inherent jurisdiction in circumstances such as these to order what

amount to pre-action disclosure from third parties. (Mr Dominic Crossley's third position was that, even if the information relating to the Charities on the Sage database was not trust property, he was nevertheless entitled to succeed under CPR Part 64, a submission which I address in the next section.)

167. Although the claimants in these proceedings are in fact trustees, the present application is in substance and reality an adversarial or hostile claim brought by them against third parties for the disclosure and delivery up of documents and information. That they are trustees is incidental to the claims which they make in the present proceedings. They are not beneficiaries seeking production of trust documents against trustees of a trust.

168. There is, however, no inherent jurisdiction of the Court which allows a party to extract data from the database or documents of a third party. Disclosure of information and documents is a matter of statute (such as the Data Protection Act 2018) and rules of the Court; there is no room for an inherent jurisdiction. As the extract from Lewin makes clear, the Court's jurisdiction to supervise and intervene in the administration of a trust by ordering disclosure of documents or information is limited to cases where disclosure is sought *by a beneficiary (or other person interested under the trust) in his capacity as such*. It does not enable a stranger to the trust to obtain disclosure as a form of pre-action disclosure for the purpose of hostile proceedings against the trustees. Nor, by the same token, does it enable trustees to obtain disclosure as a form of pre-action disclosure for the purpose of hostile proceedings against strangers to the trust.

169. Mr Dominic Crossley sought to argue that the decisions in ***Re Londonderry's Settlement*** and ***Schmidt*** had no application to this claim, but what they do is to make clear that the Court's jurisdiction as to disclosure is limited and that the Court's inherent jurisdiction, as explained in those cases and in the commentary in Lewin, does not enable the trustees to obtain disclosure as a form of pre-action disclosure for the purpose of hostile proceedings against strangers to the trust.

170. That leaves the question of the other documents identified by Mr Crossley in paragraphs 13 to 15 of his third witness statement (which I have set out in paragraphs 7 and 80 above).

171. The copy of the KPMG report was in fact exhibited to the first witness statement of Mr Walsh, a point which Mr Crossley appears to have overlooked when making his third witness statement. It is not therefore necessary to make an order for its disclosure since Cs already have it.

172. That leaves the internal audit report by the late Kay Colgrave, the previous auditors' working papers and the police enquiry into allegations of fraud. However, given that there is no jurisdiction in the Court to enable the trustees to obtain disclosure as a form of pre-action disclosure for the purpose of hostile proceedings against strangers to the trust, it must follow that there is no jurisdiction to order disclosure of those documents either.

173. So far as the previous auditors' working papers are concerned, I am bound to say that, in the absence of cross-examination, I do not accept Mr Crossley's assertion that

“This information was readily available and could have been provided without undue cost, so the only reasons to refuse would appear to be 1) something to hide or 2) a desire to be awkward. As auditors, we are required to exercise professional scepticism and must therefore assume this is because something is being hidden.”

In any event, and as is made clear by Mr Taylor in paragraph 20.3.2 of his witness statement, the RAOB GLE has no objection to Watson Buckle releasing any such documentation to Brays.

174. So far as the police enquiry is concerned, there is nothing to controvert the statement that “the GLE's response was that they have no separate details”.

175. Although I am not bound by the views of the Charity Commission, I am satisfied that the Charity Commission in fact took the correct view of the matter in its letter of 7 October 2022.

176. S.115 of the Charities Act 2011 provides that

“(1) Charity proceedings may be taken with reference to a charity by—

(a) the charity,

(b) any of the charity trustees,

(c) any person interested in the charity, or

(d) if it is a local charity, any two or more inhabitants of the area of the charity,

but not by any other person.

(2) Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.

...

(8) In this section “charity proceedings” means proceedings in any court in England or Wales brought under—

(a) the court's jurisdiction with respect to charities, or

(b) the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes”.

177. In its letter the Charity Commission stated that

“In this instance, the Commission understands that the purpose of the claim brought by the charity is to recover various accounting documents held by the Defendants. The Commission does not consider that the claim meets the definition of charity proceedings as defined in Section 115(8) of the Act. This is because it is not related to the internal administration of the relevant charities but relates to a property

related claim where the Claimant trustees are seeking documents that will permit their third-party accountant to complete accurate audited accounts for each charity as required by charity law.

In these circumstances, there is no duty upon the Commission to provide any consent in order for the proceedings to continue.”

178. As Miss Harrison submitted, either the proceedings related to the internal administration of the trust, in which case the consent of the Charity Commission was required (and no such consent had been provided) or the matter was a claim by the claimant trustees seeking documents to permit their accountant to complete accurate audited accounts for each charity as required by charity law. In the latter event there was no jurisdiction to make the orders sought.

179. For these reasons I am satisfied that there is no inherent jurisdiction in the Court to order the production of, or access to, documents and information from Ds which are not otherwise the property of the Charities.

## **II CPR Part 64.2**

180. It was evident from Mr Crossley’s submissions that reliance on CPR Part 64 was the mainstay of his jurisdictional case. He argued that, even if the Court did not accept the proposition that the information on the Sage system was trust property, it was nevertheless still disclosable under CPR Part 64 because it involved the making of an order directing any act to be done which the Court could order to be done if the trust in question were being executed under the direction of the Court.

181. However, in the light of what I have said about the ambit of the inherent jurisdiction, recourse by the claimants to CPR Part 64.2(a)(ii) cannot avail them. The Civil Procedure Rules cannot, as rules of procedure, confer a jurisdiction on the Court which it does not otherwise have. Whilst the Practice Direction gives examples of claims which may be brought under CPR 64.2(a), those examples cannot extend the ambit of the procedural rule itself to encompass a jurisdiction greater than that comprehended by the rule. Moreover, “an order directing any act to be done which

the court could order to be done if the estate or trust in question were being administered or executed under the direction of the court” can only be an order which the Court can make by virtue of the existing jurisdiction which it actually possesses and for the reasons set out in the preceding section the Court has no such jurisdiction.

182. Although the examples given in CPR 64APD. 1 are by way of exemplification rather than definition, it is instructive to consider them because they illustrate the ambit of the jurisdiction actually encompassed by CPR Part 64 itself and in particular rule 64.2(a) (I leave out of account for present purpose questions relating to the administration of estates, which are plainly not germane to the present proceedings).

183. The relevant examples are

“(1) a claim for the determination of any of the following questions –

(a) any question as to who is included in any class of persons having –

...

(iii) a beneficial interest in any property subject to a trust;

(b) any question as to the rights or interests of any person claiming –

...

(iii) to be beneficially entitled under a trust;

(2) a claim for any of the following remedies –

(a) an order requiring a trustee –

(i) to provide and, if necessary, verify accounts;

(ii) to pay into court money which he holds in that capacity; or

(iii) to do or not to do any particular act;



(b) an order approving any sale, purchase, compromise or other transaction by a trustee (whether administrative or dispositive); or

(c) an order directing any act to be done which the court could order to be done if the ... trust in question were being ... executed under the direction of the court”.

184. Sub-paragraph (1) deals with applications relating to the identity, rights or interests of a person claiming a beneficial interest under a trust. Sub-paragraph (2) (a)(i) deals with orders to provide and verify accounts. That must mean to provide and verify accounts to the beneficiaries who are entitled to see them. Sub-paragraph (2)(a)(ii) deals with payment into court of monies which the trustees hold in their capacity as trustees. Sub-paragraph (2)(a)(iii) deals with orders requiring the trustees to do or refrain from doing particular acts, but that is because the Court has supervision over them by virtue of their fiduciary position. Sub-paragraph (2)(b) deals with approval of a transaction by trustees for which their powers may be doubtful or disputed (although the sanction of the Court to an otherwise unauthorised transaction may allow a trustee to deal with a third party who is a stranger to the trust). Sub-paragraph 2(c) should be read in that light and not as some otherwise free-standing example of the ambit of the rule itself.

185. It is also instructive to look at the commentary in the White Book as to the ambit of rule 64(a) which states that

“Rule 64.2(a): *Beddoe* applications under rule

**64.2.3** Trustees or executors may bring applications for directions as to whether or not to bring or defend proceedings: *Re Beddoe* [1893] 1 Ch 547. Although a trustee or executor is entitled to an indemnity out of the trust fund against all charges and expenses properly incurred by them, they will be deprived of their indemnity if it is held that the expenses were not properly incurred. Therefore an executor or trustee is at risk of being deprived of their costs of defending or bringing a claim if they do so without either the consent of all the beneficiaries, or in default of such consent, the direction of the court.

...

Rule 64.2(a): Other more usual forms of application under rule

**64.2.4** These cover a wide range of applications. They include: applications by trustees to obtain the sanction of the court for the carrying out of transactions not authorised by the trust instrument under s.57 of the Trustee Act 1925; applications relating to the proposed exercise of existing powers (*Public Trustee v Cooper* [2001] WTLR 901); applications for approval of the purchase by trustees of part of the trust estate; applications relating to the distribution of trust property (including where there are prospective and contingent liabilities); and applications for *Benjamin* orders authorising the distribution of the fund on a particular footing (*Re Benjamin, Neville v Benjamin* [1902] 1 Ch 723 distribution on the footing that a beneficiary predeceased the testator or intestate). Authority to distribute client funds held by insolvent institutions may also be sought under r.64.2(a) using the *Benjamin* jurisdiction”.

186. There is nothing in the commentary to suggest that rule 64.2(a)(ii) has the breadth for which Mr Dominic Crossley contends. On the contrary, the examples given in the commentary at 64.2.4 are all to do with matters internal to a trust, not to parties extraneous to it (although again the sanction of the Court to an otherwise unauthorised transaction may allow a trustee to deal with a third party who is a stranger to the trust). Thus, an applications by trustees to obtain the sanction of the Court to carry out a transaction not authorised by the trust instrument arises because the trustees do not have power under the trust to do that which they seek to do. An application relating to the proposed exercise of existing powers arises because there may be a doubt as to their powers under the trust instrument. An application for approval of the purchase by trustees of part of the trust estate is necessary to avoid them falling foul of the self-dealing rule which arises by virtue of their position as trustees. An application relating to the distribution of trust property is necessary because it involves dealing with the very property of which they are trustees. An application for a *Benjamin* order authorising the distribution of the fund on a particular footing (when, for example, beneficiaries cannot be found or are believed to be dead) is again necessary because it involves dealing with the very property of which they are trustees and is necessary in those circumstances to protect the trustees if the missing beneficiaries turn up years later after distribution has taken

place. But these all relate to the position of trustees *qua* trustees; they do not relate to the position of trustees as against third parties (although, as stated above, a third party may benefit from the sanction of what would otherwise be an unauthorised transaction).

187. The example of the jurisdiction under CPR 64.2 given in sub-paragraph 2(c) does not, read in that context, assist Cs. A claim can be made under CPR 64.2(a) for an order directing any act to be done, but that must be an order which the Court could order to be done if the trust in question were being executed under the direction of the Court. However, the Court could not order what is now sought by Cs because there is no jurisdiction to order delivery up or disclosure of the documents of third parties who are strangers to the trust. There is no such jurisdiction as against third parties “in the execution of a trust” where the fact that the claimants are trustees is purely incidental to the application which they make and does not concern the internal powers, affairs or administration of the trust.

188. It is in that context that one must construe the terms of CPR 64.2(a)(ii) to the effect that

“This Section of this Part applies to claims –  
(a) for the court to determine any question arising in –  
...  
(ii) the execution of a trust”.

189. I do not, therefore, accept the submission of Mr Dominic Crossley that the rule is to be given a wide ambit which confers a jurisdiction on the Court which it does not otherwise have.

190. Accordingly, in my judgment, CPR Part 64.2(a)(ii) relates to internal trust applications, which includes beneficiaries seeking disclosure of trust documents from trustees. Whilst the claimants in the instant proceedings are trustees, the present application, insofar as it seeks relief in relation to documents or information not

otherwise the Charities' property, does not relate to the internal trusts and administration of the Charities (and if it did, that would require the consent of the Charity Commission). It is therefore outwith the scope of CPR64.2(a)(ii).

191. The point becomes even clearer when one sees CPR Part 64.2 in the context of Part 64 as a whole, which so far as relevant reads:

“General

64.1

(1) This Part contains rules –

(a) in Section I, about claims relating to –

(i) the administration of estates of deceased persons, and

(ii) trusts; and

(b) in Section II, about charity proceedings.

(2) In this Part and Practice Directions 64A and 64B, where appropriate, references to trustees include executors and administrators.

(3) All proceedings in the High Court to which this Part applies must be brought in the Chancery Division.

I CLAIMS RELATING TO THE ADMINISTRATION OF  
ESTATES AND TRUSTS

Scope of this Section

64.2

...

II CHARITY PROCEEDINGS

Scope of this Section and interpretation

64.5

(1) This Section applies to charity proceedings.

(2) In this Section –

(a) ‘the Act’ means the Charities Act 1993;

(b) ‘charity proceedings’ has the same meaning as in section 33(8) of the Act; and

(c) 'the Commissioners' means the Charity Commissioners for England and Wales".

192. Leaving aside claims relating to the administration of estates, there is nothing to suggest that Section 1 confers any wider jurisdiction on the Court than Section II. In fact the two sections dovetail neatly together. Section I is concerned with the internal management or administration of trusts which are not charitable trusts. Section II concerns charity proceedings (for which the consent of the Charity Commission is required) in the case of the internal management or administration of trusts which are charitable trusts.

193. I also note that the learned editors of the last (1999) edition of the Supreme Court Practice took the view that RSC Order 85 (the predecessor of CPR Part 64) only encompassed what they described as "the domestic affairs of an estate or trust" (volume 1, p.1560; commentary at 85/1/1) and had no wider ambit. There is nothing to suggest that CPR Part 64 was intended to confer any wider jurisdiction on the Court.

194. Mr Dominic Crossley argued that the fact that there was no authority on the points which he sought to argue should not be held against him and that CPR 64 should be construed in the widest manner possible. On the contrary, it seems to me that the absence of any authority in favour of his proposition wholly undermines Cs' argument and that when the provision is correctly understood and construed in the light of the ambit of the inherent jurisdiction which the Court does in fact have Cs' argument must fail.

195. I have reached these conclusions without reference to the Jersey cases to which I referred in paragraph 149 above, but having reached those conclusions I am fortified in them by the Channel Island decisions. The cases concern the ambit of what was originally article 47 (and is now article 51) of the Trusts (Jersey) Law 1984, but for present purposes I am satisfied that those provisions are not materially different in scope from CPR Part 64.

196. In the first of the trilogy of cases, ***Re CA Settlement***, Birt Deputy Bailiff, giving the judgment of the Royal Court, stated that

“14. The general principle of litigation in Jersey is similar to that applicable in England and most other common law jurisdictions, namely that a potential plaintiff is not entitled to an order requiring a potential defendant to give discovery of documents so that the potential plaintiff may establish whether or not he has a cause of action. The position is, of course, very different in the United States. Statute has intervened to make an exception in the case of personal injury litigation (see Law Reform (Disclosure and Conduct before Action) (Jersey) Law 1999) and *Norwich Pharmacal* relief is available where appropriate; but otherwise the principle remains generally applicable.

15. We do not think that Article 47 of the 1984 Law was intended to be used to enable a stranger to a trust to obtain pre-action discovery in order to see if he has grounds to launch a hostile action attacking the trust. Nor do we see any reason of principle why a potential plaintiff in a hostile trust action should be placed in a different and more advantageous position than a potential plaintiff in any other type of action. There would appear to be no public policy grounds for distinguishing a hostile trust action from any other action. We accept, that, if a potential plaintiff who is a stranger to a trust is given leave under Article 47(3), the Court has a theoretical jurisdiction under Article 47(2) to order disclosure of documents to the potential plaintiff; but we do not, for the reasons given above, think that the Court should generally order such disclosure. The existence of article 47, which was clearly intended to give a general power to the court to give directions in administrative proceedings, should not be used as a back-door method of allowing pre-action discovery to a non-beneficiary who wishes to attack the trust.”

197. In the second, ***Re Internine Trust and Azali Trust***, McNeill JA, delivering the judgment of the Court of Appeal, followed that decision and stated that

“25. The court bears in mind the firm view set out in *In re C.A. Settlement* that art. 47 proceedings should not be allowed to circumvent the general rule in Jersey against pre-action discovery simply because the person in possession of

documents or other evidence is a trustee. Were it appropriate, therefore, to characterize the present plight of J.P. Morgan merely as being the Azali trustee pressed for disclosure by Internine beneficiaries, we would have had no hesitation—in all the circumstances before us—in holding that the application was ill-founded.”

198. In the third case, **Re A Settlement**, Martin JA, delivering the judgment of the Court of Appeal, explained the position under article 51 as follows

**“The scope of Article 51.**

36. So far as material, Article 51 in following terms:-

“Applications to and certain powers of the court

(1) A trustee may apply to the court for direction concerning the manner in which the trustee may or should act in connection with any matter concerning the trust and the court may make such order, if any, as it thinks fit.

(2) The Court may, if it thinks fit –

(a) make an order concerning –

(i) the execution or the administration of any trust,

(ii) the trustee of any trust, including an order relating to the exercise of any power, discretion or duty of the trustee, the appointment or removal of a trustee, the remuneration of a trustee, the submission of accounts, the contact of the trustee and payments, whether payments into court or otherwise,

(iii) a beneficiary or any person having a connection with the trust, or

(iv) the appointment or removal of an enforcer in relation to any non-charitable purposes of the trust;

(b) make a declaration as to the validity or the enforceability of the trust;

(c) rescind or vary any order or declaration made under this Law, or make any new or further order or declaration.

(3) An application to the court for an order or declaration under paragraph (2) may be made by the Attorney

General or by the trustee, the enforcer or a beneficiary or, with the leave of the court, by any other person.”

37. The jurisdiction exercised by the Royal Court in this case was that conferred by Article 51(2)(a)(iii) to "make an order concerning ... a beneficiary or any person having a connection with the trust".

38. This provision is expressed in the widest possible terms. There is no apparent limit on the type of order that can be made, so long as it “concerns” a beneficiary or person connected with the trust; and there is no attempt to specify the degree of connection required in the latter case. Nevertheless, it is clear that some limit must be imposed on the width of the jurisdiction conferred by the Article. Thus it would not be permissible to regard the Article as providing a source of jurisdiction to grant relief where no other cause of action existed merely because the defendant happened to be a beneficiary under some trust. Nor could the Article be used, for example, to justify making a disclosure order against an attorney merely because the attorney had drafted a trust instrument in a wholly unrelated matter and so could be said to be connected to a trust. These examples are more than limitations on exercise of the jurisdiction: they go to the scope of the Article 51 power.

39. The necessity for some limitation was recognised by the Royal Court in *S, L and E v Bedell Cristin Trustees Ltd* [2005] JRC 109. That case concerned a claim by S that she had provided part of the funds held on trust by the defendant trustees. While her claim was still unresolved, she applied to the trustees for an interim payment to enable her to meet legal fees. The trustees declined to make such a payment until her underlying claim had been established. She thereupon applied to the court for a direction that the trustees make the payment. The trustees argued that, since they had exercised their discretion against making the payment, their decision could be challenged only on conventional, limited grounds. S, however, argued that Article 51 (2) gave the court a wholly unqualified power to make an order "relating to the exercise of any power"; with the consequence that the court could exercise its own discretion without regard to the reasonableness or otherwise of the trustees' exercise of discretion. In rejecting that submission, Birt, Deputy Bailiff, said this (at [22]):-

"Although the wording of Article 51(2) is indeed wide and the Court may have a theoretical jurisdiction to make an order as [S's advocate] submits, the jurisdiction of the



Court must be exercised on a sensible and principled basis. A settlor does not choose the Court as a trustee; he chooses his appointed trustee. It is that trustee upon whom the various discretions conferred by the trust deed have been conferred. If [S's advocate's] argument were to be accepted, the effect would be to constitute the Court as a trustee. That is not the Court's role. The Court's role is a supervisory one and it is simply to ensure that decisions taken by trustees are reasonable and lawful. The Court does not simply substitute its own discretion for that of the trustee ...”.

40. The question, therefore, is how the undoubted limitation on the power is to be identified. The starting point in answering that question is to ascertain the purpose for which the power exists. As the Royal Court stated in *In re C A Settlement* (above, at [16]), the Article “was clearly intended to give a general power to the court to give directions in administrative proceedings”. It is a statutory embodiment of what was described by Lord Walker of Gestingthorpe in *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709 at [51] as “the court’s inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts”, together with its corollary, the entitlement of a trustee to seek directions from the court in case of difficulty. In *In the matter of the Internine and Azali Trusts* (above, at [24]) this court recognised that applications brought under Article 47 (as Article 51 was previously numbered) were applications to the supervisory jurisdiction of the court; and the same recognition appears from the quotation set out above from *S, L and E v Bedell Cristin Trustees Ltd*.

41. This being the purpose of the Article, it is clear that the power to make an order concerning a beneficiary is confined to cases where the order affects the beneficiary in his capacity as such – that is to say, in his capacity as beneficiary of the trust whose administration the court is supervising. The foundation of the jurisdiction lies in the nexus between trustee and beneficiary arising out of the trust relationship. The fact that a person is a beneficiary is not of itself sufficient to justify the making of an order: the order must be made for the purpose of vindicating, or at least promoting, some right or interest arising directly out of the trust relationship.

42. Similar considerations seem to us to apply to the question of who is a “person having a connection with the trust”. Like Gloster JA in *In re Broere Trust* [2003] JLR 509 at [26], we do not propose to attempt any exhaustive definition of those who might fall into that category; and we agree with her that whether

a person has a connection with the trust must depend on the factual circumstances relevant to the particular case. It does, however, seem to us that the connection must be a direct connection with the relationship between trustee and beneficiary constituted by the trust instrument. The examples given by Gloster JA in *Broere*, of a settlor or protector or the potential object of a discretionary power who is not a beneficiary of the relevant time, all have the necessary direct and immediate connection with the trust relationship. So also, we think, did the creditor of the settlor who was convened at the outset of the Esteem litigation to advance any grounds on which it challenged the validity of or gifts to the settlement, since the issue was fundamental to the existence or otherwise of the trust relationship: see *UBS Trustees (Jersey) Limited v Ismail* [2003] JRC 147 at [6]. By contrast, in *Broere* itself, it was held that the mere fact that there happened to be an identity between persons who were the trustees of one trust and the trustees of a second trust could not result per se in there being a connection between the first trust and the trustees of the second trust or vice versa.

43. We consider that the requirement of a direct connection with the trust relationship provides a principled basis for exercising the jurisdiction conferred by Article 51 against a beneficiary or a person connected with the trust, whilst preserving the wide discretion to do whatever is necessary to further the administration of a trust that the Article was clearly intended to confer on the court. We do not consider that mere knowledge of the existence of the trust suffices, as Advocate Cadin suggested; nor do we think that the test can be satisfactorily framed in terms merely of proximity, as Advocate Young proposed, although proximity is clearly a relevant factor.”

199. Although what Birt Deputy Bailiff said in *Re CA Settlement* was couched in terms that article 47 was not intended to be used to enable a stranger to a trust to obtain pre-action discovery in order to see if he had grounds to launch a hostile action attacking the trust, it must equally follow that the trustees could not use article 47 to obtain pre-action disclosure to enable them to see if they had grounds to launch a hostile action against strangers to the trust. There is no reason of principle why a potential plaintiff in a hostile action who happens to be a trustee should be placed in a different and more advantageous position than a potential plaintiff in any

other type of action. There are no public policy grounds for distinguishing a hostile action by parties who happen to be trustees from any other action.

200. Just as in the case of the Jersey article 47 (or article 51), so in the case of CPR Part 64 I agree with Martin JA that it is clear that some limit must be imposed on the width of the jurisdiction conferred by Part 64. It is not permissible to regard the rule as providing a source of jurisdiction to grant relief where no other cause of action existed merely because the claimant happens to be a trustee under some trust. CPR Part 64

is a procedural embodiment of what Lord Walker described in **Schmidt** as “the court’s inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts” but it confers no wider jurisdiction than that.

201. For these reasons I am satisfied that there is no jurisdiction in the Court under CPR Part 64.2(a)(ii) to order the production of, or access to, documents and information from Ds which are not otherwise the property of the Charities.

202. Miss Harrison submitted that what Cs should have done was to make a formal application for pre-action disclosure under CPR 31.16 which provides that

“(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started.

(2) The application must be supported by evidence.

(3) The court may make an order under this rule only where–

(a) the respondent is likely to be a party to subsequent proceedings;

(b) the applicant is also likely to be a party to those proceedings;

(c) if proceedings had started, the respondent’s duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and

(d) disclosure before proceedings have started is desirable in order to –

(i) dispose fairly of the anticipated proceedings;

(ii) assist the dispute to be resolved without proceedings; or

(iii) save costs.

(4) An order under this rule must –

(a) specify the documents or the classes of documents which the respondent must disclose; and

(b) require him, when making disclosure, to specify any of those documents –

(i) which are no longer in his control; or

(ii) in respect of which he claims a right or duty to withhold inspection.

(5) Such an order may –

(a) require the respondent to indicate what has happened to any documents which are no longer in his control; and

(b) specify the time and place for disclosure and inspection”.

203. She argued that such an application, were it to be made, would fail. I have no such formulated application before me and I do not therefore consider that it is appropriate to opine on what the fate of such an application might be were it to be made, but I accept the general thrust of Miss Harrison’s submission that any such application as Cs might mount to obtain the documentation which they seek should have been made by way of an application for pre-action disclosure under CPR 31.16 rather than CPR Part 64.

### **Ds’ Secondary Case**

204. In the light of the findings which I have reached above in relation to the absence of any jurisdiction to make the orders sought (even in the more attenuated version sought at trial), it is not strictly necessary to deal with Ds’ secondary case, namely that Cs and Brays have been provided with more than sufficient information

simply to prepare audited accounts and that these proceedings should never have been brought. I shall, however, for the sake of completeness briefly deal with the issue in deference to the arguments addressed to me on the point.

205. I shall assume for these purposes that Mr Dominic Crossley is right in his submission that, even though the information relevant to the Charities on the Sage database is not information belonging to the Charities, there is nevertheless jurisdiction under CPR Part 64 to make the order for production and delivery up sought by the Charities, even in the attenuated form now sought by them at the trial rather than in the expanded form originally sought in the Schedules attached to Mr Crossley's first witness statement.

206. On the assumption that such a jurisdiction does exist, it is clear that such a remedy would be an equitable one and there a discretionary remedy and that relief would not follow automatically simply because certain factual contentions were made out, in contrast to, say, a common law claim for damages for breach of contract or for tortious wrongdoing.

207. In support of her contention, Miss Harrison submitted that, prior to the issue of the proceedings, the Charities' solicitors had made sporadic requests for a copy of the *entire* Sage database, but months would pass without the issue being mentioned again. Mr Taylor had explained in his witness statement that that request would have involved production to them of all records between 2013-19 for all entities, including the RAOB GLE. He took the view that it was appropriate for the data relating to each Charity to be extracted and provided to them by way of an audit pack and trial balances. That offer was first made by him in 2019.

208. Miss Harrison then set out the relevant chronology. I have set this out in detail in paragraphs 34 to 57 above, but in summary she lit upon the following documents and it seems to me that that is an accurate summation of the chronology:

(1) on 17 October 2019 Brays wrote to Watson Buckle asking for information. Watson Buckle replied that the 2019 audit was nearly complete.

(2) on 4 December 2019 Mr Taylor told Brays that he would not provide the whole Sage system as all of the records of the RAOB GLE were on it. He could send audit packs and Excel trial balances. All manual adjustments would be noted. He stated “I am sure that we can devise appropriate tests that do not require your firm to receive the whole contents of the large back-up”.

(3) on 5 December 2019 Wilson Bramwell demanded access to a copy of the entire Sage database. That letter confirmed that the Charities had operated their own accounts system since 1 April 2019 and no time frame was specified.

(4) on 13 December 2019 they wanted a copy of the entire Sage database for audit purposes. No time frame was specified.

(5) on 16 January 2020 Mr Taylor offered to produce separate trial balances and the supplemental papers prepared for Watson Buckle’s use.

(6) on 7 February 2020 Clarion for the RAOB GLE confirmed that they would provide audit packs and trial balances produced from Sage so that the Charities could prepare accounts. Tests could be agreed to ensure their accuracy.

(7) on 25 February 2020 Wilson Bramwell stated that they wanted access to the entire Sage database as there were issues which concerned the trustees. It was stated that it was “difficult to ascertain precisely what monies are owed and by whom without access to Sage. This will be disclosable in any subsequent proceedings.”

(8) in March 2020 the RAOB GLE sent an audit pack to Brays in relation to the JCF. Mr Taylor said that he would prepare the other packs.

(9) on 1 June 2020 the Letter of Claim was sent on behalf of the Charities including various claims against the RAOB GLE (including a claim to access to the Sage database). On 29 June 2020 a Letter of Response was sent on behalf of the RAOB GLE. The Charities were again offered access to the Sage database. It was stated that “Your clients have already been offered access to the SAGE system in order to prepare their accounts. The system belongs to the RAOB GLE who paid for it. Please clarify what cause of action is being relied upon here.” That question had never been answered nor had there ever been any substantive response made to the Letter of Response.

(10) on 29 June 2020 Brays were sent trial balances and information by Watson Buckle. It was stated that they were not aware that anything else would be needed.

(11) in February 2021 Brays asked for the other audit packs and Mr Taylor immediately agreed.

(12) in May 2021 Mr Taylor provided the audit pack to Brays in relation to the WMF. On 21 March 2022 they were sent the CTF audit pack.

(13) on 18 June 2021 the Charities demanded “full and unfettered access to the Sage system together with underlying prime records.” That was the first time that documents had been requested (including the records of the Charities) and the RAOB GLE was given 7 days to produce them and it bore no relation to their previous requests for information. The proceedings were then issued.

(14) on 1 July 2021 Clarion replied that the time given was unrealistic given the material involved. The RAOB GLE would make extracts available from the system which the auditors could then verify. It was pointed out that an audit pack had been provided in relation to the JCF in February 2020 and that process had stopped as Mr Walsh had said that packs were insufficient. Nothing was then heard from Brays until February 2021.

209. She then drew attention to what Mr Taylor had said in his witness statement from paragraph 46 onwards, with regard to the position in relation to the provision of information to Brays namely that

(1) they had had audit packs in relation to each Charity and a trial balance. The packs included scans of many prime records and lists of transactions. Brays had been offered access to check the supporting records. On 5 August 2022 he had chased them to arrange an audit visit.

(2) Brays had all bank statements which the Charities already held.

(3) delivery up of all prime records had been offered since the start of proceedings. That amounted to 6 pallets, but the Charities had ignored all requests to collect them at their own cost. Brays had already had the specific prime records for which they asked. They had also been offered the facility to inspect and copy the prime records which remained uncollected.

(4) In March 2022 they were given a copy of the Sage report for the period between 1 April 2018 and 31 March 2019 (which was offered in the statement of Ms Dodds) despite the failure to provide the undertaking sought.

(5) they had been offered access to the Sage system to run off an extraction report. They had also been offered a report of all transactions on the Sage system between 1 April 2017 and 31 March 2019 provided they undertook that the information would only be used for accounting purposes. That undertaking had not been provided.

(6) a meeting took place between him and Mr Dowse-Holmes of Brays on 26 April 2022 in which he explained the accounting systems used.

(7) the queries raised by Brays in relation to the WMF and JCF had been answered in writing. They had not raised queries in relation to the CTF.



210. The position as at 29 July 2021, very shortly after the issue of the proceedings, was, as Ms Dodds explained in the offer as set out in her witness statement

“40. The RAOB GLE has no desire to spend the funds of its members on litigation of this kind and it has never denied the right of the Charities to information to prepare its accounts. For those reasons, it offers on an open basis to provide an electronic copy of a report from the SAGE system covering all financial transactions from 1 April 2018 to 31 March 2019, but, with any confidential information relating to its staff deleted and on the basis that:

40.1 the copy is only to be produced to Mr Crossley and the trustees of the Charities who will use the information provided for the purpose of preparation of accounts only;

40.2 the recipients of the information agree and undertake to the Court that they cannot disclose to any third party any of the data contained in the copy relating to the affairs of the RAOB GLE.

41. In addition, the RAOB GLE have no objection (as offered before) to Mr Crossley having direct access to the SAGE system in order to complete his audit (including being able to run, for himself, the report referred to in paragraph 40 above) and, as is already offered in the audit packs, any supporting documentation will be provided on request. Mr Taylor is also willing to answer any further relevant queries which Mr Crossley may have.”

211. It is to be noted that the undertaking to be required of the recipients of the information was that they could not disclose to any third party any of the data contained in the copy relating to the affairs of the RAOB GLE. The undertaking did not therefore preclude disclosure of the Charities' *own* information to any third party such as a regulator. Nor did it preclude Cs themselves from seeing the information. Mr Walsh was therefore incorrect to claim as he did in paragraphs 6 and 9 of his third witness statement that “Mr Taylor was insisting that whilst our auditors could see the documents, they could not be shared with any other person, including us as trustees ... Mr Taylor's insistence that any information that he provides cannot be shared with anyone outside of Brays causes a great deal of difficulty for us.”

212. Mr Taylor further explained that

“20. Either within the claim or by correspondence prior to and in connection with it, Brays has requested the following information and records to date for each of the Charities:

20.1 A backup copy of SAGE:

20.1.1 Brays has requested a backup copy of the SAGE accounting system containing all bookkeeping records held in SAGE for all prior years to 31 March 2019. That backup copy contains records going back approximately six years for both the RAOB GLE and the Charities.

20.1.2 Whilst this may first appear to simply be a request for the same information as was previously given to Watson Buckle for their audit, when such information was given to Watson Buckle, it was done at a time when Watson Buckle were expected to act for RAOB GLE and the Charities in preparing accounts for the year ended 31 March 2019. When it became clear, at a late stage, that the trustees of the Charities wished to change auditors to Brays, Brays then requested a copy of the SAGE accounting system. As this contains not only the accounting records of the Charities but also a far larger volume of accounting transactions related to RAOB GLE for all years from April 2013 up to that year ending 31 March 2019; giving Brays a copy is, in my opinion, excessive and moreover, not essential for Brays to carry their role as auditors. There are sufficient alternative means of extracting a listing of the transactions related to the charities for the year to be audited.”

213. In fact, and notwithstanding the fact that Ds did not give the undertaking required, on 21 March 2022 they were in fact given a copy of the Sage report for the period between 1 April 2018 and 31 March 2019 under cover of the email which Mr Taylor sent to Mr Crossley which also enclosed the CTF audit pack (the last of the three audit packs to be produced). Moreover, it has been made clear by Mr Taylor that consent to disclosure to any third party regulators would not be unreasonably withheld.

214. On 26 April 2022 Mr Dowse-Holmes of Brays met Mr Taylor at the head office of the RAOB GLE. During that meeting, Mr Taylor explained their system in detail and showed him the Sage system. That enabled Brays to plan their testing and

verification of JCF's accounts. Mr Taylor anticipated that there would be further meetings to complete the exercise for CTF and WMF. He chased Mr Crossley on 5 August 2022, but did not receive any reply.

215. Moreover, as Mr Taylor made clear in paragraph 40 of his witness statement

“We are not however preventing access to SAGE. We have offered Brays full access to SAGE at the RAOB GLE's office and the ability to run whatever type of reports are required and appropriate to prepare the accounts. Additionally, as stated above, a copy of a report from the SAGE system covering all financial transactions (including those relating to the Administration Fund) from 1 April 2018 to 31 March 2019 has been provided to Brays. Subject to the undertaking being provided as requested, the RAOB GLE is also willing to allow Brays to run and retain a report of all transactions recorded in SAGE including those relating to the Administration Fund covering the period from 1 April 2017 to 31 March 2019.”

216. As Ms Dodds explained, the RAOB GLE had no objection to Mr Crossley having direct access to Sage in order to complete his audit (including being able to run for himself the report referred to in her offer) together with any supporting documentation which would be provided on request. Mr Taylor was also willing to answer any further relevant queries which Mr Crossley might have,

217. The response of Mr Crossley is set out in his third witness statement, although he does not in fact address in detail (as one might have expected) the points made in paragraphs 46 and following of Mr Taylor's statement, instead confining himself to saying that many of the events took place after his previous statements. I have set out the relevant extracts from Mr Crossley's statement in paragraphs 78 to 86 above and do not need to repeat them here. In particular I do not need to reiterate what I have said above in relation to the individual documents referred to in paragraphs 13 to 15 of his statement (the Kay Colgrave report, the KPMG report, the working papers of Watson Buckle and the police enquiry). Mr Crossley does accept in paragraph 11 of his statement that

“We have had some fruitful conversations with Andy Taylor, both in person and via email, and much of the information we have requested has been provided. I think it is important to note that we feel Andy Taylor has been as helpful as possible within the constraints set by his employers”.

Counsel sought to argue that the position was that much of the information which he had requested had been “offered” rather than “provided”, but it is Mr Crossley’s evidence that it had been “provided”.

218. In particular, Mr Crossley does not dissent from the proposition that, at the case management conference before DJ Greenan, Ds sought an adjournment of the proceedings for 3 months to allow ADR to be undertaken with Mr Crossley going to the RAOB GLE’s offices, looking at the documents offered and the system and then discussing matters with Mr Taylor, but that he did none of those things. That is hardly consistent with invoking the equitable jurisdiction of the Court. One would have expected Mr Crossley to take up the invitation and to work out what he could do on the basis of the information provided and what he could not do. At the very least he should have been in a position to say “I have done x and y, but I cannot do z because I need the following particular documents”, but he had not done so. Mr Dominic Crossley said in his reply that it was not correct to say that his namesake had not taken any steps to devise audit tests for the records, but precisely what steps he had taken remained wholly opaque.

219. However, what Mr Crossley says in paragraphs 24 and 25 of his statement is hardly consistent with Cs’ case that access to Sage is *necessary* to complete the tasks of preparing annual accounts and auditing them:

“24. Ultimately, with full access to the charities’ prime records and other financial and non-financial information (as detailed in previous witness statements) *we do not strictly speaking need Sage to complete the work ...*

25. Although, subject to full provision of other information, *access to the Sage data is not strictly necessary, it would certainly make the audit engagement more straight forward and less costly.*”

220. That admission, it seems to me, undermines the case that disclosure is necessary. It may be more convenient and may make the audit process more straightforward, but that is not enough to invoke the jurisdiction of the Court (if it had one).

221. What he then says is that

“GLE have offered supervised, on-site access to Sage. Whilst this is better than no access, it is not ideal; a copy of the Sage data would allow us to review transactions to our own timetable, without making an appointment and without the pressure of time limits. We would be able to work on the audit at our discretion and use Sage to quickly answer any ad-hoc, unexpected queries within 5 minutes of them arising.”

222. I am bound to say that his complaint that

“The current offer would involve making an appointment and waiting for a mutually convenient date and time to visit the GLE office for 5 minutes of work, which would result in increased costs and further delay”

are hardly the imposition of onerous conditions. I do not accept that attendance at RAOB GLE’s offices would be as time-consuming, difficult or slow as Mr Crossley makes out.

223. However, Mr Crossley then goes on to assert (with emphasis added) that

“26. Furthermore, *the offer of supervised access introduces an intimidation threat to our independence*. The ICAEW code of ethics identifies various threats to an auditor’s independence, one of which is intimidation. It does not matter whether intimidation is actual or perceived if it affects the work of the auditor. The code of ethics defines an intimidation threat as follows:

- ***the threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the accountant***

*27. It is clear that an individual auditor may feel intimidated attending the office of an apparently hostile organisation to work under their supervision. Faced with this situation, the individual may feel it necessary to cut corners or not exercise sufficient professional scepticism. If this situation can be avoided to protect the independence of the audit then it should be. It is fair to say that those representing GLE are trying to influence how our audit is carried out, and they are quite insistent that our work is undertaken on their premises.”*

224. There was no shred of evidence to support those assertions or insinuations. If it were seriously going to be asserted that the offer of access introduced a threat of intimidation on the part of Ds or Mr Taylor or that the threat of intimidation would lead to the possible cutting of corners or the failure to exercise professional scepticism because of illicit pressure, that should have been put to Mr Taylor in cross-examination. It may also have been necessary for other members of the RAOB GLE to make witness statements and be cross-examined on them if such allegations were being maintained. One would also have expected at the very least a witness statement from Mr Dowse-Holmes, who had actually been to the RAOB GLE offices to meet Mr Taylor, concerning any veiled intimidation or intimation that he or anyone else at Brays might be lent on in the production of the audited accounts.

225. Nor was it appropriate in the absence of cross-examination to make or maintain the susurrations of innuendo against Mr Gill and Mr Taylor in paragraphs 31, 34, 35, 37 and 38 of his third witness statement.

226. In short I do not accept that attendance at RAOB GLE's offices would be anything like as onerous, time-consuming, difficult or slow as Mr Crossley makes out and I specifically reject his suggestions as to potential impropriety on the part of RAOB GLE or Watson Buckle in the provision of access to the Sage database.

227. Moreover, and this is the nub of the matter, it is apparent from the evidence filed by Cs that the application goes far beyond the need to restate the 2018 accounts and to file the audited accounts for the subsequent financial years (the purposes as stated by Mr Dominic Crossley in paragraphs 17 and 18 of his skeleton

argument), but is a vehicle for searching for evidence relevant to all of the disputes between the Charities and the RAOB GLE. That is particularly apparent from the evidence of Mr Walsh in his first witness statement where he says (with emphasis added) that

“15. Finally, there are *other* potential issues that we have uncovered from the limited information available which suggests there may have been improper use of the Charities’ funds including:

15.6 improperly paid expenses;

15.7 purchases made without proper authorisation;

15.8 salaries and expenses relating to companies established by members being paid without authorisation from the Charities’ funds (in particular, in respect of a regalia business known as F C Parry);

15.9 further unauthorised loans, e.g. to an RAOB lodge in Bridgend; and

15.10 unexplained transfers of funds between the Charities and the admin fund and/or other third parties.

*All of these issues are matters that we cannot progress to resolution, either by establishing that there is no wrongdoing, or sorting out anything that has gone wrong, without access to the records identified by Mr Crossley, including full access to the Sage system and the underlying prime records.*

...

27. I therefore ask the court to make the order sought in these proceedings, or some other appropriate order, so that the Trustees can (i) restate the accounts for the 2018 financial year; (ii) file audited accounts for the subsequent financial years; and (iii) *investigate the financial irregularities outlined in this Witness Statement as a matter of urgency.*”

228. Similarly Mr Crossley’s first witness statement is cast in the widest of terms (again with emphasis added):

“30. It is clear that, to understand and test the systems and controls within an organisation accurately, *wide access beyond the prime and bookkeeping records is required*. This is also the case when reviewing statements made in the Trustees’ Report and any notes to the accounts, for which access to meeting minutes and correspondence may be required.

31. Given the wide scope of an audit, it is impossible to give a comprehensive list of the information required, as the list can vary significantly from one audit to the next – and can change dependent on what is discovered in the prime and bookkeeping records. However, it is certain that both the prime records and the bookkeeping records would be required as a bare minimum, and *it is fair to say that, provided an auditor can demonstrate how the information might be linked to the accounts, they should have access to all of the organisation’s records.*”

229. That the application goes far wider than just the need to restate the 2018 accounts and to file audited accounts for the subsequent financial years is apparent from Mr Walsh’s second witness statement and from the tenor of Mr Crossley’s third witness statement where he specifically says that

“24. ... It is also important to note that full information might include what GLE considers to be GLE records. If, because of the way the records have been maintained, we need access to GLE records in order to obtain charity information, this access will, unfortunately, be required.”

230. That the relief now sought is much narrower than what was originally set out in Schedules 1 and 2 does not detract from the underlying purpose of the application.

231. In her supplemental skeleton argument Miss Harrison stated (as I have set out in paragraph 142) that

“The conclusion of all of that was that Mr Crossley had now admitted that he did want to trawl through all of the records of Ds to see whether he could find anything which he considered to be evidence of fraud or wrongdoing. That was entirely based on the suspicions of Cs and his belief that, if a third party did not want to open all of its records up to a stranger, that it must be hiding something. The pretence that he simply wanted to



inspect data relating to Cs and to prepare their accounts had been exposed. What was also clear from that evidence was that Mr Crossley had made no effort whatsoever to

(1) collect the prime records offered 19 months ago and look at them

(2) use the access to the SAGE system which he has been offered and run off reports as was offered

(3) devise audit tests to test the veracity of the information given to him in the audit packs”.

232. I do not accept that it was a pretence that Mr Crossley wanted to inspect data relating to Cs and to prepare their accounts. I accept that he does want to inspect data relating to the Charities and to prepare their accounts, but it is undoubtedly the case that he has not collected the prime records offered on 1 July 2021 and looked at them nor has he used the access to the Sage system which he has been offered and run off reports as was offered. Nor is there any evidence that he has devised audit tests to test the veracity of the information given to him in the audit packs. It is, however, my conclusion that he does want to trawl through the records of Ds to see whether he can find anything which he considers to be evidence of fraud or wrongdoing and that in reality this is an application for pre-action disclosure outside the ambit of CPR 31.16.

233. It is not appropriate in this judgment to decide who is correct about the matter of the monies allegedly owed by the Charities to the RAOB GLE in the approximate sum of £3 million, particularly since on the day before the trial in the instant case Ds served High Court proceedings on Cs in relation to that very dispute. It will therefore be for the Court to determine that matter, not the Charities’ auditor.

234. Nor is it appropriate to determine the correctness of the assertions about the treatment of the charitable donations, as to which I was not referred to any documentation which would back up the assertions made in the respective witness statements, and as to which there was in any event no cross-examination. I am

bound to say, however, that there seemed to me to be considerable force in Miss Harrison's submissions which I have set out in paragraph 115 above.

235. Ultimately, however, I am satisfied that the present application is in reality an application for pre-action disclosure. Even if there were jurisdiction to make such an order, I would not have considered it appropriate to do so. To paraphrase the Deputy Bailiff in Jersey, the existence of CPR Part 64, which was clearly intended to give a general power to the Court to give directions or make orders in administrative proceedings relating to trusts, should not be used as a back-door method of allowing pre-action discovery to a trustee who wishes to attack a stranger to the trust and who is not a beneficiary of that trust.

236. Accordingly, even if I had found that CPR Part 64 conferred a jurisdiction on the Court to make an order for disclosure and production, even in the attenuated form now sought by Cs (which was essentially limited to the Sage database), I would not have considered it appropriate to make such an order.

### **The Relief**

237. As I have explained in paragraphs 153 to 159 above, there was no significant dispute between the parties that the Charities were entitled to their own documents since they were the property of the Charities themselves. The substantive dispute was as to the question of payment for their collation and/or delivery.

238. Given that it does not seem to be in dispute between the parties, I shall therefore order delivery up of the Charities' own records (consisting of about 6 pallets of documents) upon payment of Ds' reasonable costs of collation and delivery. I shall give the parties liberty to apply in relation to the production and delivery up of those documents.

239. I will hear counsel on the precise form of the order and in relation to the time required for the extraction and delivery of the documents in question.

240. Save as aforesaid, the application is dismissed.

