

**IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEAL (ChD)**

NCN: [2024] EWHC 1818 (Ch)

7 Rolls Buildings
Fetter Lane
London

Before THE HONOURABLE MR JUSTICE RICHARDS

IN THE MATTER OF

**(1) ENUS ALI
(2) MOHAMMED ABDUL WAHID (Appellants)**

- v -

**(1) MUHAMMAD MODU MIAH
(2) MONSHUR BARI (Respondents)**

**J G MENDUS EDWARDS appeared on behalf of the Appellants
SIMON BUTLER appeared on behalf of the Respondents**

**JUDGMENT
5th JUNE 2024
(APPROVED)**

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MR JUSTICE RICHARDS:

1. This is an appeal against an order of 14 June 2023 (“**the June Order**”) of HHJ Johns KC (“**the Judge**”).

BACKGROUND TO THE DISPUTE

2. A charitable trust, The East Ham Bangladeshi Islamic Community Trust (“**the Trust**”), was engaged in a dispute with a Mr Bari concerning ownership of a mosque in Market Street, London E6 (“**the Mosque**”). Mr Bari is the registered proprietor of the Mosque. The Trust commenced proceedings against him in the County Court (“**the County Court Proceedings**”) asserting that it had a beneficial interest in the Mosque.
3. That litigation raised some preliminary questions: (i) who the trustees of the Trust were and (ii) whether those trustees had consented to the Trust commencing the County Court Proceedings since, if they had not, those proceedings could be *ultra vires* and liable to be struck out.
4. Those matters were considered at a hearing before HHJ Richard Roberts on 14 December 2022 (“**the December 2022 Hearing**”). HHJ Richard Roberts decided that:
 - a. as at 14 December 2022, there were three trustees of the trust: Mr Miah, Mr Ali and Mr Wahid, since a purported removal of Mr Miah by Mr Ali and Mr Wahid was of no effect.
 - b. He did not believe the evidence of Mr Ali, given orally at the December 2022 Hearing, to the effect that neither he nor Mr Wahid had consented to the Trust bringing the County Court Proceedings.
5. By his order HHJ Richard Roberts had made findings touching on the first stage of a dispute over the control of the Trust. HHJ Richard Roberts concluded that the attempt by Mr Ali and Mr Wahid to oust Mr Miah as trustee had failed. There was no appeal against his order.
6. Following the December 2022 Hearing, Mr Miah struck back. On 15 December 2022 (the day following the hearing) Mr Miah sought to remove Mr Ali and Mr Wahid as trustees and to replace them with Mr Rahman and Mr Hussain. It was this striking back that led to the hearing before the Judge on 4 June 2023 (“**the June 2023 Hearing**”) and the June Order that is under appeal before me.
7. The June Order set out the Judge’s determination following an application to substitute Mr Rahman and Mr Hussain as claimants in the County Court Proceedings in place of Mr Ali and Mr Wahid. That was a case management decision about the substitution of claimants which had to be informed by the Judge’s conclusions as to who the true trustees of the Trust were.

8. The Judge concluded that Mr Rahman and Mr Hussain should be substituted as claimants in the County Court Proceedings on the basis that they, together with Mr Miah, were the trustees of the Trust. The Judge concluded that Mr Ali and Mr Wahid should not be claimants as he was not satisfied that they were trustees of the Trust as Mr Miah had validly substituted them as trustees on 15 December 2022 in exercise of powers conferred on him by s36 of the Trustee Act 1925 (“**the Trustee Act**”) on the grounds that Mr Ali and Mr Wahid were unfit to act as trustees of the Trust.
9. In short, the Judge decided that (at least for the purposes of determining who the proper claimants to the County Court Proceedings were) Mr Miah’s substitution of Mr Rahman and Mr Hussein as trustees in place of Mr Ali and Mr Wahid had been successful.
10. Mr Ali and Mr Wahid (together “**the Appellants**”) appeal against that conclusion with the permission of Bacon J. Bacon J summarised the Appellants’ grounds of appeal as consisting of essentially two grounds, with Mr Mendus Edwards adopting that summary in his oral submissions before me. Those two grounds were:
 - a. Ground 1: Mr Miah was not entitled to rely on the power conferred by s36 of the Trustee Act because that power had been ousted by the instrument creating the Trust.
 - b. Ground 2: even if Mr Miah was in principle entitled to rely on s36 of the Trustee Act, the Judge erred in concluding that the Appellants were “unfit” to act as trustees with the result that there was no trigger for exercise of the power conferred by s36.

LEGISLATIVE PROVISIONS

11. Section 36 of the Trustee Act provides, so far as material, as follows:

36 Power of appointing new or additional trustees.

(1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Act on the number of trustees,—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee;

may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

[...]

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

12. However, s69(2) of the Trustee Act permits the power given by s36, among other provisions, to be ousted by the terms of the trust instrument in question:

(2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

GROUND 1

13. It is common ground that the various instruments creating the Trust do not nominate any person to appoint new trustees in the place of outgoing trustees. Therefore, s36(1) (a) of the Trustee Act 1925 is not engaged. Accordingly, to the extent that s36 permits anyone to substitute trustees, the power is, by s36(1)(b), conferred on the “surviving or continuing trustees or trustee for the time being”.
14. The question raised by ground 1 is whether that power is ousted by the instrument creating the Trust on the basis that it expresses a contrary intention.

The instruments creating the Trust

15. The Trust is constituted by (i) a declaration of trust dated 26 November 2007 (“**the Declaration of Trust**”) as supplemented by (ii) a supplemental deed dated 28 May 2013 (“**the Supplemental Deed**”). The Declaration of Trust takes the form of a template document declaring a charitable trust prepared by a law stationer or similar with space for manuscript additions to be made to reflect the desired terms of the charitable trust in question.

16. It is common ground that the following provisions of the Declaration of Trust (as varied by the Supplemental Deed) are relevant to the presence or otherwise of a “contrary intention” that ousts the effect of s36 of the Trustee Act.
17. Section 9 of the Declaration of Trust provides as follows:

9 Appointment of Trustees

(i) There must be at least [three] Trustees. Apart from the first Trustees, every Trustee must be appointed [for a term of two years] by a resolution of the Trustees passed at a special meeting called under clause 15 of this deed.

(ii) In selecting individuals for appointment as Trustees, the Trustees must have regard to the skills, knowledge and experience needed for the effective administration of the Charity.

(iii) The Trustees must keep a record of the name and address of the dates of appointment, re-appointment and retirement of each Trustee.

(iv) The Trustees must make available to each new Trustee, on his or her first appointment:

a) a copy of this deed and any amendments made to it;

b) a copy of the Charity’s latest report and statement of accounts.

18. Until the date of the Supplemental Deed, there was a Clause 9(v) which provided that:

(v) The first Trustees [which included Mr Ali and Mr Wahid] shall hold office for the following periods respectively: five years.

19. However, Clause 9(v) was removed pursuant to the Supplemental Deed which provided:

Clause 9, sub-clause (v) inclusive of the [Declaration of Trust] to be deleted as from here onwards first Trustees shall hold office until they retire.

20. Clause 10 of the Declaration of Trust provides as follows:

10 Eligibility for trusteeship

(i) No one shall be appointed as a Trustee:

(a) if he or she is under the age of 18 years; or

(b) if he or she would at once be disqualified from office under the provisions of clause 11 of this deed.

(ii) No one shall be entitled to act as a Trustee whether on appointment or any re-appointment as Trustee until he or she has expressly acknowledged, in whatever way the Trustees decide, his or her acceptance of the office of Trustee of the Charity.

21. Clause 11 of the Declaration of Trust (as varied by the Supplemental Deed) provides as follows:

11 Termination of trusteeship

A Trustee shall cease to hold office if he or she:

(i) is disqualified for acting as a Trustee by virtue of section 72 of Charities Act 1993 or any statutory re-enactment or modification of that provision;

(ii) becomes incapable by reason of mental disorder, illness or injury [...] managing his or her own affairs

(iii) is absent without the permission of the Trustees from all their meetings held within the period of 3 months and the Trustees resolved that his or her office be vacated; or

(iv) notifies to the Trustees a wish to resign (but only if enough Trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).

22. Clause 12 of the Declaration of Trust provides as follows:

12 Vacancies

If a vacancy occurs the Trustees must note the fact in the minutes of their next meeting. Any eligible Trustee may be re-appointed. So long as there are fewer than three Trustees, none of the powers or discretions conferred by this deed or by law on the Trustees shall be exercisable by the remaining Trustees except the power to appoint [new] Trustees.

Analysis

23. Mr Mendus Edwards relies on what is described in the grounds of appeal as “the comprehensive provisions for appointment and removal of trustees” in Clauses 9 to 11 of the Declaration of Trust providing a contrary intention. However, section 69(2) provides (subject to the question of contrary intention) for the powers in s36 of the Trustee Act to be in addition to those set out in the trust instrument. Therefore, the mere fact that the Declaration of Trust contains provisions dealing with the appointment and removal of trustees does not, on its own, demonstrate a “contrary intention” for the purposes of s69(2). Conceptually the powers in s36 could operate in addition to those set out in the Declaration of Trust.
24. In order to make good an argument based on a “contrary intention”, the Appellants must show that, on a fair reading of the Declaration of Trust (as amended by the Supplemental Deed), it would be “inconsistent with the purport of the instrument” for the trustees or continuing trustees to have the power of replacement set out in s36(1) of the Trustee Act (see *IRC v Bernstein* [1961] Ch 399 (CA)).
25. Mr Mendus Edwards focused his attention on Clause 11 of the Declaration of Trust supplemented by an analysis of some of the other provisions which I will come on to. He argues that Clause 11 sets out an exclusive code dealing with the removal of trustees with the presence of that “exclusive code” as applicable to the first trustees being emphasised by the statement in the Supplemental Deed that those first trustees are to hold office “until they retire”. He characterises these provisions as “entrenching” the position of the first trustees and as imposing a discipline on the trustees, in cases where they fall out, of either resolving their differences or, if they really cannot do so, invoking the assistance of a third party agency with a view to securing a disqualification of certain trustees under s72 of the Charities Act 1993, so as to make Clause 11(i) operative so that new trustees can be appointed under Clause 9.
26. I do not think that the statement in the Supplemental Deed that the first trustees “shall hold office until they retire” is as significant as Mr Mendus Edwards argues. The statement must be read in the context of the Declaration of Trust as a whole. Even ignoring s36 of the Trustee Act, the first trustees will not always hold office until they retire (voluntarily) because Clause 12 of the Declaration of Trust contains provisions that provide for them automatically to be removed on the occurrence of particular trigger events.
27. Therefore, the statement in the Supplemental Deed is not to be read as somehow “entrenching” the position of the first trustees since it did not alter the landscape of the Declaration of Trust permitting them to be removed even before they retire voluntarily.
28. Moreover, the Supplemental Deed does not contain a provision providing for the first trustees to “hold office until they retire”. Rather, the Supplemental Deed deleted Clause 9(v) (which previously provided for the first trustees to hold office for a maximum of five years) and gave a reason for that removal: a first trustee’s appointment would no longer end automatically after five years but would continue until “retirement” without specifying what “retirement” is. The fact that such an explanation was given provides, in my judgment, slender support for a “contrary intention” that the additional powers in s36 of the Trustee Act should not apply.

29. Nor, in my judgment, does the fact that Clause 11 specifies some triggers for a trustee to be removed automatically of itself indicate that a trustee cannot be replaced on the occurrence of the events set out in section 36(2) of the Trustee Act.
30. Clause 11 is dealing with a different situation from section 36(2). Clause 11 is concerned with objectively measurable triggers that mean that a trustee can be taken no longer to be suitable to continue in office. Where Clause 11 applies, a replacement trustee does not necessarily have to be appointed, although if there are fewer than three trustees, Clause 9(i) would apply.
31. By contrast, as far as it deals with trustees being “unfit to act”, Section 36(2) is concerned with more of a value judgment and can be invoked only if there is a replacement trustee that can be found to act in the place of the outgoing trustee. I do not consider it to be “inconsistent with the purport of the instrument” for there to be a power to replace “unfit” trustees simply on the basis that there are provisions for trustees’ appointments to cease on the occurrence of particular events.
32. Next, it is argued that the Declaration of Trust contains provisions dealing with meetings of trustees and associated quorum requirements that envisage all trustees being entitled to vote at such meetings. Mr Mendus Edwards points out that s69(2) of the Trustee Act provides for any power in s36 to be subject to the terms of the Declaration of Trust. He argues that it would be inconsistent with the Declaration of Trust for a trustee to be replaced otherwise than at a meeting at which the trustee could attend, and vote against their own replacement.
33. I do not accept that analysis. The power under s36 is to effect the replacement of trustees by writing. Perhaps there is scope for debate as to what the proper nature of that “writing” is and who needs to sign it. However, this appeal is not brought on the basis that Mr Miah’s letter to Mr Ali and Mr Wahid removing them was somehow defective (because it should have been signed by others as well as Mr Miah) or that, not being a deed, that letter failed to vest the property of the Trust in Mr Rahman or Mr Hossain. Nor was that the position advanced before the Judge. The Appellants do not argue that there is a defect in the way powers under s36 of the Trustee Act were exercised. Rather, they argue that the provisions for meetings of trustees in the Declaration of Trust demonstrate a “contrary intention” as showing that the powers in s36 were not to be available at all. I do not accept that analysis.
34. Where certain Clause 11 triggers are present a trustee is removed whether there is a meeting or not. Therefore, it is not the case that the Declaration of Trust envisages that any decision involving the appointment or removal of directors must be at a meeting as some removals happen automatically.
35. It is true that Clause 9 envisages that a new trustee would be appointed at a meeting. However, the situation where a “brand new” trustee is to be appointed, perhaps in addition to existing trustees, is different from the situation where an existing trustee is considered to be unfit and in need of replacement. The fact that the Declaration of Trust envisages a meeting in the former case is not inconsistent with replacement by writing in the latter case. Nor does appointment “by writing” cut across the quorum requirements in Clause 17 or the provisions as to voting in Clause 18 of the Declaration of Trust. Section 36 requires all the “surviving or continuing trustees” to execute the “writing” replacing a trustee and so the power in s36 could not be exercised by a minority only of trustees.

36. I have also considered Clause 6 of the Declaration of Trust, which makes it clear that no powers under the Trustee Act 2000 are ousted. I queried with the parties whether this shed any light on the question of “contrary intention” since the draftsman took no steps to deal with the Trustee Act 1925. Neither party sought to argue that Clause 6 provided any indication one way or the other.
37. The appeal fails on Ground 1.

GROUND 2

The Judge’s conclusions

38. At [14] and [15] of his judgment, the Judge directed himself that the question as to whether Mr Ali and Mr Wahid were “unfit” should be approached in a similar way to that applicable where a court is exercising power to replace a trustee under s41 of the Trustee Act. He drew support from that conclusion from paragraph 19-039 of the current edition of *Tudor on Charities*. That self-direction is not challenged in this appeal.
39. The slight difficulty is that s41 of the Trustee Act does not refer to “unfitness” as a ground for replacing a trustee and so does not provide a guide as to what amounts to “unfitness”. Rather, s41 contains some non-exhaustive examples of when the court can act to replace trustees namely (i) a lack of capacity, (ii) becoming bankrupt or (iii) being a corporation in liquidation or which has been dissolved. That said, paragraph 19-049 of *Tudor on Charities* indicates that s41 can be invoked in cases of a trustee’s “misconduct” and neither party invited me to doubt that proposition.
40. The Appellants do not argue in this appeal that “unfitness” for the purposes of s36 of the Trustee Act consists only of one of the specific examples set out in 41. Rather, both sides proceed on the basis that “unfitness” is an ordinary word of the English language and that I should focus on whether the judge was entitled to reach the conclusion that Mr Ali and Mr Wahid were unfit in the ordinary English sense of that word. I agree and would add only that the question of “unfitness” is to be considered in the specific context of acting as trustee of the Trust. It does not follow that, even if a person is “unfit” to be a trustee of a particular charity, that the person suffers from a lack of morality generally.
41. The Judge set out his conclusions on the issue at [16] of his judgment. He said that:

The conduct of Mr Ali and Mr Wahid here would, in my judgment, justify their removal by the court. They wrongly denied having authorised the bringing of the proceedings. They both submitted witness statements to that effect, albeit those were ruled inadmissible in the event for not being in their own language. Mr Ali gave oral evidence, as I have said, to the same effect. In the context of what the Trust is currently dealing with, I do regard that conduct as making them unfit to be trustees. The Trust is fighting to protect its use of the Premises. These proceedings are plainly designed to protect the claimed interest of the Trust in the Premises. But the denial of Mr Ali and Mr Wahid worked very much against that. If accepted, it would likely have resulted in the striking out of the proceedings. The rightness of

the conclusion I have reached is, in my judgment, underlined by the absence of any evidence from Mr Ali or Mr Wahid on this application explaining their conduct.

42. The references to the evidence in that section require some explanation of what happened at the December 2022 Hearing:
- a. Both Appellants submitted witness statements in the December 2022 Hearing.
 - b. Mr Wahid's statement was short. In it he said that Mr Miah had not told either him or Mr Ali about the County Court Proceedings. He confirmed that he agreed with Mr Ali's witness statement. Mr Wahid signed his witness statement himself.
 - c. Mr Ali's witness statement was also short (some six paragraphs in length, running to less than two pages). It also stated that Mr Miah had not informed either Mr Wahid or Mr Ali about the County Court Proceedings. Mr Ali's witness statement was signed, not by Mr Ali, but by his barrister as was made clear in paragraph 6.
 - d. HHJ Roberts refused to admit either witness statement as evidence in the December 2022 Hearing for two reasons. First, neither had been prepared in the first language of Mr Ali and Mr Wahid. Second, Mr Ali's witness statement suffered from the additional defect of having been signed by his barrister rather than by Mr Ali himself.
 - e. Nevertheless, HHJ Richard Roberts allowed Mr Ali, who was present at the December 2022 Hearing, to give oral evidence through an interpreter. Mr Wahid was not present at the hearing and so he gave no oral evidence.
 - f. In his oral evidence at the December 2022 Hearing, Mr Ali said that he did not know about the County Court Proceedings. However, Mr Miah's case, put to Mr Ali in cross-examination, was that Mr Ali knew full well about the County Court Proceedings because he knew that a solicitor was being instructed and had visited a bank branch to withdraw £6,000 to pay that solicitor.
43. HHJ Richard Roberts made the following findings at [30] to [32] of his judgment:

30. Where there is a conflict in the evidence, between Mr Miah and Mr Ali, I prefer the evidence of Mr Miah. I found Mr Ali to be an evasive witness. He frequently did not answer straightforward questions. I make all due allowance for the fact that he was giving evidence through an interpreter, but even making that allowance the questions were often quite straightforward. But what he did agree was that he was summonsed to the bank, that he knew that he was being asked to withdraw money to pay to the solicitor and that this was because of Mr Bari going into possession of the mosque. I find that he did know that Mr Miah wanted to withdraw money to pay for a solicitor to bring injunction proceedings and he agreed.

31. Although I prefer Mr Miah's evidence to that of Mr Ali, I accept the evidence of Mr Ali that when he was at Lloyds Bank in East Ham he spoke

at the telephone to Mr Wahid and relayed to him precisely what he was doing and why they were instructing solicitors, namely because the mosque had been locked by the defendant.

32. I find that what has happened in this case is that, subsequently, there has been an outcry in the local community about the mosque being locked in the light of the local community having made donations to the mosque, and Mr Ali has changed his position. Indeed, on 4 June 2022, Mr Ali entered into a meeting which was not in accordance with the trust deed, whereby nine new trustees were appointed, which it is accepted was not lawfully achieved in this case because there should have been a special meeting pursuant to clause 15.

Criticisms of the Judge’s conclusions on “unfitness”

44. At [16] of the judgment under appeal, the Judge was expressing an evaluative conclusion in case management proceedings whose function was to determine the right parties to the County Court Proceedings.
45. It is well-known that an appeal court is slow to interfere with evaluative conclusions on matters that involve the application of a relatively imprecise standard such as “unfitness”. The Judge had the evidence before him and saw Mr Ali’s evidence tested in cross-examination, which is not the norm in a case management hearing. Therefore, the question on appeal is not whether I agree, or disagree, with the Judge’s conclusion. Rather, the question is whether the Judge’s evaluative conclusion was available to him.
46. The Appellants argue that the Judge’s conclusion was not available for the following reasons:
 - a. There was no admissible evidence that Mr Ali and Mr Wahid would prevent the County Court Proceedings from continuing. Rather, the evidence before the Judge established only that they favoured an out-of-court settlement with Mr Bari instead of litigation.
 - b. The Judge should not have taken into account Mr Ali’s witness statement, which was excluded from the December 2022 Hearing.
 - c. It is not unusual for trustees to have different views on litigation tactics. The Judge erred in concluding that holding such differences made Mr Ali and Mr Wahid “unfit” to be trustees.
47. I do not accept those arguments.
48. As to the point in paragraph 46.a.), the Judge did not find that the Appellants would “prevent litigation from continuing”. Rather, the Judge found that the Appellants had tendered witness statements saying that they did not know about the County Court Proceedings when they did. The “unfitness”, therefore, consisted of the Appellants giving evidence that (i) HHJ Richard Roberts found to be untrue and (ii) was contrary

to the interests of the Trust since, if their untrue evidence had been believed, the County Court Proceedings were liable to be struck out.

49. The point in paragraph 46.b.) misunderstands the Judge's conclusion. The Judge was not basing his conclusions on Mr Ali's inadmissible witness statement, but on what Mr Ali had said in his oral evidence that was disbelieved. Mr Ali did not disavow the witness statement that had been signed by his barrister. Rather, in cross-examination, he repeated the central point of his witness statement that he did not know about the County Court Proceedings and, in so doing, gave evidence that HHJ Richard Roberts found to be untrue and contrary to the Trust's interests.
50. In oral submissions, Mr Mendus Edwards suggested that Mr Ali had not been cross-examined on whether he knew about the County Court Proceedings. I do not accept that. In my judgment, the transcript of proceedings before HHJ Richard Roberts demonstrates that Mr Ali was cross-examined on this matter.
51. I do not consider that it matters that Mr Wahid did not himself attend the December 2022 Hearing. He had submitted a witness statement supporting Mr Ali's account. I accept that HHJ Richard Roberts was not prepared to accept that witness statement as evidence because it had not been prepared in Mr Wahid's own language. However, in his witness statement prepared for the June 2023 Hearing, Mr Wahid did not disavow his witness statement for the December 2022 Hearing or explain why he was providing support for an account that HHJ Richard Roberts had found to be untrue. The Judge was entitled to have regard to the fact that Mr Wahid had given his witness statement in December 2022 even though HHJ Richards Roberts had not admitted it into evidence.
52. The Appellants characterised the matter as "involving differences of opinion on litigation tactics," but that puts the matter too low. Mr Ali gave evidence, found to be untrue, on a matter within his own knowledge that was contrary to the Trust's interests. Mr Wahid sought to do the same thing by tendering a witness statement to similar effect.
53. In my judgment, the Judge was entitled to make the evaluative finding of "unfitness" that he did and Ground 2 fails.
54. I recognise that the Judge's finding on "unfitness" has caused some concern to Mr Ali and to Mr Wahid. I think it is right that I make clear that I am not today making any finding that either is morally "unfit" in any general sense (see my comments in paragraph 40. above). I recognise and respect the strength and sincerity of both Appellants' religious beliefs. Nor am I making any finding that the Appellants are dishonest. The Judge did not make any such findings either. My conclusion in rejecting Ground 2 is simply that the Judge was entitled to come to the view that the Appellants were "unfit" to be trustees of the Trust in the light of the way they had approached the December 2022 Hearing.
55. For those reasons, the appeal is dismissed.

This transcript has been approved by the Judge