Neutral Citation Number: [2021] EWHC 1783 (Ch)

Case No: BL-2019-CDF-000008

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
BUSINESS LIST (ChD)
CARDIFF DISTRICT REGISTRY

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF10 1EY

Date: 30/06/2021

Before :

HIS HONOUR JUDGE JARMAN QC
Sitting as a judge of the High Court

Between :

CEREDIGION RECYCLING AND FURNITURE TEAM	**Claimant**
- and -	
(1) DEREK CLIFFORD POPE **(2) ALLISON CANN** **(3) CYFRI CYFRIFWYR CYFYNGEDIG (TRADING AS PJE CHARTERED ACCOUNTANTS** **(4) CYFRI CYFYNGEDIG** **(5) SLA PROPERTY COMPANY LIMITED** **(6) SUFFOLK LIFE ANNUITIES LIMITED**	**Defendants**

Ms Lydia Seymour (instructed by **Hugh James Solicitors**) for the **claimant**
Mr Guy Adams (instructed by **Redkite Solicitors**) for the **first defendant**
The second defendant in person
No other party appeared or was represented

Hearing dates: 7 to 9 June 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC:

Introduction

1. The claimant (the company) was incorporated as a company limited by guarantee in 1998 to take over a project started some years earlier run by volunteers in Aberystwyth to recycle furniture and other domestic items. One of the volunteers was the first defendant, Clifford Pope. Upon incorporation he became one of five directors. Business grew and in 2001 the company bought the freehold of new premises at Station Buildings, Alexander Road, Aberystwyth (the property). The following year the second defendant commenced employment with the company and by 2009 she and Mr Pope were the only directors and members of the company.

2. After taking accountancy advice from the third and/or fourth defendants, Mr Pope and Ms Cann in 2012 arranged self-invested personal pensions (SIPPs) for themselves funded in part by a transfer of the freehold of the property to SIPP providers, the fifth and six defendants (together referred to as Suffolk Life). The company was to continue to occupy the property with a 15 year lease (the lease) back to the company at a rent ultimately of £60,000 per year. Ms Cann resigned as a director in 2015 and Mr Pope did the same in 2017. The company now claims that the transfer of the property amounted to a breach of their duties as directors and seeks return of the property or alternative and consequential relief. They deny any wrongdoing.

3. The claims against the third and fourth defendants have been discontinued after settlements have been arrived at. However, three witness statements filed on behalf of these parties were relied upon in the proceedings before me. Notices pursuant to CPR Part 33.2 were served on behalf of Mr Pope on other parties indicating an intention to rely upon the evidence set out in these statements. The other parties could have applied for permission under CPR Part 33.3 to call the makers of the statements to be cross-examined or under CPR Part 33.4 to call evidence to attack the credibly of the makers. No such applications were made. Accordingly, whilst these witnesses have not been cross-examined, the opportunity to do so was there, and their statements should be given due weight in all those circumstances.

4. One such statement is that of Donald Patterson who is a chartered accountant and a director of the third defendant which trades as PJE Chartered Accountants (PJE). At material times, PJE acted as the accountants and auditors of the company. During that time, Mr Patterson was also a director of the fourth defendant (Cyfri), which provided financial advice and is regulated by the FCA. The second statement is made by Gary Davies, who is a director of both companies and provides financial advice on behalf

of Cyfri. The third statement is made by Simon Longworth, a chartered accountant who was a director of and employed by PJE for about five years from April 2009. He was the designated auditor of the company. He assisted the company in the preparation of its year end accounts, abbreviated and full, and was responsible for the company's audit of the financial statements.

5. Although PJE and Cyfri had common directors and shareholders and shared offices, there was a division of services between the two companies. Mr Patterson and Mr Longworth provided accountancy services for PJE and are not qualified financial advisors. Mr Davies provides financial advisory services for Cyfri but is not a qualified accountant.

6. Suffolk Life did not take part in the hearing before me.

7. Before me the company was represented by Ms Seymour and Mr Pope was represented Mr Adams. Ms Cann represented herself. At the nub of the dispute is a fundamental disagreement as to the applicable law. Mr Adams submits that as the only directors and members at the time of transferring the freehold of the property out of the company in order to provide themselves with SIPPS, Mr Pope and Ms Cann were acting lawfully. Ms Seymour for the company submits that that ignores the separate legal identity of the company, and that Mr Pope and Ms Cann had duties to act in the best interests of the company which means taking into account the interests of future, as well as current, members.

Background

8. There is little factual dispute between the company, Mr Pope and Ms Cann as to the background. Upon incorporation, the volunteers began to receive wages, typically the minimum wage. Furniture and other items were donated to the company, renovated by staff, and then sold. Accordingly, the biggest expense of the company was the wage bill.

9. Prior to 2006, the company carried on business from old stables in a back street of the town. In 2003 the company acquired the property which then comprised a derelict railway platform at Aberystwyth Railway Station and adjoining waste land. The purchase price was £50,000, £40,000 of which was raised by mortgage advance and the balance out of company funds. The company employed professionals to design an ecologically sustainable building. It was this aspect of the redevelopment that attracted public funding, and included special glazing to keep the property warm in winter and cool in the summer, and a wood chip boiler. Just under £2.7 million was raised for the design and build from public bodies such as the Welsh European Funds Office (WEFO), the local authority and others. The company moved into the new building in 2006, by which time the number of directors had reduced to three. The third director and member resigned in 2009.

10. By the autumn of 2010 the business of the company had grown significantly. In the last four years turnover had more than doubled to £325,000 and a small loss had been turned into a profit of around £80,000 after accounting adjustments. However, about £15,000 of that profit came from hiring out rooms to the local education authority. This resulted in a liability to corporation tax of up to £20,000. The company was by then employing around 10 people, but there was no pension scheme in place.

11. Mr Pope had undergone some accountancy training after leaving university and then worked in local government finance departments for several years and then had various jobs before starting to work in what became the company's business. By October 2010, he and Ms Cann, then aged 61 and 52 respectively, had been considering succession planning for some months.

12. In that month he emailed Mr Longworth about succession planning, and stated that he and Ms Cann were the only directors and members of the company, which would disappear without them. The email included the following:

> "We were wondering if we need to start thinking about succession planning, and in particular ways of ensuring that staff, or at least those with a long history of involvement , have [their] interests safeguarded, perhaps financially. We would be quite willing to pay for some consultation and advice on this."

13. Mr Longworth took the view that this request was more within the remit of Mr Patterson as senior partner and asked him to consider the request, who agreed, and arranged to meet Mr Pope and Ms Cann later that month. Mr Patterson took notes of the meeting, and says in his witness statement that it was clear to him from his notes that the tone of the meeting was to secure proper succession, to reinforce the not-for-profit ethos of the company and to treat staff and directors fairly.

14. At the meeting there was discussion under nine topics, including valuation of the property, existing salary structures and succession planning. The property was still being shown in the balance sheet at its historical cost of around £2.5 million. The creditors showed a liability of about the same amount reflecting potential clawback of funding, including by WEFO. Mr Patterson suggested it was sensible to obtain a valuation of the property in order to decide whether the historical cost basis remained appropriate and to obtain confirmation from WEFO that the clawback period had expired. If so, then these creditors could be written off.

15. Corporation tax was also discussed and Mr Patterson pointed out that renumeration for staff and directors would be allowable deductions if commercially viable. On being informed that no pension provision was in place, Mr Patterson took the view that to provide pensions by monthly contributions would, in the case of the directors, frustrate the succession planning. However, such a scheme would be practical for the staff.

16. Wages were also discussed. By then Mr Pope and Ms Cann were each in receipt of a salary of £25,000 per year. They accept that until their discussion with Mr Patterson they had thought that that was reasonable remuneration. However, Mr Patterson recalls that they raised the issue of reasonable wages for directors and staff. He responded that the directors could seek a comparison and suggested that middle management in local government commonly received £40,000 to £45,000 per years with a pension of up to 50% of final salary depending on years of service.

17. After the meeting, Mr Pope supplied him with a copy of the company's memorandum and articles of association which he considered. Clause 4.2 of the former empowers the company to establish maintain or join a pension scheme. Clause 5 provides that the company's income should be directed solely towards the promotion of its objects

and should not be paid to members…"except by payment in good faith and proper wages, bonuses…return for any services actually rendered to the company." Clause 53 of the articles, dealing with renumeration of directors, provides that any renumeration should only be in respect of services rendered to the company subject to clause 5 above, including the payment of fair and proper wages and bonuses in the case of management committee members. He took the view that those provisions allowed the company to pay its directors fair and proper wages including pensions in return for their work as directors.

18. He met them again in December 2012 when the focus was upon renumeration and pensions. Again, he took notes in which he recorded calculations in respect of each director in comparison to local government managers. These show that by the age of 65 Ms Cann would have completed 22 years' service giving rise to 30% of final salary requiring a pension fund of £300,000. The comparable figures for Mr Pope were 22 years' service meaning 25% of final salary requiring a pension fund of £220,000. Mr Patterson suggested that the company should consider this level of pension as "fair and proper," and that is a phrase recorded in his notes. However, in his witness statement he says that he did not recommend that the company should make payments at this level. He was merely offering a comparison and it was up to the directors to determine their level of renumeration including pension.

19. He realised that a total pension fund of £520,000 appeared "unaffordable" from the company's then cash resources, which he calculated at about £100,000, unless profits increased significantly in future years. It seemed to him that for such provision the company would need to consider using the property which was its main asset. He recommended that advice be taken from an authorised independent financial advisor and suggested Mr Davies.

20. At the end of January 2011 a valuation report was obtained on the property which valued it at £875,000, with a rental value of £70,000 per year. That is not a valuation which Mr Patterson knew of when he met the directors in 2010. Mr Pope and Ms Cann say that the low valuation, compared to the cost of the design and build, came as a surprise to them. It would mean that if the property was to be used for the level of pension provision for the directors which he had discussed with them, then most if not all of the value would be needed.

21. Mr Patterson introduced Mr Davies to the two directors at a meeting between the four on 17 March 2011. Mr Davies in his witness statement says that he understood that Mr Patterson had had discussions with the company about director and staff renumeration and was introducing the two directors to him as they required regulated financial advice in respect of their personal pension arrangements He understood that it had already been determined that the company would make contributions to these pensions, including an element for perceived past underpayment, by using the property. He said that at the meeting, the directors wanted to discuss the structure of the scheme and how the property could be used in it.

22. Mr Davies explained about SIPPs. He said that it would not be possible for SIPPs to receive parts of the property directly by way of in-specie pension contributions as originally envisaged, and that such an arrangement would not attract tax relief. He said that once the SIPPs had received contributions from the company, the pension fund could be used to purchase the property at market value which would achieve the

objective of Mr Pope and Ms Cann that the property would be owned as part of the SIPPs. He also explained the then current statutory limits on pension contributions. He did not regard himself as advising the company, but as advising Mr Pope and Ms Cann on their own personal affairs and says that they were keen to maximise the pension contributions which the company could afford to pay. He asked them whether they would like to pay his fees directly, or out of their SIPPs and they both confirmed the latter.

23. He produced spreadsheet illustrations showing a pension fund value for the two of them over an 11 year period. This was based upon the recently obtained property and rental valuation and upon rental income being used to make pension contributions. One illustration was calculated on contributions of £50,000 made for each of the two directors in each of the 11 years. The pension fund value in each case (excluding fund growth and charges) was shown in year 11 as £815,023. The other illustration was on the basis of £150,000 for each director in the first year and no further contributions in year 10 or 11 and that produced a value of £865,866 each in the latter year.

24. He says that he did not give to Mr Pope and Ms Cann any advice as to how much it would be lawful or reasonable for the company to pay by way of such contributions or for the contributions to reflect previous under renumeration. As it was then too late to arrange the SIPPs for the current tax year about to expire, Mr Davies suggested that the two directors may wish to arrange to receive contributions from the company into personal pensions which he could set up for them by 5 April 2011, in order to use up some of employer's contribution allowance for the tax year ending on that date. This could later be transferred into SIPPs. Thereafter, Mr Patterson's role was limited to dealing with the consent of the government funders of the purchase of the property to the proposal to use it for pension provision.

25. Shortly after that meeting Mr Pope and Ms Cann held a board meeting and Mr Pope took minutes. The minutes recorded that it was agreed to start SIPP schemes for the two of them "largely based on employer contributions." It was agreed to pay £50,000 in respect of each director by 5 April 2011. Those payments were in the event made out of the company's cash reserves. It was resolved to increase the renumeration for each of them from £25,000 to £40,000 per year. The latter figure was to be by way of salary and pension in proportions to be determined. There was also agreement to introduce a general staff scheme as soon as possible, although in the event nothing was done about that until some two years later.

26. There was reference to the commercial rent which the company would have to pay. Ms Cann made annotations on the minutes one of which was the rent would have to be reviewed by an independent valuer every "x years."

27. The minutes also contained the following:

> "A key feature of this scheme is that a SIPP can accept contributions of commercial property. The site and buildings owned outright by CRAFT and recently valued at £875,000 will be transferred in stages to the SIPPs over a 10-year period."

28. Mr Davies accepts that the minute is consistent with his recollection of the meeting which he had had with them, except insofar as it suggests that the property would be transferred in specie. He says that the 10 year period was arrived at simply by having regard to the then current annual contribution limit and the market value of the property, and that it was clear to him from his initial meeting that Mr Pope and Ms Cann were keen to transfer the property into their pensions in the shortest time period achievable. This ties in with an email to him dated 12 April 2011, in which Mr Pope indicated that his own financial advisor had told him that he could use any unused allowance from the previous three years and the new £50,000 limit and possibly at the old £255,000 limit. He continued:

> "If true, that would surely allow us to transfer most of the building now rather than having to spread it over 10 years?"

29. In a board meeting the same month Mr Pope and Ms Cann decided to pay pension contributions into SIPPs provided by the fifth and/ or sixth defendants, as recorded in the minutes "to the maximum permissible amounts of the necessary proportion" of the property.

30. As the funds to develop the property had been advanced by way of grant, there was concern that this may impact upon the plan to transfer the freehold of the property to the SIPPs.

31. By letter dated 25 October 2011, copied to Ms Cann, Mr Patterson and Mr Davies, Mr Pope wrote to WEFO to explain the plan. He said that this had "several important advantages" for the company, including that it would "provide proper remuneration and attract staff with realistic pensions." WEFO responded that it would have no further involvement in decision-making as it regarded the economic life of the project as at an end.

32. In November 2011 Mr Pope emailed Mr Patterson and Mr Davies (and copied in Ms Cann) saying this:

> "I am aware of time slipping by, and the imperative to get this started in the current tax year…
>
> Our feeling is that having taken your advice that the scheme is viable, falls within funders' rules, and having given the WEFO the opportunity to comment, we should now press ahead."

33. Mr Davies compiled a financial planning report dated 6 January 2012 for Mr Pope and Ms Cann, in which he pointed out that the company's memorandum articles of association provide that they should be remunerated commensurately with the public sector, and that their salaries barely achieved that, and that the lack of an employer pension provision put them at a "significant disadvantage."

34. In a board meeting in March 2012, the directors agreed to make employer's contributions of £288,000 for the two of them for the year 2011/12 in the form of payments of appropriate portions of the freehold of the property, funded by a £200,000 bank bridging loan until the end of June 2012. The advance was received on 28 March 2012 and on the same day the company paid £288,000 to Suffolk Life.

35. A local firm of solicitors, Morris & Bates, was instructed by Suffolk Life to deal with the property side of the scheme and one of its solicitors, Nia Jones-Steele had care and conduct of the instructions. Ms Cann recalls that the firm also acted for the company, but accepts that all dealings with the firm were left to Mr Pope. He accepted in cross-examination that no legal advice was sought in relation to whether the property should be used to fund the SIPPs. The directors signed a lease agreement with Suffolk Life on 27 June 2012.

36. On the 3 July 2012, the documents to deal with the property side of the scheme were executed, one of which was the lease by which the company demised the property to itself and its two directors as tenants. The amount of rent due under the lease increased as the freehold property was part by part transferred into the SIPPs. The second main document was a declaration of trust whereby the company declared that Suffolk Life acquired beneficial interests in the property in proportion to the contributions which were put into the SIPPs.

37. Further contributions were made by the company to each director in the sums of £50,000 in September and December 2012 and in March and June 2013. In April 2013 an updated valuation of the freehold of the property was obtained from the valuers as £600,000.

38. For the financial years ending 2011 and 2012, Mr Longworth had prepared company accounts by referring simply to the amounts of contributions which the company had paid to directors pensions. In June 2013, in preparing the accounts for the year ending the previous April, Mr Longworth had meetings with Mr Pope. By then, some of the beneficial interest in the property had been used to fund the SIPPs of the directors and the company had become liable to pay rent under the lease. This was dealt with in the draft accounts as follows:

> "As described in the pensions note, the property is being purchased by a SIPP in tranches and leased back to the company. Although legal ownership is being passed to the SIPP, the substance of ownership under a repairing lease is that CRAFT has all the risk and the majority of the reward of the property throughout the lease period. The property remains on the balance sheet of CRAFT, albeit as a changing status from freehold to leasehold."

39. The accounts were approved by the directors in November 2013. The pension section mistakenly referred to total contributions in the directors personal pension plans as £100,000 instead of £300,000, and this mistake was rectified in the year end accounts for 2014. In the accounts for 2013, note 5 stated that the value of the company's interest in the property had been reduced by the correct figure, namely £300,000.

40. By January 2014, 95% of the beneficial interest in the property had been transferred in the SIPPs, far earlier than the 10 year period originally envisaged. Only some £14,000 remained to be contributed in respect of each director so that there was a prospect of transferring the whole of the freehold of the property during that year. That possibility caused some concern about how the transfer of all the freehold in the property might appear. In January 2014, Mr Pope emailed Mr Longworth in which he said:

> "Thinking both of public presentation and how the transactions might appear to funders, it occurs to us that there might be virtue in deliberately retaining a minimal CRAFT ownership for the time being, to sit alongside the lease to safeguard CRAFT's position?"

41. There were further email exchanges between the two and on 29 January 2014 Mr Longworth responded that he thought he was close to an "accounting solution that works all round."

42. The following month, Ms Cann emailed Mr Pope saying that she was alarmed about the reduction of director's salaries and taking pension drawdown instead, as she thought that that was a suggestion that would be considered at a later date. Mr Pope replied that that was going to become a necessity unless sales got back to their old levels. He continued:

> "We are caught between falling sales and the need to find an extra £60,000 pa for rent. In round terms we need to make £7,500 per week, and sales have fallen to £6,000. £75,000 pa can only be saved by cutting directors' salaries completely."

43. In the same month, he emailed Mr Longworth on several matters, including the issue of how full ownership of the property in the pension funds should be presented in the accounts, saying that the directors aimed to have this presentation "to best advantage" and again suggested retaining a nominal interest or ensuring that the transfer "occurs post 31 March 2014." There was a meeting between the two, after which Mr Pope emailed Mr Davies and Morris & Bates saying "we would like to press ahead now as quickly as possible with the purchase of the remaining apprx 5% portion by the two SIPPs."

44. In July 2014 Mr Longworth sent draft accounts to both directors. On 31 July 2014, Mr Pope emailed him saying:

> "…we discussed a few months ago repercussions of public disclosure of the pension arrangements, and you were going to investigate the acceptability of having blander wording in these accounts. Is that still relevant?"

45. Mr Longworth replied, copying in Ms Cann, to the effect that although there was a degree of flexibility, the accounts were required to state the figure for renumeration of the directors. Mr Pope responded to leave the accounts as drafted. However Ms Cann's response by email included this:

> "I am really concerned about the effect this disclosure may have, within the community and at CRAFT. If it has to be done so be it but I just wonder if there is another way…[is] there room to reduce the information that's made public."

46. Mr Longworth replied that the renumeration to directors including pension contributions must be disclosed in the accounts. As for the property, he said that as a minimum the accounts must disclose "a sale and leaseback arrangement where the

substance over the form is ownership retained by CRAFT until 2027." He pointed out that it could be left at that or an explanation could be given, which was a matter for the directors and he would point out any non-compliance with legislation. Ms Cann responded that she was hoping for a "magic fix and there isn't one, so best leave as drafted."

47. In August 2014,the freehold of the property was transferred to Suffolk Life. Thereupon the amount of the rent became £60,000 per year. By then, £358,000 had been contributed by the company to the pensions of each of its directors over a four year period. No employee pension contributions were made by either of them. These payments represented almost the full value of the property and the company paid no further sums as pension contributions.

48. In April 2014 Mr Pope had identified four employees of the company who might become additional or replacement directors. These included Scott Thomas and his wife Sharon Thomas. In the autumn of 2014, training sessions were arranged for these four.

49. Mr Longworth sent draft accounts in November 2014 to the directors which repeated the wording of the 2013 accounts so far as the property was concerned, and corrected those accounts as to renumeration as well as indicating that the pension contributions for the year end March 2014 were £100,000. These were signed by Ms Cann has having been approved by the board in the following month.

50. At about this time, the local press found about the transfer of the property, the leaseback and the pension payments and adverse articles appeared in the papers. This caused staff and customers to ask what was happening. Despite Mr Pope trying to give reassurance, the four who were receiving training to become directors said they no longer wished to proceed. Sales were falling short of targets by about £1000 per week. This poor performance continued into the summer. However, Mr and Mrs Thomas were co-opted onto the board in June 2015.

51. The following month a budget statement was presented to a meeting of the four directors in which no provision for directors' salary was made for 2016/17. Ms Cann became unhappy with this situation and maintained that she did not agree to a full reduction of her salary or to take a drawdown of pension instead. After instructing solicitors and initiating grievance procedures she resigned as director in December 2015.

52. Mr Pope continued to be in control of the company's finances and to receive a salary until March 2016, when he ceased to work for the company. Thereafter Mrs Thomas began looking into issues concerning the lease and the pensions, and in the autumn of 2017 instructed solicitors to investigate further. Mr Pope resigned as director in December 2017. The claim form was filed in March 2019.

Issues of fact

53. As already indicated the factual issues which need to be resolved for determination of the dispute before me are relatively few and varied in terms of impact upon potential outcome. Before I deal in detail with these, I will make some general observations on the evidence of Mr Pope and Ms Cann in relation to such issues. At the crucial time,

the former was company secretary and responsible for finances. Having given the impression in pre-action correspondence and in her witness statement that she had little involvement in, or at times understanding of, the decisions leading to the transfer of the property, she accepted in cross-examination that although Mr Pope took the lead, he reported back to her and that the relevant decisions were made by the board in which she was involved. That, in any event, is shown by the contemporaneous documentation and in particular the emails and board minutes.

54. Unsurprisingly, each of these witnesses had some difficulty in recollecting details of meetings and conversations going back to over 10 years ago, and in several instances was corrected by reference and deferred to the contemporaneous documentation. The demeanour of these witnesses in giving evidence in such circumstances is only one indication of what occurred, and a limited one at that. In so far as it goes, the impression I gained was that Mr Pope was somewhat argumentative and did not always give answers in a straightforward way. Ms Cann was more straightforward, but did not have the same grasp of detail as Mr Pope and came across at times as confused about such detail. It was clear to me that he did take the lead as between the two of them in the pension arrangements.

55. The claimant's case that each acted dishonestly and fraudulently upon the company in such arrangements was put clearly to each of them by Ms Seymour and indignantly denied by each. I shall return to this issue in due course, when all relevant matters and not just demeanour will have to be taken into account in deciding whether that is an appropriate finding. In terms of the factual issues, however, I did not get the impression that either of these witnesses were setting out to mislead the court.

56. The first issue is whether any of the decisions in question were taken by the two of them as members and not just as directors. The contemporaneous documents and the witnesses statements of Mr Pope and Ms Cann focus upon their roles as directors. However, in his statement, Mr Pope says that they had been advised, prior to the pension process, that due to the company then having only two directors and members that there was no need to hold formal board meetings. The two worked together in the same room, and often made day to day decisions whilst sitting at their desks. He said that they always spoke about what they were each doing. He kept a running record of decisions made as directors, but for the more important decisions he would prepare more detailed minutes.

57. In my judgment, in those circumstances it is somewhat unrealistic to expect a clear demarcation between decisions as directors on the one hand and as members on the other. It is likely that they did not always keep in mind this demarcation. However, in my judgment it is likely that in respect of the pensions arrangements there was sufficient engagement with them as members.

58. The second issue is to what extent Ms Cann was involved in the pension process, and in particular with some of the pension payments and with the lease. As noted above, Ms Cann's position on this has been inconsistent. However, ultimately she agreed with Mr Pope that she was involved.

59. The third issue is whether from the outset of the process the plan was for rental from the lease to be in lieu of salaries, as Mr Pope contends, or whether there was no such agreement, as Ms Cann contends. In cross-examination she says that she would not

have agreed to this at the time because her two children were in or about to go to university and she was the main breadwinner. That part of her evidence came across vividly. Moreover, Mr Pope's response to her when she raised this and said she thought it was something that might be discussed later, tends to suggest that that was the case.

60. However, in a note headed "Pension points August 2015" Ms Cann says that when it emerged that the company had to pay rent she was "appalled and felt physically sick." It was put to her in cross-examination that that note suggests that the fact that the company had to pay rent only emerged in 2015. She was not able to say why she felt appalled and physically sick, but maintained that this happened much earlier in 2011. In my judgment the description of how she felt, which on one view gives some support to the company's case, also comes across vividly. Some support for her recollection of when that occurred is given by the evidence of Mr Davies and her note on the board minutes in 2011 in respect of the rent, although there are other inconsistent indications in the documentation. In my judgment it is likely that Ms Cann's oral evidence on these points is accurate and I accept that evidence.

61. Fourth, was their decision to transfer the property to benefit Mr Pope and Ms Cann, as he contends, or a general pension fund for directors, as she contends, or did contend in her pre-action protocol response, drafted by solicitors. The response went on to say that in short the arrangements with Suffolk Life were far wider than the "very narrow (and rather sinister) interpretation" that the claimant was putting upon them. However, in my judgment it is clear from the evidence and notes of the professionals referred to above, that although the initial inquiry may have been made on a general basis, they proceeded on the basis of making provision specifically for Mr Pope and Ms Cann.

62. Fifth, is to what extent if any the two of them were underpaid so as to justify the "perceived element of past underpayment" in the words of Mr Davies. In cross-examination, each accepted that he or she did not carry out the exercise of calculating what such underpayment may have been. In my judgment it likely that there was some element of underpayment for a year or two prior to Mr Patterson's involvement, but it is unlikely this stretched back more than four or five years when there were two other directors and when the company was still operating from the old stables.

63. Sixth, is the financial position of the company before and after the transfer of the property and the lease back. Ms Seymour submits that beforehand the company was making modest profits and had the property as its valuable main asset. The grant income had come to an end. By the transfer, it lost that asset and became liable for £60,000 per year rent. The lease prevented sub-letting or parting with possession of a part of the premises and so the hiring out of rooms which had previously been done could not continue, at least not without the risk of forfeiture or legal redress.

64. In my judgment that is a broadly accurate summary. There are two pieces of telling evidence. The first is that Mr Patterson realised that the pension provision which he had in mind was "unaffordable" on the basis of the company's then cash reserves and profit level. The second is Mr Pope's response to Ms Cann's alarm about cutting salaries to the effect that the need to find an "extra" £60,000 per year together with falling sales necessitated cutting director's salaries "completely." On the other hand, it

is clear that after their departure, the company traded successfully until being required to stop trading because of Covid-19 restrictions in March 2020.

65. Seventh, is whether Mr Pope and Ms Cann "effectively and double-handedly established a flourishing business" as claimed by Mr Adams in his skeleton argument. I accept that the contribution from each to the success of the company was significant, but to attribute the success just to the two of them is to overstate the case. As indicated above, there were four directors until 2005 and three until 2009.

66. The final issue of fact is when Mr and Mrs Thomas each found out about the property transfer and leaseback. Both say that after reading the newspaper article at the beginning of 2015, there was some turmoil amongst the staff and concern that Mr Pope and Ms Cann were not there to deal with it. They say they later had discussions with Mr Pope who said that there had been no wrongdoing and they believed him. It was only after Ms Cann left in 2015 that Mrs Thomas says that she had access to her laptop and saw emails about the property and began investigating more documents. She did not raise any concerns with Mr Pope until after he also left. In 2017 she sent documentation to the company solicitor and asked whether the property transfer and pension contributions amounted to misappropriation of assets, saying that they had waited so long to have the matter investigated.

67. Mr Pope accepts that he told staff in 2015 that nothing improper had occurred and maintained that this was true. However, he and Ms Cann say that they informed Mr and Mrs Thomas of the detail of the transactions at a meeting in 2014. Mr Pope in cross-examination said that he explained the pension arrangements but could not remember the detail. He accepted that he may not have said in terms that the whole of the beneficial interest in the property would be used for pension contributions. When he was asked whether he made it clear that the contributions were in respect of himself and Ms Cann only, he replied "clearly not clear enough." He also said that later on, sometime in 2015, he told the staff about the property transfer, and added that it was "standard knowledge." However later on in his oral evidence he said that he didn't know that he did tell staff and so could not say what he did say.

68. Ms Cann said in cross-examination that she remembers the meeting with Mr and Mrs Thomas about the pensions clearly. She thinks she took a note of the meeting, but left these in the company office and finds it odd that they cannot now be found. She said that the account which Mr Pope gave to them was "quite detailed" although she added as a company "you don't have to expose yourself to all and sundry" and that the amount of information given was reasonable.

69. It is clear from their emails to Mr Longworth that Mr Pope and Ms Cann were concerned about the amount of information concerning their pensions being made available in the accounts. The arrangement was on any view a complex one. It is likely that the meeting with Mr and Mrs Thomas lasted for substantially longer than the 5 minutes they recall. However, in my judgment it is likely that only a limited explanation about the pension arrangement was given to them, and later to the staff. In particular it was not made clear that the whole of the beneficial interest in the property was to be used to provide the pensions or that these were for Mr Pope and Ms Cann only.

Issues of law

70. I turn now to the legal issues. The focus of Mr Adams submission was that Mr Pope and Ms Cann as the only directors and members at the time of the transfer of the property could lawfully agree to that course. The company is limited by guarantee and there are no shareholders. It is not suggested that at that time the company was insolvent. Accordingly Mr Adams submits that the question of whether as directors they acted in breach of their duties under the 2006 Act or at common law to act in good faith in the interest of the company does not arise.

71. He relies on section 39(1) of the 2006 Act which provides that the validity of any act done by a company shall not be called in to question on the ground of lack of capacity by reason of anything in the company's constitution. Section 40(1) provides that in favour of a person dealing with the company in good faith, the power of the director to bind the company, or to authorise others to do so, is deemed to be free of any limitation under the company's constitution. Subsection (5) provides that the section does not affect any liability incurred by the directors by reason of the directors' exceeding their powers.

72. I was referred to several authorities on this submission. It should be borne in mind that many of them are in the context of liquidation or where there are shareholders other than the directors making the challenged decision. One decision which involved a company limited by guarantee and without a share capital is *Gaiman v National Association for Mental Health* [1971] 1 Ch 317, where the defendant, referred to in the judgment as the association was such a company. Megarry J, as he then was, said this at 330H:

> "The association is, of course, an artificial legal entity. And it is not very easy to determine what is in the best interest of the association without paying due regard to the members of the association. The interests of some particular section or sections of the association cannot be equated with those of the association, and I would accept the interests of both present and future members of the association, as a whole, as being a helpful expression of a human equivalent: see Palmer's Company Law, 21st ed. (1968), p. 531, and for a possible alternative expression see Greenhalgh v. Arderne Cinemas Ltd. [1951] Ch 286, 291."

73. The alternative expression therein referred to was that of Evershed MR, who considered that the phrase "the company as a whole" did not, at least in that case, mean the company as a commercial entity distinct from the corporators, but meant the corporators as a general body, so that the case may be taken of "an individual hypothetical member" and whether the proposal was for that person's benefit.

74. Mr Adams submits that if a company is solvent then it is bound by any lawful transaction with the unanimous agreement of its members. He relies upon the Court of Appeal decision in *In re George Newman & Co.* [1895] 1Ch 674 at 686, where the judgment of the court was that directors have no right to be paid for the services or to receive presents from company assets unless authorised to do so by the instrument which regulates the company or by the shareholders at a properly convened meeting. If the company is a going concern, the majority could bind the minority.

75. A company is bound in a matter which is intra vires the company by the unanimous agreement of its members. In *Saloman v Saloman & Co Ltd* [1897] AC 22, the House of Lords considered whether a company had been properly formed in accordance with the provisions of the Companies Act 1862. The company had then purchased a business. Lord Davey at 27 said:

> " I think it an inevitable inference from the circumstances of the case that every member of the company assented to the purchase, and the company is bound in a matter intra vires by the unanimous agreement of its members."

76. In *In re Horsley & Weight Ltd* [1982] Ch 442 the Court of Appeal considered whether the only two shareholders could agree to the payment of a pension to a retiring director in such a way as to bind the liquidator. After citing Lord Davey in *Saloman,* Buckley LJ giving the lead judgment said of the shareholders at 454D:

> "They both initialled the proposal form and they both signed the cheques for the premiums. Their good faith has not been impugned, nor, in my view, does the evidence support any suggestion that in effecting the policy they did not honestly apply their minds to the question of whether it was a fair and proper thing for the company to do in the light of the company's financial state as known to them at the time. In my judgment, their assent made the transaction binding on the company and unassailable by the liquidator."

77. Earlier in his judgment, Buckley LJ had considered the question of what is within the powers of a company, and said this at 488D:

> "The Companies Act 1948, section 2, requires the memorandum of association of a company incorporated under the Act to state the objects of the company. A company has no capacity to pursue any objects outside those which are so stated. It does not follow, however, that any act which is not expressly authorised by the memorandum is ultra vires the company. Anything reasonably incidental to the attainment or pursuit of any of the express objects of the company will, unless expressly prohibited, be within the implied powers of the company. It has now long been a common practice to set out in memoranda of association a great number and variety of "objects," so called, some of which (for example, to borrow money, to promote the company's interests by advertising its products or services, or to do acts or things conducive or incidental to the company's objects) are by their very nature incapable of standing as independent objects which can be pursued in isolation as the sole activity of the company. Such "objects" must, by reason of their very nature, be interpreted merely as powers incidental to the true objects of the company and must be so treated notwithstanding the presence of a separate objects clause…"

78. In *Multinational Gas and Petrochemical Co v Multinational Gas and Petrochemical Services Ltd and Others* [1983] 1 Ch 259, the Court of Appeal considered applications by a company to serve writs out of the jurisdiction on its foreign shareholders and directors alleging negligence against them. Lawton LJ, referring to the *Saloman* and *Horsey & Weight Ltd* line of authorities said this at 269A:

> "In my judgment these cases establish the following relevant principles of law: first, that the plaintiff was at law a different legal person from the…shareholders and was not their agent: see the Salomon case…per Lord Macnaughten at p. 51. Secondly, that the…shareholders were not liable to anyone except to the extent and the manner provided by the Companies Act 1948: see the same case at the same page. Thirdly, that when the [shareholders] acting together required the plaintiff's directors to make decisions or approve what had already been done, what they did or approved became the plaintiff's acts and were binding on it…"

79. Dillon LJ, the other member of the majority, said this at 288D:

> "The heart of the matter is therefore that certain commercial decisions which were not ultra vires the plaintiff were made honestly, not merely by the directors but by all the shareholders of the plaintiff at a time when the plaintiff was solvent. I do not see how there can be any complaint of that."

80. Moreover, Mr Adams submits that the decision in respect of the pension arrangements for Mr Pope and Ms Cann can be attributed to the company. That principle was considered by the Supreme Court in *Bilta (UK) Ltd (in liquidation and others v Nazir and others (No 2)* [2015] UKSC 23 in the context of whether fraud on the part of directors could be attributed to the company for the purposes of the rule of public policy that the court will not lend its aid to a party who founds their cause of action on an immoral or illegal act.

81. The Supreme Court held that in most cases such attribution could be put on the basis of the rules of the law of agency, but the key to any question of attribution was to be found in considerations of context and the purpose for which the attribution was relevant. Lord Mance at paragraph 42 said that in the context of duties owed by directors to the company, the acts, knowledge and state of mind of the company must be separated from those of the director, even where the latter is the directing mind and will of the company or the sole shareholder of a company in or facing insolvency. He continued:

> "Any other conclusion would ignore the separate legal identity of the company, empty the concept of duty of content and enable the company's affairs to be conducted in fraud of creditors."

82. Lord Sumption at paragraph 89 referred to the fiduciary duties owed by a director to the company and continued:

> "It would be a remarkable paradox if the mere breach of those duties by doing an illegal act adverse to the company's interest was enough to make the duty unenforceable at the suit of the company to which it is owed."

83. Lord Neuberger, with whom Lord Clarke and Lord Carnwath agreed, referred to that passage amongst others of the judgment of Lord Sumption, and observed that Lords Toulson and Hodge effectively were saying the same thing. He thought that the principle could be stated as follows:

> "Where a company has been the victim of wrongdoing by its directors, or of which the directors had notice, then the wrongdoing, or knowledge cannot be attributed to the company as a defence to a claim brought by the liquidator, in the name of the company and/or on behalf of the creditors, for the loss suffered by the company as a result of the wrongdoing, even where the directors were the only directors and shareholders of the company, and even though the wrongdoing or knowledge of the directors may be attributed to the company in many other types of proceeding."

84. It is true that the present claim is not one brought by a liquidator or on behalf of creditors and that there are no shareholdings, but the claim is one which falls within Lord Neuberger's second alternative as brought in the name of the company. The question is whether in those circumstances the principle of attribution applies.

85. Lord Toulson at paragraph 187 referred to the non-statutory "consent principle," that shareholders who have a right to vote may by unanimous agreement bind the company in a matter in which they had power to do so by passing a resolution at a general meeting (*In re Duomatic Ltd* [1969] 2 Ch 365).

86. However, this principle does not apply if a decision is invalid because it is a fraud or ultra vires. See Palmer's Company Law at 7.446:

> "The Duomatic principle does not permit shareholders to do informally what they could not have done formally by a resolution. It follows that it cannot be used to ratify any act which is ultra vires the company, such as an unlawful payment of dividends, or the exercise of powers for an improper purpose."

Discussion

87. Dealing first with Mr Adam's reliance on the *Saloman* line of authorities, in my judgment it is clear from the extracts set out above that regard must be had to the issue of vires. That is so notwithstanding section 39 of the 2006 Act, which in my judgment is directed to capacity rather than vires. Moreover section 62 of the 2006 Act provides that a company is entitled to omit the word "Limited" from its title, as the company does, providing the requirements therein set out are met, namely that its objects are charitable; its articles require its income to be applied in promoting its objects; and its articles prohibited the payment of dividends. By the following

section, such a company must not amend its articles so that it ceases to comply with the conditions for exemption and commits a criminal offence if it does so. As Ms Seymour submits, the entitlement to not use 'Limited' is a sign to the public that the company is not for profit, in other words that it cannot distribute its assets. It suggests that the directors cannot ignore any prohibition against distribution in its memorandum and articles of association.

88. As for attribution, in my judgment it is clear from the passages cited above from the judgments in *Bilta*, that in deciding whether the principle applies in a claim by a company against its directors, regard is to be had to any wrongdoing on the part of the latter.

89. Accordingly, I turn to consider the questions of vires and wrongdoing. Mr Adams submits that the pleaded case of the company in respect of the latter is inadequate, but I do not accept that submission.

90. In my judgment, the establishment of SIPPs for Mr Pope and Ms Cann using the whole of the beneficial equity in the property, does not constitute the establishment maintenance or joining of a pension scheme by the company within the meaning of clause 4.2 of the memorandum, and the contrary was not seriously argued. Moreover, it is clear that the scheme went well beyond the payment of proper wages within clause 5, or reasonable and proper wages within clause 53 of the articles. Even if the payment of sums by way of wages or pension contributions to make up for "previous underpayments" comes within those powers, and that in my judgment is questionable given that that is what the directors had agreed at the time to pay and be paid, then it is clear that no attempt was made to work out the amount of such underpayments. What was paid was determined by reference to what could be paid, not by what should be paid. In my judgment it follows that it cannot be said that the payments were proper, reasonable or in good faith. It follows that the payments were ultra vires and the *Saloman* line of authorities does not apply.

91. It is not in dispute that the memorandum and articles of association provided a power of amendment to remove the restriction of distribution to members at clauses 5 and 9 and a power to amend the articles of at article 62. Mr Adams submits that Mr Pope and Ms Cann could have used this power. The short answer is that they did not do so. In *Imperial Hydropathic Hotel Company Blackpool v Hampson* (1882) 23 ChD 1 Cotton LJ said:

> "Now in my opinion it is an entire fallacy to say that because there is power to alter the regulations, you can by a resolution which might alter the regulations, do that which is contrary to the regulations as they stand in a particular and individual case."

92. I therefore turn to consider whether in making these payments the directors were in breach of their duties under sections 171 to 177 of the 2006 Act and their fiduciary duty to act in the best in interest of the company. The most relevant of the statutory duties in the present case are the duty to act within the powers of the company (section 171), to promote the success of the company (section 172), to act with reasonable care skill and diligence (section 174), and to avoid conflicts of interest (section 175).

93. It follows from what I have said already that in my judgment the directors in putting into effect the schemes did not act within the powers of the company. Moreover by using the main asset of the company for the schemes and exposing the company to the payment of rent without being able to hire out rooms amounted to a failure to promote the success of the company. In my judgment this foreseeably jeopardised the success of the company, as can be seen in the event from the perceived need to cut directors salaries in 2015. The fact that Ms Cann felt appalled and physically sick when learning of the rental situation is telling in this regard. By taking these steps without computing the amount of previous underpayments, they failed to exercise due diligence, but instead put themselves in a position of conflict with the company. When all these factors are taken into account, in my judgment they were also in breach of their fiduciary duties to the company.

Dishonesty

94. Dishonesty is not a required ingredient of any of the foregoing conclusions, but Ms Seymour pursues this allegation against Mr Pope and Ms Cann, because a finding that one or both of them acted dishonestly in the setting up of his or her SIPP may impact upon points of limitation and indemnity taken by Mr Adams.

95. The test for dishonesty was set out by the Supreme Court in *Ivey v Genting Casinos Limited* [2017] UKSC 67 in approving the law as stated by Lord Hoffman in *Barlow Clowes International Ltd v Eurotrust International Ltd* [2005] UKPC 37:

> "Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree."

96. Ms Seymour relies on many factors as proof of dishonesty. Neither Mr Pope or Ms Cann owned any part of the company, the objects of which, as set in the memorandum and articles of association, are quasi-charitable. On winding up the assets are not paid to members but to promote similar objectives. It is a not-for profit organisation. The property had been developed with public money. The effect of its transfer of was to deprive the company of its main asset and to impose upon it an obligation to pay rent. Mr Pope's letter to WEFO was misleading, in that it referred to the retention and attraction of staff as a benefit of the transfer, when only he and Ms Cann received any benefit from the transfer and no other staff did. They did so over a period of about three years rather than ten years originally envisaged and it is clear from the contemporaneous documentation that they wanted to transfer the whole of the property to themselves as quickly as was consistent with their own tax advantage. This resulted in employer's pension contributions to each in identical amounts at identical dates of up to 450% of their salaries, which represented the whole of the value of the property after which no further payments were made. The board minutes describe such contributions as "the maximum permitted" which referred to their personal allowances, and no decisions were made as to the appropriate level of remuneration.

97. It is perhaps not surprising in those circumstances that Mr Pope and Ms Cann sought to restrict the amount of information in relation to these matters in the company's public accounts. As they accept, after the adverse report in the local press they considered disciplining a member of staff for talking about their pensions and paying off another member with more than the statutory entitlement of redundancy pay in return for a confidentiality clause. I have already made findings that they did not give full details of the transactions to Mr and Mrs Thomas or to the staff. Mr Pope at the time identified the risks arising from an investigation of the matter as including his being forced to resign, the collapse of the company and being obliged to return the sums put into his SIPP.

98. All of these matters, submits Ms Seymour, show dishonesty. Although not a pleaded particular of dishonesty, she also seeks to rely upon a letter which Mr Pope wrote to the local authority in 2013 seeking rates relief on the basis that the company was a not for profit company which made "no financial distribution to any outside organisation or individual." When this was put to him in cross-examination, he replied that no-one would think that meant that no pension contributions were being paid in respect of directors.

99. I accept that even without that letter, the other factors relied upon amount to a strong indication of dishonesty. If that letter is taken into account then the indication becomes a little stronger, although I do not accept that it is as strong as Ms Seymour submits for the reason identified by Mr Pope.

100. However, these factors must be set in context. Mr Pope and Ms Cann had worked for many years for the company on what on any view were very modest wages at best and no pension provision. As I have already found, the contribution of each of them to the success of the company was significant. I accept also that their approach to Mr Longworth in 2010 was motivated by genuine concerns on the part of each of them as to what would happen to the company after they retired. That is what the contemporaneous documentation shows and is given some support from the professionals approached. Moreover, such concern came across when each gave their oral evidence. The clear impression I gained is that each had a genuine affection for the company and its ethos.

101. The professionals approached included the company accountant, his senior partner and a financial advisor. What was not obtained was legal advice as to what should be done, rather than what could be done. Although solicitors became involved, their input was limited to the legal procedures necessary to implement the transactions and not to give advice to the company or to its directors. However, I gained the strong impression when Mr Pope and Ms Cann gave oral evidence that each believed that the professional advice sought was sufficient.

102. What happened then, in my judgment, was that each became beguiled by three main factors. The first was Mr Patterson's indication that they had been underpaid for some time. The second was Mr Davies's advice as to what could be done by way of pension. The third was Mr Longworth's indication in his draft and finalised accounts that the "substance of ownership" of the property was such that it remained in the company's accounts albeit changing from leasehold to freehold.

103. It is clear that Mr Pope and Ms Cann each sought to limit the amount of information about these matters as set out above. However, even if the transactions were lawful and honest, there was clearly a risk that they would cause a great deal of dissatisfaction amongst staff or the wider community. Whilst Ms Cann's admission that she felt physically sick may be taken to show that she knew what was happening was wrong, the fact of the admission may also be taken as showing that she was giving honest evidence in saying that she believed she had been reassured by the professionals. That is how this part of her evidence came across.

104. In my judgment, the fact that each was beguiled in the ways set out above meant that each took their eyes off the interests of the company and focussed instead upon their own interests, as that was the focus of the professionals whom thy consulted. Hence they fell into the breaches of duty set out above. In my judgment, however, applying the ordinary standard of dishonesty, the state of mind of each, when looked at objectively, falls short of the mark.

Limitation

105. Mr Adams refers to the provisions of the Limitation Act 1980 as barring any relief sought in respect of the causes of action which arose more than six years before the claim was issued. Ms Seymour relies on section 21(1)(b) of that Act in response, amongst other points. That provides that no period of limitation prescribed by the Act shall apply to an action by a beneficiary under a trust, being an action "to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use."

106. In *Burnden Holdings (UK) Ltd v Fielding* [2018] UKSC 14, the Supreme Court held that that subsection was applicable by analogy to company directors, who were entrusted with the stewardship of the company's property and owed fiduciary duties to the company, as beneficiary of the trust, in respect of that stewardship and did not become inapplicable merely because the misappropriated property had remained legally and beneficially owned by corporate vehicles, rather than having become vested in law or in equity in the defaulting directors. In the result, the directors' participation in that case in unlawful distribution from which they stood to derive economic benefit amounted to a conversion of the shareholding to their own use within the meaning of section 21(1)(b) and so the limitation defence failed.

107. In my judgment, that reasoning applies to the facts of the present case. Mr Pope and Ms Cann have derived economic benefit from the transfer of the property which amounts to conversion of it to their own use and no period of limitation applies.

Relief from liability

108. Finally, it is submitted that Mr Pope and Ms Cann acted honestly and reasonably in the transaction to set up their SIPPs, and having regard to all the circumstances of the case ought fairly to be excused under section 1157(1) of the 2006 Act. That provides so far as material:

> "If in proceedings for negligence, default, breach of duty or breach of trust against an officer of a company…it appears to the court hearing the case that the officer or person is or may be

> liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit."

109. I have already found that although Mr Pope and Ms Cann may have acted honestly, they did not act reasonably. Furthermore, having regard to all the facts of the case, and in particular those summarised in paragraph 96 above, in my judgment they ought not fairly to be excused.

Disposal

110. By the time of closing submissions, it became clear, and agreed by counsel, that the issue of what relief the company is entitled to in the event that the claim succeeded would have to be adjourned for a further hearing (in default of agreement), for two main reasons. The first is that Suffolk Life should be given an opportunity to make submissions on relief as that may impact upon them. The second was that no calculations have been carried out as to the precise losses to the company or to the extent to which, if at all, some of pension contributions may have been lawful.

111. The parties helpfully indicated that written submissions could be made on any consequential matters arising from this judgment which cannot be agreed. I invite them to attempt to agree a draft minute of order and draft directions for the relief hearing and to file those and any such written submissions within 14 days of hand down of this judgment. Any application for permission to appeal is adjourned for that period.