

Case No: LV18D81679

The Civil Justice Centre
Manchester

Friday, 25th November 2022

Before:
HIS HONOUR JUDGE BOOTH
Sitting as a Judge of the High Court pursuant to s9 SCA

B E T W E E N:

SHELLEY ROSE

and

DAVID MICHAEL ROSE,

and

CAROLE DAWBER and DAVID WAXMAN (trustees of the Cavendish Trust and the
Bamberworth Trust)

MISS HILLAS KC and MR CURRIE appeared on behalf of the Applicant
MR MONTALDO appeared on behalf of the First Respondent
The Second and Third Respondents did not attend and were not represented

APPROVED JUDGMENT

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court.

HHJ BOOTH:

1. This is my judgment in financial remedy proceedings brought by Shelley Rose whose Form A was issued on 20 January 2020. She has been represented by Miss Hillas KC and Mr Currie. The respondent, David Rose, has acted for himself but has been represented by Mr Montaldo on a direct access instruction basis.

The divorce

2. It was realised shortly before the final hearing that there is yet no decree nisi. Steps have been taken to remedy that. However, it has been accepted by both sides that I can decide the case and determine what the outcome should be, although it can only be effective once the decree nisi has been made and can only be enforced once the decree absolute has been made. Given the complexities in this case, I anticipate it may take some time to produce a final order in any event.

The difficulty in the case

3. The problem that this case throws up is how the court should deal with a respondent husband who has been dishonest throughout, has failed to comply with Court orders, has failed to provide relevant financial information and documentation, has flagrantly breached undertakings given to the Court, and who has given no encouragement to others with relevant information to assist the process. Indeed, an email has surfaced indicating that he was taking steps from many years ago to put assets beyond the reach of his wife. Because of his actions, I do not have a complete picture and I will have to consider how I should draw inferences and what inferences I should draw on the basis of the information that I do have. It is right to record this is one of the most flagrant breaches of the duty of full and frank disclosure that has come before the Courts.

The background

4. Let me set out a little bit of the background. Both parties are now aged 59. They married in February 1985 and separated in 2010, so I am dealing with a long marriage of 25 years. They have three children, two adults and one dependent child aged 16. The two younger children live with their mother at 26 Pinfold Court in Whitefield. The property is owned by an entity called the Bamberworth Trust. It forms part of the security for a debt owed to a company called Creativityetc Limited arising from a loan from Creativityetc Limited to two Cypriot companies beneficially owned by Mr Rose.
5. Mrs Rose has not worked during the marriage and is now in receipt of state benefits. Mr Rose describes himself in his Form E as a property consultant. Despite the parties separating in 2010, it was not until 2018 that Mrs Rose issued divorce proceedings. By then, Mr Rose's efforts to distance his wealth from access by Mrs Rose were well underway. He had, however, been paying £400 per week in voluntary maintenance payments to Mrs Rose, which went towards the cost of keeping their son. That stopped in February 2020, immediately following the issue of Form A, and he has paid nothing since.

The Trusts

6. Next, let me deal with two trusts. In 1999, a trust was set up known as David Rose Trust. Mr Rose was the trustee and the principal beneficiary. Mrs Rose and the children were beneficiaries. The property at Pinfold Court was placed into the trust. That property had originally been a home for Mr Rose's parents, but by 1997 had become the family home.
7. On the same date in 1999, a second trust was set up known as David's Trust. This trust held a commercial property situated in Peter Street, Manchester. The original documentation describes Mr Rose's mother as the settlor with Mr Rose and his mother as trustees and the children as beneficiaries. It was to be split into three parts: David's fund giving Mr Rose a

life interest; Shelly's fund giving Mrs Rose a life interest and the children's fund. The initial settlement was of half the interest in Peter Street and the other half was introduced into the trust in 2000.

8. The David Rose Trust changed its name to the Bamberworth Trust, and David's Trust changed its name to the Cavendish Trust, and those are the names by which I will refer to them throughout the rest of this judgment. It is part of Mr Rose's case that those trusts were never intended to benefit Mrs Rose and were, in any event, holding assets originating with his parents. Mr Rose has provided me with no documentation that supports his claims as to the origins of the property.
9. In 2002, Mr Rose gave up his interest in the Cavendish Trust for the benefit of his children. In 2003, Mr Rose entered into transactions to acquire the benefit of his sister's trust interests, interests that seemed to mirror his own and support the contention that the assets then in the trusts came from his parents.
10. In 2004, by a deed of appointment, Mr Rose attempted to terminate his life interest and any future life interest of Mrs Rose in the Bamberworth Trust. In 2004, the Cavendish Trust acquired a property at Hilltop in Hale, which was subsequently sold in 2013. In 2005, a property at Higher Lane, Stockport became an asset of the Bamberworth Trust.
11. In 2007, Mr Rose became estranged from his mother and his sister. Such was the extent of the fallout that litigation ensued which ran until 2012.
12. The solicitor acting for Mr Rose in that litigation was a man called Nick Henesey and he will feature in due course. In March 2007, by a deed of appointment, a friend of Mrs Rose's, Christine Timperley was appointed a trustee of both trusts. Shortly afterwards, Mr Rose's mother ceased to be a trustee of the Cavendish Trust and Mr Rose's friend, David Waxman, became a trustee. Bank statements have shown that by June 2010, the balance of the Cavendish Trust business account demonstrated a debt of £949,893.95. On 8 July 2010, £1.048 million was paid into that account via an international transfer. The source of that money remains unexplained.
13. It was most likely that in October 2010 the parties separated. Mrs Rose had begun a relationship with another man and Mr Rose left the family home. By 2011 it appears that the property in the Bamberworth Trust at that time may well have been Pinfold, a company called Bamberworth Limited and the property at Higher Lane. Bamberworth Limited year-end accounts on 30 September 2011 show the company having property assets worth £1.6 million and shareholder funds of £476,000. In May 2011, it appears that the assets in the Cavendish Trust consisted of the property Hilltop and the commercial property at Peter Street, Manchester.
14. In July 2011, Mr Rose, acting on behalf of the Bamberworth Trust trustees, took a loan from Christopher and Patricia Henesey for £150,000. Legal advice was given to the trustees by a firm of solicitors, but it is Mr Rose's case that this loan was arranged by Nick Henesey, who Mr Rose trusted implicitly, but that Nick Henesey had a plan to denude Mr Rose, caught him at a low ebb post-separation and that this loan from the Henesey family leads directly to the Creativityetc Limited debt that Mr Rose says has rendered him penniless.
15. By 2013, further money was being borrowed from the Heneseys with charges registered against Pinfold.
16. Documents have subsequently emerged because of third-party disclosure orders relating to various transactions in which Mr Rose was involved, and I will deal with these specifically when I deal with Mrs Rose's allegations of fraud. Put simply, it is Mrs Rose's case that by duping, for example, solicitors, Mr Rose was able to act on both sides of transactions, creating profit for himself from the sale of assets from within the trusts with that money spirited abroad to countries noted for their reluctance to investigate transactions and reluctant to provide

- information to others. Those include Switzerland, Cyprus and Gibraltar, where Mr Rose maintained bank accounts and/or companies in his beneficial ownership.
17. In November 2013, the sale of Hilltop occurred. It was sold by the trustees of the Cavendish Trust to a Cypriot company for £1.2 million and on the same day resold by the Cypriot company for £1.5 million to another company. Mr Rose was on both sides of the transaction and the £300,000 “profit” was retained by Mr Rose’s Cypriot company. £319,117 was paid by the conveyancing solicitor to a Swiss bank on behalf of the Cypriot company.
 18. In 2015, Mr and Mrs Rose obtained a Get.
 19. In 2015, Creativityetc Limited, the Henesey family vehicle, lent £240,000 jointly and severally to two Cypriot companies belonging to Mr Rose. The documentation appears to show that Mr Rose pledged all his assets as security for the loan, giving personal guarantees for the debts of the two companies, plus company debentures creating a floating charge over company assets and additionally charges over property at Bury Old Road and Lower Hillgate, properties owned respectively by each of the two Cypriot companies.
 20. Days later, Mr Rose and Mr Waxman granted Creativityetc Limited a legal mortgage over Hillgate, a trust property. Further loans were provided by Creativityetc Limited in February 2015. By May 2017, Creativityetc Limited were demanding repayment of the £240,000 loan. They got a judgment on 5 July 2021. One of the Cypriot companies was placed into liquidation.
 21. In the summer of 2017, there began a series of transactions of money being withdrawn from the Cavendish Trust management account, which looks like Mr Rose removing money to accounts of his own. Precisely where it was going is not necessarily recorded.
 22. In early 2018, there was activity ahead of a sale by the Cavendish Trust of the upper floors of Peter Street, Manchester. The sale proceeds were £1.6 million. A significant proportion of the proceeds are unaccounted for. £629,305 was paid to the Cavendish Trust on 29 August 2018, and it is said that £565,990 was paid to redeem a bridging loan that solicitors acting in the transaction say never was redeemed. It appears that over £700,000 was sent to accounts held by entities owned by Mr Rose and to foreign bank accounts in his name.
 23. By April 2018, Mr Rose had fallen out with his eldest adult child and wished to have her removed as a beneficiary, and he instructed solicitors. In April 2018, in the litigation concerning the debt to Creativityetc Limited, the firm’s solicitor, Christian Eagle, was sent documents by the receiver of one of the Cyprus companies and filed a statement in those proceedings, which included information that Mr Rose had benefited to the tune of £300,000 at the expense of the Cavendish Trust, of which he was a trustee and his wife was a beneficiary, and referred to an email sent by Mr Rose referring to Mr Rose concealing assets because of his divorce in these terms, “... held in a company name to conceal my identity as Nick reckoned it was safer for me getting divorced”. The Nick referred to is Nick Henesey.
 24. On 1 May 2018, instructions were given by the solicitors, who had acted in the sale of the Peter Street premises, for the bank to transfer the £629,305 to the Cavendish Trust. At the same time, Mr Rose was sending money abroad to accounts in his name via the Royal Bank of Scotland’s foreign payment service. That pattern of payments abroad continued. In July 2018, the Cavendish Trust received £300,000 from a firm of solicitors referenced “Lower Hillgate”. It is not clear, and Mr Rose has never explained, what this money represents. The day after that payment, the contract was entered into by Creativityetc Limited for them to purchase Lower Hillgate for £610,000. The company that appeared to own the property included as its directors Mr Rose’s girlfriend, Francine Elkinson.
 25. In a document dated 27 July 2018, the solicitors involved in the sale of Peter Street commercial property for £1.5 million recorded that the balance due to the Cavendish Trust after an RBS charge had been repaid was £889,266. The instruction from those solicitors was

- to pay the Cavendish Trust £590,648.
26. However, by August 2018, when Mrs Rose issued her divorce petition on the basis of five years' separation, the proceedings involving Creativityetc Limited had reached the stage of a compromise with a Tomlin order and Mr Rose was ordered to pay £200,000 into Court.
 27. In August 2018, Mr Rose sought advice from counsel about a proposed restructuring of the trusts to exclude Mrs Rose. He was advised that Mrs Rose could possibly seek to challenge her removal as a beneficiary in the event of divorce.
 28. Again, in August 2018, the solicitors who had acted on the sale of the Peter Street property were, on the instruction of Mr Rose as a trustee, transferring the proceeds of sale not to the trust but to a company owned by Mr Rose called Palador Properties Limited. The money went from Palador to a firm of Manchester solicitors who have amongst their clients Mr Rose's girlfriend's father, a Manchester businessman. At the end of the month, Palador paid £57,000 to a company owned by Mr Rose's girlfriend and her father, and the pattern of Palador transferring funds continued in early 2019 with the money not going to the Cavendish Trust but to Mr Rose or others associated with him.
 29. In October 2019, Mrs Rose emailed Mr Rose requesting an account of the Cavendish Trust. Mr Rose's response was to tell her that she was not entitled to that information and two months later Mrs Rose was removed as a beneficiary of the Cavendish Trust.
 30. In November and December 2019, Palador transferred funds representing the proceeds of sale of Peter Street to entities related to Mr Rose.
 31. In December 2019, a compromise agreement was reached by Mr Rose with Creativityetc Limited according to a statement provided by Mr Rose when he settled on a figure of £765,000 to be paid by 28 February 2020. He told Mrs Rose he had settled, and she told him she had an appointment with solicitors to deal with the matrimonial finances. That resulted in Mr Rose "retiring" Christine Timperley as a trustee of the Bamberworth Trust. The circumstances of this will be considered below when I look at the allegations of fraud made against Mr Rose.
 32. Mr Rose appointed Carol Dawber his long-time bookkeeper as a trustee of the Bamberworth Trust and as a trustee of the Cavendish Trust. Within days, a deed had been prepared removing Mrs Rose and their eldest daughter as beneficiaries of the Bamberworth Trust and a second deed removing them as beneficiaries of the Cavendish Trust.
 33. On 20 January 2020, Mrs Rose issued her Form A. In February 2020, the voluntary interim maintenance stopped. By April 2020, Form Es were due to be exchanged. Mr Rose did not comply. On 23 April 2020, the case came before me without notice to Mr Rose with Mrs Rose seeking orders against the trustees to freeze the assets of the two trusts and preventing Mr Rose from disposing of his interest in Higher Lane, Pinfold and for him to provide financial information.
 34. Mr Rose contended that a without notice order was inappropriate, and I listed the matter for a full hearing. I re-timetabled the date at which Mr Rose's Form E should be filed and he failed again to file it.
 35. In May 2020, Christine Timperley filed a statement with the Court saying that she had never seen or signed the deed of resignation relating to the Bamberworth Trust.
 36. On 27 May 2020, the case was back before me, and I accepted undertakings from Mr Rose that prevented his dealing with various properties and shareholding and his agreement to preserve assets in the Cavendish Trust of at least £380,000. On the basis of his undertaking, I discharged the freezing order. It has since emerged that within a week, Mr Rose was trying to sell trust properties to his own companies, in this case Palador, in breach of his undertaking.
 37. On 20 July 2020, the case came before me for a first appointment but there was still no Form E from Mr Rose and I re-timetabled that to come in on 3 August 2020. Needless to say, it

- did not. That led to Mrs Rose applying for a penal notice and for further orders preventing Mr Rose disposing of funds held by one of his companies following a settlement of a dispute with a man called Philip Eckersley.
38. It has subsequently emerged that at this time there were circular transactions of money with Mr Rose using companies to which he moved the Peter Street funds to create loans to other companies, including loans to a company run by his girlfriend's father.
 39. Mrs Rose's application came before HHJ Haigh on 21 September 2020. He granted the injunction sought and added a penal notice to the requirement to Mr Rose to file his Form E. On 2 October 2020, Mrs Rose applied for Mr Rose's committal for failing to file his Form E. The matter came back before me on 16 October 2020, when I gave further directions but the date for Mr Rose's Form E came and went without it being filed. He eventually filed it on 30 October 2020. It contained hardly anything of relevance. It certainly did not explain his complicated financial affairs and there was no justification for it being so delayed.
 40. The matter came back to me on 9 November 2020 where Mr Rose set out the case he has run ever since, namely that his liabilities exceed any assets he may have. I directed him to file a statement about the various property transactions involving the businesses and the trusts and any other assets he had, such a statement to be filed by 13 November 2020. On 13 November 2020, when the committal application was before me, I adjourned the case into the New Year whilst a judgment from HHJ Halliwell in the Creativityetc Limited litigation was awaited. I required Mr Rose to file a further statement about the trusts and to explain what assets he had brought into the marriage and to disclose bank statements for last two years. I made it plain on the face of the order that the Court could draw adverse inferences if information was not provided.
 41. On 19 January 2021, Mrs Rose applied for a further committal order for breach of Mr Rose's undertakings by using, it was said, trust funds to pay for litigation and failing to provide the information he was ordered to provide. The matter came back before me on 21 January 2021, where it was recorded that Mr Rose was in breach of orders directing him to provide information.
 42. I decided at that hearing that the only way to get information out of Mr Rose, in the light of what he was telling me when he attended via telephone from Dubai where he was living in a hotel and said he did not have direct access to documents, was for me to start the final hearing and hear evidence from Mr Rose about his means. The matter clearly could not go on indefinitely with Mr Rose simply failing to provide documents and explanations as he was being ordered.
 43. On 1 March 2021, I began to hear evidence from Mr Rose. His case in summary was that he had no assets only debts; that he had resigned from the Cavendish Trust; had liquidated his connections with the United Kingdom was not able to say he would return to the jurisdiction. He said he continued to have an income but that it was reduced substantially from that stated in his Form E. His explanation for breaches of his undertaking was that he did not consider the undertaking a valid undertaking and he was not able to state whether there was still money in the Cavendish Trust available for distribution. He was asked about how he was funding his litigation, and he said he had been loaned money by a company owned by Andrew Dempsey. In fact, that company is owned by his girlfriend's father.
 44. It is Mrs Rose's case the money he was being advanced was his own money which had been sent by a circuitous route to his girlfriend's father for him to hold on her behalf.
 45. He identified a number of people who might be able to assist with documents and he gave authority for those acting for Mrs Rose to contact those individuals and for them to release information sought. He confirmed that he had not resigned from the Bamberworth Trust. Pursuant to Mr Rose's authority, Mrs Rose's solicitors wrote to, amongst others, Mr Waxman

- and Mrs Dawber, the trusts' accountants and the solicitor who had acted for Mr Rose in setting up the trusts and changing the trustees and the beneficiaries, all effectively to no avail.
46. On 5 July 2021, judgment from HHJ Halliwell identified that Mr Rose was the beneficial owner of the shares in one of the Cypriot companies that had been involved in the transaction where the £300,000 instant profit had been created.
 47. In the meantime, Mrs Rose's solicitors were making limited progress in identifying Mr Rose's assets from inquiries of those he said he had given authority to disclose information who appeared unwilling to co-operate.
 48. Palador continued to receive funds, said to represent a repatriation to Mr Rose of funds that he had secreted abroad. On 1 March 2022, I gave further directions. I allowed Mrs Rose to amend her Form A to include an application to vary the Bamberworth Trust and the Cavendish Trust, and I provided for Carol Dawber and David Waxman to provide statements about their potential joinder as intervenors within these proceedings, given that there was now a claim against the trusts of which they were trustees.
 49. At that point, those acting for Mrs Rose had asked for third-party disclosure orders against a variety of entities who had been identified from the documents that had, to that stage, been disclosed. That process has continued right up to the final hearing and, in the event, has proved the most productive way of getting information about Mr Rose's affairs. A great many of the matters I have raised in this summary of events have been gleaned from documents provided via that route. There are some entities that have not assisted the Court, including banks in Switzerland, His Majesty's Revenue and Customs and entities in Cyprus and Gibraltar.
 50. Included amongst those who were served with third-party disclosure orders were Carol Dawber and David Waxman. Neither responded. At a hearing on 30 March 2022, I joined Carol Dawber and David Waxman as parties so that I could consider whether orders affecting their legal interests ought to be made. I also made provision for Mr and Mrs Rose jointly to instruct solicitors to advise the beneficiaries of the Cavendish Trust with the solicitor to be paid for by the trust. That has not happened. Nobody other than Mrs Rose had provided the solicitor with documents confirming their identity and address and no funds were provided from the trust to pay the solicitor. I have had to consider whether that is an impediment to me going on. For reasons I will explain in due course, I decided that I could proceed.
 51. I made further third-party disclosure orders on 10 August 2022, resulting from information gleaned from the disclosures that had been made by those third parties who had responded, inevitably the process growing as more information of what Mr Rose was really up to began to emerge.
- Pre-Trial Review**
52. On 13 September 2022, I conducted pre-trial review. The final hearing was due to recommence on 7 November 2022, and I was anxious that a full week of Court time was not to be wasted. I made directions that Mrs Rose, Mr Rose, Mrs Dawber and Mr Waxman should attend the final hearing in person to give evidence, recording that a final order may be made in their absence. I made provision for the filing of section 25 statements and the exchange of open offers.
 53. Mrs Rose had, immediately before that hearing, issued a further application for a freezing order, which I adjourned to the final hearing. Mr Rose was present at that pre-trial review and did not suggest, although he had opposed the suggestion, that there was any impediment to his attending at Court. His complaint was that it would be difficult as he had no base in Manchester and would have to stay in a hotel which would be stressful for him. He did not tell me that his girlfriend lived in Manchester.

Final hearing 7 November 2022 and Mr Rose's participation

54. 7 November 2022 was a Monday. At 20 minutes after four in the afternoon of the Friday before the hearing, Mr Rose filed an application by email with the Court seeking to have the final hearing adjourned, asking for permission to file his section 25 statement out of time and, if the matter was not adjourned, asking to give his evidence remotely. He filed information in support of his application about trespassers in his block of flat in Spain contained in emails dated March and April 2022, and he filed a short note from a doctor saying he was anxious and should not have to give evidence.
55. I refused all his applications. Firstly, all those matters could have been raised at the pre-trial review. None of them were. Secondly, the evidence in relation to the flats was months out of date. Thirdly, the medical evidence was woefully inadequate to justify adjourning: there was no reference to Mr Rose's medical history, there was no explanation of the treatment he had been receiving and was continuing to receive for his anxiety, and there was no prognosis about when he would be fit to give evidence should the Court accede to his request.
56. Of necessity, I had to make those decisions first thing on the Monday morning. That time had been set aside for my reading. I decided that I would adjourn the start of the evidence until the following day to give Mr Rose an opportunity to get a flight from Spain to Manchester and to be in attendance. Mr Rose did not attend. Mr Montaldo, on instructions, asked that Mr Rose be allowed to, at the very least, observe the hearing via video link. I refused. There was no reason for him to be anywhere other than at Court.
57. Mrs Dawber provided no information to the Court, no documentation and did not attend. She provided no explanation as to why she did not attend. Mr Waxman had attended an earlier directions hearing when it was conducted remotely. He had had limited email exchanges with Mrs Rose's solicitors. He did not provide information and he did not attend, and I do not have the benefit of his evidence. However, remarkably, he attended at the Court building on the day when Mr Rose's girlfriend Miss Elkinson was required to give evidence and was identified sitting in the café with her in the Court building. He did not visit the Court room, nor did he provide anyone with an explanation as to what he was doing.
58. In the event, I heard evidence from Mrs Rose, from Christine Timperley, from Mr Elkinson, Miss Elkinson's former husband and from Miss Elkinson. I had the evidence Mr Rose had given at the first part of the final hearing, which had been transcribed. As a result of the third-party disclosure orders, I had several thousand pages of documents. Miss Hillas and Mr Currie, on behalf of Mrs Rose, provided me with a 58-page chronology of information largely gathered from the third-party disclosure. That was a particularly helpful document and has largely informed the history that I have given. I also had written submissions from Miss Hillas and Mr Currie and from Mr Montaldo.
59. The witnesses were subject to cross-examination, and I gave Mr Montaldo time to take instructions from Mr Rose before he cross-examined.
60. I can summarise each party's case very shortly. It is Mrs Rose's case that she and Mr Rose, during the course of their marriage had, primarily in the two trusts but also through properties owned by Mr Rose and his businesses, very substantial wealth. Although they did not live an extravagant lifestyle, there was no shortage of money and that whenever she needed money Mr Rose provided it in cash. Her case, as advanced through her legal team, was that Mr Rose has plundered the trusts treating trust assets as if they were his own money; that he has spirited substantial sums of money abroad and squandered hundreds of thousands of pounds in litigating with Creativityetc Limited to no effect, leaving the debt outstanding accumulating interest so that what is owed now may be as much as £1.8 million with interest accruing at £15,000 per month. Recently disclosed through third-party disclosure orders was an action by Mr Rose seeking £1.9 million from Creativityetc Limited.

61. Mr Rose's case is that he has no assets and only debts. He has not answered nor has explained why he has transferred funds abroad. He claims that it has been a legitimate use of trust funds to fight Creativityetc Limited who have sought security and obtained it against trust assets. He regarded as justified his failure to observe his undertakings to the Court and his failure to preserve the trust assets that he said he would.
62. Mrs Rose invites me to conclude that the sums passing through Mr Rose's hands, which have disappeared, are of the order of £5.5 million – that is what has been identified - but probably substantially more. She wishes for there to be a variation of the trust holding her home at Pinfold to enable her to live there for life. She seeks a lump sum, and she puts that in her open offer at £2.3 million; and that based on a total figure of £4.6 million, which had been the sum said to have been disposed of by Mr Rose until the day counsel's opening note was filed with me when a further £999,000 was identified from March 2015.
63. In order to enforce her lump sum, she invites me to vary the trusts to restore her as a beneficiary; ensure the proper management of the trust by removing the current trustees and replacing them with Mrs Rose and the party's eldest child and to allow her to receive the maximum benefits from the trust by transferring or selling assets of the trust. She seeks a declaration that the assets owned by companies and trusts controlled by Mr Rose are held for Mr Rose's benefit, effectively that they are nuptial settlements, and then varying those settlements by ordering a sale of the assets and payment of any proceeds to Mrs Rose.
64. Mr Rose's response is to say that I should do none of that but impose a clean break between them with no provision made for Mrs Rose or their dependent child.

The relevant law

65. Let me deal with the law. The relevant statute is the Matrimonial Causes Act 1973 as amended. Not all of the schemes set out in the MCA part II are brought into play by the facts of this case.
66. Section 23 provides a list of orders that are available. Section 23(1)(c) provides for one party to the marriage to pay a lump sum to the other. Section 24 allows the Court to order the transfer of property from one party to the other. A power to order a sale of property, if that is needed, is contained in section 24A. Section 24B gives the Court power to make one or more pension sharing orders.
67. Section 24(1)(c) provides that:
 - “On granting a decree of divorce...
 - The court may make any one or more of the following orders, that is to say...
 - (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage”.
68. “Settlement” means any provision (other than an absolute gift) made for the benefit of the parties to the marriage by either one or both of them or by a third party. A nuptial settlement is one that makes some form of continuing provision for both or either of the parties to a marriage with or without provision for their children.
69. The Court's jurisdiction is unfettered and unlimited and can extend to transferring an asset to a non-beneficiary free of a trust.
70. The matters to which the Court is to have regard in deciding how to exercise its powers under section 23, section 24, section 24A and section 24B are set out in section 25. The Court is required by section 25(1) to have regard to all the circumstances of the case, the first consideration being given to the welfare whilst a minor of any child of the family who has

- not attained the age of 18.
71. Section 25(2) specifies that:
 “the court shall in particular have regard to the following matters—
 (a)the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
 (b)the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 (c)the standard of living enjoyed by the family before the breakdown of the marriage;
 (d)the age of each party to the marriage and the duration of the marriage;
 (e)any physical or mental disability of either of the parties to the marriage;
 (f)the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
 (g)the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
 (h)in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring”.
72. Section 25A(1) then requires the Court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party to the other will be terminated as soon as is just and reasonable (often referred to as “a clean break provision”).
73. Consideration of the statutory scheme by the Higher Courts has identified the following factors that are applicable to the facts of this case:
 “i) The analysis must be gender neutral and non-discriminatory – *White v White* [2001] 1 AC 596 HL.
 ii) The starting point in every inquiry is a two-stage process, first computation then second distribution – *Charman v Charman* (No 4) [2007] 1 FLR 1246 Court of Appeal.
 iii) In considering section 25 there are three main distributive principles: needs, compensation and sharing shaped by the overarching requirement of fairness - *Miller v Miller; McFarlane v McFarlane* [2006] 1 FLR 1186 HL.
 iv) The objective of financial orders is to meet the needs of the parties to enable a transition to independence to the extent that that is possible.
 v) The main needs in this case, as in most cases, are for housing, present and future income, including income in retirement”.

Computation

74. Let me start the next phase of this judgment by considering what assets there are and have been identified.
75. Pinfold, the family’s home, has been held by the Bamberworth Trust. There have been other

properties owned by the trusts as well.

a) 1 and 1a Higher Lane, Whitefield owned by the Bamberworth Trust. In his evidence in March 2021, Mr Rose said it was worth about £300,000 and that it secures an RBS mortgage of £110,000. In May 2020, Mr Rose undertook not to deal with this property. He in fact attempted to secure charges against it in favour of one of his companies Palador Properties Limited.

b) 24c Hilltop, Hale, this was owned by the Cavendish Trust and sold in 2013 in a transaction I have already referred to, which resulted in funds being transferred to Mr Rose of £800,000, and of that £320,000 transferred to a Swiss bank account,

c) 47 Peter Street, Manchester was owned by the Cavendish Trust and sold in July 2018 for £3.1 million. At least £2.2 million appears to have found its way to Mr Rose. It may also be that a further £600,000, said to have been a debt, was also transferred to Mr Rose as it appears no such debt existed.

d) 168-170 Bury Old Road, Manchester was owned by the Cavendish Trust but transferred to a Cypriot company in 2003. That company sold it in March 2015 to a company associated with the Henesey family for £999,000.

76. Mr Rose has properties outside the trusts.

a) 79-87 Lower Hillgate, Stockport. This is owned by Mr Rose and David Waxman. Attempts have been made by Mr Rose and Mr Waxman to sell it to companies owned by Mr Rose. That property currently secures the Creativityetc Limited debt.

b) The Gables, 511 Liverpool Road, Rufford, Ormskirk. This was owned until May 2021 by a Cypriot company of which Mr Rose is the beneficial owner. It was sold to another of Mr Rose's companies for £250,000. He did not disclose this asset at the Court hearing on 1 March 2021.

c) 56 London Road, Ashton-under-Lyne. This is owned by another of Mr Rose's Cypriot companies. It is believed to be an unoccupied terraced property. The company that owns it was placed into receivership in 2018.

77. The next property I mention for the sake of completeness. It is not owned by either of the parties or the trusts but owned by the children of the family pursuant to the will of Mrs Rose's stepfather. That is a property at 212 Bury New Road, Whitefield. Mr Rose asserts that he is the beneficial owner of the property and says that it is worth £220,000 and has a mortgage of £40,000 secured against it. Mr Rose has produced no documentation in support of his claim. It is not part of the assets available for distribution.

78. Another of Mr Rose's companies in July 2020 received £240,000 in settlement of a dispute with the Eckersleys. An order was made freezing that money and preventing Mr Rose disposing of it. It has gone. As I have already mentioned, Mr Rose gave an undertaking to preserve £380,000 in the Cavendish Trust but that money appears to have gone.

79. Miss Hillas characterises what has been demonstrated from the documents produced pursuant to the third-party disclosure orders as follows:

a) There has been material non-disclosure by Mr Rose and the trustees on a massive scale.

b) It appears Mr Rose has received substantial sums (at least £4.6 million and probably much more) since the parties separated and he has not shared that with Mrs Rose.

c) Some of that money has ended up offshore (Zurich, Cyprus and Gibraltar).

d) Mr Rose has used the assets of the trust as his personal piggy bank and the trustees have permitted him to do so.

80. As I set out at the beginning of this judgment, it is abundantly clear that Mr Rose is thoroughly dishonest. There is evidence suggesting that he is bringing money back for his own use through vehicles belonging to his girlfriend and his girlfriend's father, but the tracing exercise is incomplete because neither of them have responded to the third-party production orders, inevitably leading me to conclude that they must have something to hide. Miss Elkinson did produce bank statements following the giving of her evidence, but they did not demonstrate what I asked her to demonstrate, namely where the money that was passing through her accounts had come from.

Adverse inferences

81. How do I approach the drawing of adverse inferences? The law is comprehensively set out in *Moher v Moher* [2019] EWCA Civ 1482. The evidential platform for a finding of non-disclosure is established by either (i) direct evidence of an asset which the alleged non-disclosure has not revealed and/or; (ii) failure to comply with Court orders or provide adequate responses to questions from which failure the Court feels able to draw adverse inferences and/or; (iii) evidence of lifestyle wholly inconsistent with the disclosed resources.

82. All three of those propositions apply here. Third-party disclosure orders have demonstrated the scale of removal of assets by Mr Rose, and he has failed to comply with Court orders and respond to requests for the provision of information and orders for the provision of information. He has ignored and flouted Court orders for the preservation of assets. He lives abroad and has done for approximately two years with no visible means support. Mrs Rose, when she gave her evidence, was asked about her husband's work and had no idea what he had done when they were married. Miss Elkinson gave evidence and was asked about Mr Rose's work now. She had no idea what he does to generate an income, despite describing herself as a businesswoman running a successful business. She disclosed that he has plans to purchase the flat in which he is living in Spain, but his case is that he has no funds with which to do that.

83. How then do I go about assessing what there is, what there ought to be, so determining what is available to be distributed between the parties before I go on to consider distribution?

84. Mr Montaldo, on Mr Rose's behalf, has been highly critical of Mrs Rose for not having got to grips with her case, not understanding the history of the matter nor the details of the proposals for settlement made on her behalf. That is a wholly unjustified criticism. Mrs Rose has been a homemaker and mother throughout the parties' relationship. She has had no dealings with Mr Rose's affairs. She knew there were trusts. She knew that she was a beneficiary but had no idea about the wheeler dealing done by Mr Rose to convert assets into cash and to spirit that cash out of the jurisdiction. Given that Mr Rose was deliberately orchestrating his affairs on the basis that he was being divorced, as admitted in the email to which I have referred, it is highly unlikely that he will have shared his activities with his estranged wife. In any event, until the third-party disclosure orders began to produce relevant information neither those acting for Mrs Rose nor the Court had much idea of what Mr Rose had been up to.

85. Mr Rose deliberately absented himself from the final hearing. He could and should have given evidence. Instead, he chose to stay in Spain and leave Mr Montaldo to do his best with the material at his disposal. That failure to attend at the final hearing was entirely in keeping with Mr Rose's failure to file his Form E in anything like a timely fashion and his failure to provide documentation, his failure to provide explanations, his disregard of Court orders, injunctions and undertakings given by him, but what can I assume that he is hiding? It will be wrong of me to conclude that he has assets or access to funds that it is clear he does not, but that is not this case.

86. As I have observed at several of the previous hearings, the fact that he has spent what turns

out to be hundreds of thousands of pounds on the Creativityetc Limited litigation indicates that he, firstly, has access to substantial funds and, secondly, is prepared to apparently waste it simply putting off the day when he must satisfy the debt that he undoubtedly has to Creativityetc Limited; that debt now standing at £1.8 million and growing by the day. It is Mr Rose's case that the Creativityetc Limited debt is at the heart of everything. He says that Mr Henesey has duped him and is part of a conspiracy to deprive him of what limited assets he has.

87. He goes further and says that the only reason Mrs Rose is bringing this claim for a financial order is at the bidding and behest of Nick Henesey, who is controlling Mrs Rose and dictating her case. He has run his conspiracy theory in the Creativityetc Limited litigation, so far with no success. I am wholly unpersuaded there is anything in Mr Rose's suggestion that Nick Henesey is behind all of this. Mr Rose had the opportunity, and I made directions to allow it to happen, to call Mr Henesey to give evidence, and he chose not to do so.
88. Mr Rose relied on a letter sent to a firm of solicitors who had acted for Mr Rose that was effectively a letter before action and clearly written by a lawyer. Mr Rose asserted, without any evidence, that the letter was written by Nick Henesey. Mrs Rose accepted that she had not written it and explained that she had instructed a barrister to draft it based on documents left at the family home by Mr Rose. She was able to point to a payment to a barrister in her bank statements. There was nothing else she would have been paying for to a commercial expert. Although her explanation had some difficulties in it, I have no hesitation in preferring her version of events to the speculation of Mr Rose.
89. I must allow for the fact that some or all of the properties that have been sold have been subject to borrowings, but the figures put forward by Miss Hillas and Mr Currie are net figures after discharge of the established borrowing. The numbers put forward are the amounts emerging from the conveyancing solicitors and being sent to various bank accounts in various parts of the world at Mr Rose's instruction. Insofar as Mr Rose has chosen to spend money fighting Creativityetc Limited, there is no reason why he should not choose to spend his own money in that way. What is not legitimate is for him to spend money that might properly belong to Mrs Rose consequent upon their divorce proceedings.
90. After a long marriage like this the starting point is likely to be that Mr and Mrs Rose should share equally in what they have accumulated during their marriage. Unless there are compelling reasons to the contrary that may well be the finishing point.
91. If I work on the premise that there is at least £5.5 million, then Mr Rose will have plenty left over from his half share when he has satisfied the Creativityetc Limited debt and paid his legal costs. If he does not, that is the choice that he has made prioritising fighting that litigation as opposed to settling it, or having settled it, paying the amount he agreed to pay. I note from the papers that he has twice settled that claim and on both occasions not paid what he agreed to pay. As a litigation strategy that seems somewhat reckless. As I have identified, he now has a claim of his own said to be worth £1.9 million, but time will tell.

Are some of the assets non-matrimonial?

92. The next matter I need to consider is whether there ought to be some distinction made for assets brought into the marriage by Mr Rose that were previously assets of his parents. In this case, it will be difficult to characterise them as non-matrimonial assets. Everything was put into trust for the benefit of the family. That of itself really negates any argument that they should be treated as non-matrimonial assets. It may be a factor that I can take into account at the distributive phase, but they have been matrimonial assets within the trust since 1999. That again seems to me to be a comprehensive answer that there should not be some different treatment or exclusion or recognition in respect of what are said to be non-matrimonial assets.

Minor beneficiaries and other beneficiaries of the trusts

93. I have already mentioned the beneficiaries of the trusts and the direction I made for them to have advice. That has not happened, and I decided to proceed in the absence of that happening. I need to record that at an early stage within these proceedings the parties' middle child, an adult but living with her mother at the family home, sought to join into the proceedings. She was concerned about her security at her home and concerned about her status as a beneficiary under the trusts. I am alive to her interests, and I am alive to the interests of the parties' youngest child who remains a dependent and whose interests require to be my first consideration. His need first and foremost is for a roof over his head. His father has made plain from his actions since these proceedings were intimated that he has no intention of paying anything towards the maintenance of his son. The reality is that the family will benefit from anything recovered by Mrs Rose, whether it be from the trusts or from any other entities under the control of Mr Rose. I am quite satisfied that she has her children as her priority and will ensure that they are provided for.

Other financial support

94. In addition to saying that he has nothing, Mr Rose has also prayed-in-aid that since their separation Mrs Rose has had a relationship with a man (Mr Flynn) who has provided her with financial support. That is undoubtedly the case, and she accepted that that financial support continues even though they are no longer in a relationship. She described Mr Flynn providing for the parties' son both financially and as a father figure and hoped that that might continue, but she has no legal call on Mr Flynn's resources. She regarded the amount of money that he had paid to date, of which she had no precise calculation, as money that she is honour bound to repay should she obtain funds from Mr Rose. Mr Montaldo's point was that Mrs Rose has no need of financial support either of a capital nature or for her maintenance in that she continues to reside the way she has done for many years at Pinfold and with the support of her friend and with state benefits that she manages and has no debt.

Distribution

95. I am required to look at the standard of living enjoyed by the parties during the marriage. I need to look at their needs overall. Mrs Rose at 59, and not having worked during the marriage, has no earning capacity. There is no reason why Mr Rose cannot continue his occupation as a property consultant for many years to come. As I set out when I recited the law, their primary needs are for a home and income now and in retirement. Need in any event is an elastic concept. It must be put into the context of the case I am considering. Mrs Rose had no idea how much as a family they might be worth. All she was able to say was that during the course of the marriage money was not a problem, although they lived relatively modestly.
96. Mr Rose's attitude to his responsibilities is difficult to discern. He fell out with his mother and sister and litigation ensued. He has fallen out with his friend Nick Henesey and litigation has ensued. He has fallen out with Mrs Rose and this litigation has ensued, but this litigation has been conducted on the basis that he has used his very best endeavours to make sure she gets nothing by spiriting money abroad, altering the trusts to exclude her and spending whatever he could irrespective of whether it was injuncted or subject to undertakings. Had he treated his finances in that sort of way during the course of the marriage, Mrs Rose would have had no idea about their finances.
97. In my judgment, Mrs Rose is entitled to everything she asks for. It is right that such assets as there are in which Mr Rose has an interest that have been identified should be transferred to Mrs Rose. It is right that the trustees of the Bamberworth Trust and the Cavendish Trust should be removed. They have allowed Mr Rose to plunder those trusts without questioning him. Their silence in and absence from these proceedings speaks volumes. They are tainted with Mr Rose's dishonesty. I am astounded by the brazen behaviour of Mr Waxman in

attending at Court to support Mr Rose's girlfriend. The trustees should be Mrs Rose and the parties' eldest daughter. The trust should be rewritten to provide that Mrs Rose and the children of the family become beneficiaries. That is effectively the only way to make provision for the parties' dependent child that has any prospect of being met.

Fraud

98. There is an aspect of the case that I have not yet dealt with. During the course of previous directions hearings, Miss Hillas indicated that her case amounted to making allegations of fraud against Mr Rose. Given that Mr Rose was acting in person, although instructing Mr Montaldo for the purposes of representing him at the hearings, I directed that a document should be prepared setting out the allegations of fraud in writing as a proper pleading cross-referenced to the evidence in the case. Miss Hillas and Mr Currie did so in a document dated 14 October 2022. In setting out the history of what happened, I alluded to the matters set out in more detail in the allegations of fraud pleading. The pleading itself cross refers to the documents upon which it was based. I have been through it in detail, and I am satisfied that every one of the allegations made by Miss Hillas and Mr Currie is made out on the evidence.

Allegation 1: 2013 sale of 24c, Hilltop, Hale, Altrincham WA15 0NN

- 4. At all material times David Michael Rose ('the Respondent') was a trustee & protector of the Cavendish Trust ('Cavendish'). From 8 March 1999 to 14 December 2019 Shelley Rose ('the Applicant') was a beneficiary of the Cavendish Trust.*
- 5. Cavendish purchased 24C Hilltop, Hale, Altrincham WA15 0NN title no. GM486986 ('Hilltop') for £925,000 on 24 December 2004. The Respondent was registered as a proprietor of Hilltop on 28 May 2010.*
- 6. At all material times the Respondent was the registered and beneficial owner of Karunia Holdings Limited ('Karunia'), a company registered in Cyprus.*
- 7. Karunia first instructed Janet Auckland, solicitor, in 2003. At that time, Karunia, via Michael Hunter of Michael Hunter and Partners of Tel Aviv, informed Janet Auckland of the following matters via due diligence documents:*
 - a. That its directors were Eva Agathangelou and Stelios Savvides;*
 - b. That its company secretary was Hive Management Services Ltd; and*
 - c. That its beneficial owner was David Jeffrey Shein.*
- 8. In June 2013, Karunia opened a file with Janet Auckland related to the purchase and sale of Hilltop. The Respondent, via Karunia, dishonestly and fraudulently confirmed to Janet Auckland that there had been no changes to the information provided in 2003. The Respondent further dishonestly and fraudulently omitted to inform Janet Auckland at any time that he was connected in any way to Karunia.*
- 9. Karunia instructed Janet Auckland to conduct the purchase of Hilltop from Cavendish for a price of £1,200,000.00. This sale was completed on 15 November 2013. The Respondent and David Waxman as Trustees of Cavendish received £485,613.89 of the proceeds of this sale, which was paid to an RBS Bank account named 'The Cavendish Trust (Management Account)' (account no. 20265784 sort code 16-00-01) on 15 November 2013.*
- 10. On 15 November 2013, the Respondent via Karunia further sold Hilltop to M Residential Limited (Co. Regn. No. 07644617) of 6th Floor, 40 Bruton Street, London W1J 6QZ ('M Residential') for the sum of £1,500,000.00.*
- 11. The balance of £319,117.16 was paid to a bank account held by Karunia with Credit Suisse, Zurich IBAN no CH3004835021851862001 on 15 November 2013.*

12. As sole beneficial owner of Karunia, the Respondent enriched himself by the amount of £319,117.16 and deprived Cavendish, and as such the Applicant as a beneficiary of Cavendish, of the same in fraudulent breach of his duties as trustee.

Allegation 2: Forged Resignation of Christine Timperley

13. At all material times, the Respondent has been the trustee and protector of the Bamberworth Trust ('Bamberworth'). The Applicant and the parties' children were beneficiaries of Bamberworth from its inception on 8 March 1999.

14. On 9 March 2007, Christine Timperley was appointed as a co-trustee of Bamberworth.

15. On 3 July 2018, the Respondent instructed Cyril Rose, solicitor of Kormornicks Solicitors, to draft a Deed of Resignation as trustee of Bamberworth with respect to Christine Timperley. The Respondent further instructed Cyril Rose to draft Deeds of Exclusion with regard to the Applicant in respect of Cavendish, and Shifra Kaufman, the parties' eldest daughter, with respect to Cavendish and Bamberworth.

16. On the same date, the Respondent instructed Cyril Rose to draft Deeds of Appointment, appointing Carol Anne Dawber and David Waxman as trustees of Bamberworth.

17. On 11 December 2019, the Respondent and, purportedly, Christine Timperley appointed Carol Anne Dawber as a trustee of Bamberworth. The Deed of Appointment giving effect to the same was witnessed by David Waxman.

18. On 12 December 2019, the Respondent forged the signature of Christine Timperley on a Deed of Resignation as trustee from Bamberworth. David Waxman fraudulently witnessed the Deed of Resignation and Christine Timperley's forged signature.

19. Christine Timperley did not to her knowledge sign the Deed of Resignation.

20. On 12 December 2019, the Respondent and Carol Anne Dawber appointed David Waxman as a trustee of Bamberworth. The Deed of Appointment giving effect to the same was witnessed by Barrie Semp.

21. The Applicant and the parties' eldest daughter were excluded as beneficiaries of Bamberworth on 14 December 2019.

22. The Respondent fraudulently excluded Christine Timperley from the management of Bamberworth to enable him to deal with the assets of Bamberworth in an unencumbered manner. Specifically, the Respondent fraudulently excluded Christine Timperley from the management of Bamberworth to enable him to defeat or otherwise frustrate the Applicant's interest in the assets held by Bamberworth without opposition from Christine Timperley.

Allegation 3: Misappropriation of funds from the sale of 47 Peter Street & dealings with Lower Hillgate

23. The Respondent misappropriated the funds flowing from the sale of 47 Peter Street, Manchester M2 3NG, ('Peter Street') which was a property held by Cavendish until the sale of the Upper Floors on 29 March 2018, and the Freehold on 27 July 2018 in that:

a. The Upper Floors of Peter Street ('the Upper Floors') were sold on 29 March 2018 for a sale price of £1,600,000.00.

b. In advance of that sale, the business current account held by 'the Cavendish Trust' with RBS account number 20224042 sort code 16-00-01 ('the business account') received £210,000.00 paid via BBS Law across four

transactions on 20 October 2017, 22 January 2018, 25 January 2018 and 19 February 2018 in respect of monies to be received upon completion of the sale.

c. On 29 March 2018, upon of the sale of the Upper Floors, the Respondent paid Clarion Solicitors Limited the sum of £565,990.00 to an HSBC account no. 23665445 sort code 40-27-15, said to be in redemption of a loan from TFG Capital.

d. On 29 March 2018, upon completion of the sale of the Upper Floors, the Respondent paid £175,000.00 to an account held by 'The Cavendish Trust' with RBS account number 22115976 sort code 16-00-01 ('the Cavendish Trust loan account'), which is referred to as 'RBS Repayment'.

e. On 1 May 2018, the remaining balance from the sale of the Upper Floors of £629,305.00 was paid to the business account.

f. The Respondent paid £30,030.00 to a foreign bank account in his name from the business account on 1 May 2018.

g. The Respondent paid £200,030.00 to a foreign bank account in his name from the business account on 7 June 2018.

h. The business account received £199,855.00 on 20 June 2018 with the payment reference 'RBSCTYO01590763 RBSCHQO00465655 BANCO POPULAR ES PANOL MADRID'.

i. The Respondent transferred £700,060.00 to Jubilee Holdings in three payments on 4, 9 & 18 July 2018. The Respondent is the director of Jubilee Holdings Limited, which is registered 21 Engineer Lane Gibraltar, GX11 1AA, under incorporation number 1169462.

j. The Freehold of Peter Street ('the Freehold') was sold on 27 July 2018 for £1,500,000.00.

k. From the proceeds of sale of the Freehold, on 27 July 2018 the Respondent via BBS Law paid the Cavendish Trust loan account £590,648.00, which was the outstanding balance of the loan account.

l. On 24 August 2018, the Respondent and David Waxman authorised the transfer of £250,000.00 of the proceeds of sale of the Freehold via BBS Law to Palador Property Investments Limited account number 28475844 sort code 09-01-29 ('the Palador Property HSBC account'). The Respondent and David Waxman are the holders of the Palador Properties HSBC account.

m. On 29 August 2018, the Respondent and David Waxman authorised the transfer of the remaining balance of the proceeds of sale of the Freehold via BBS Law to the Palador Property HSBC account which amounted to £639,218.45.

24. The Respondent and David Waxman were the registered proprietors of 78-87 Lower Hillgate, Stockport, SK1 3AW ('Lower Hillgate'), from 19 January 2016. The Respondent and David Waxman via their role as directors of Palador Property Investments Limited (Co. Regn. No. 10964957)³ were registered as beneficiaries of Lower Hillgate on 28 September 2017. £300,000.00 was transferred via JMW Solicitors upon the Respondent's instructions into the Cavendish business account with the payment reference 'LOWER HILLGATE' on 11 July 2018, and thereafter utilised by the Respondent for his personal gain in breach of his duty as trustee.

25. As a result of the above, the Respondent, fraudulently and in breach of his duties as a trustee of Cavendish, disposed of the assets of Cavendish to his personal gain, by either making payments towards debts he accrued in the course of his personal commercial endeavours or by transferring the assets held by Cavendish to himself.

Allegation 4: General breaches of trust

26. The Respondent made regular withdrawals from the RBS business account to an RBS account titled 'The Cavendish Trust (Management Account)' account number 20265784 sort code 16-00-01 ('the management account'), and withdrew funds from the management account for his and David Waxman's personal gain:

- a. On 9 May 2017, £12,414.51 was withdrawn from the management account to 'DAVID ROSE AND WAX';*
- b. On 28 June 2017, £18,000.00 was transferred from the management account to 'DR';*
- c. On 9 August 2017, £12,414.51 was withdrawn from the management account to 'DAVID ROSE AND WAX';*
- d. On 8 November 2017, £13,000.00 was transferred from the business account to the management account;*
- e. On 9 November 2017, £12,414.51 was withdrawn from the management account to 'DAVID ROSE AND WAX';*
- f. On 9 February 2018, £13,000.00 was transferred from the business account to the management account; and*
- g. On 9 February 2018, £12,414.51 was withdrawn from the management account to 'DAVID ROSE AND WAX'.*

27. The Respondent therefore fraudulently deprived Cavendish, and thereby the Applicant, of funds for his personal gain.

28. The Respondent regularly spent monies from the business current account for his benefit. For example:

- a. Payments totalling £3,020.11 in Spain & Gibraltar between 1-8 May 2018;*
- b. Payments totalling £2,986.92 in Florida, USA between 10-17 May 2018;*
- c. £1,700.00 at the Smile Centre, Whitefield on 6 September 2018; and*
- d. £116.49 at the Bangkok Marriott on 14 December 2018.*

29. The transactions set out above amount to misappropriation of funds held by Cavendish for the Respondent's personal gain in breach of his duties as a trustee.

99. It is in effect no more than a detailed analysis of some of Mr Rose's dishonesty and his attempts to put assets and the proceeds of sale of assets beyond the reach of the Court and beyond the reach of Mrs Rose.
100. During Mrs Timperley's evidence another possible explanation of how she came to be removed as a trustee emerged. The document bearing her signature had on it an address she had lived at some years before. She accepted that when Mr Rose put a document in front of her for her signature that she would sign without understanding or even asking what it was she was being asked to sign. It is possible that she signed the document without knowing what it was. Mr Rose could have filed the document for future use and brought it out when he wanted to use it applying the date at the time of use. That explanation makes sense but also demonstrates the dishonest lengths Mr Rose was prepared to go to.
101. In order to put this judgment into effect, a detailed order will need to be drafted. In the first instance, I am going to invite Miss Hillas and Mr Currie to prepare such a document and to invite Mr Montaldo to confirm that it reflects what I have said in this judgment. I anticipate I will need to consider it at a hearing at which Mr Rose has an opportunity to make representations and given the wide-ranging nature of the steps that will need to be taken. When I hand this judgment down, I will set up a hearing for that purpose.

End of Judgment

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This transcript has been approved by the judge.